# REVITALIZING SOCIAL INSTITUTIONS FOR PEACE, JUSTICE AND ENVIRONMENTAL PROTECTION

## (RSIPJEP-2022)

Editors:
Meenu Chopra
Gaurav Kataria
Ankit Paul Kaur
Chander Prakash

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# REVITALISING SOCIAL INSTITUTIONS FOR PEACE, JUSTICE AND ENVIORNMENT PROTECTION

# RSIPJEP-2022

## INTERNATIONAL CONFERENCE,

## SCHOOL OF LAW,

## LOVELY PROFESSIONAL UNIVERSITY

**Editors:**

**Dr. Meenu Chopra, Dr. Gaurav Kataria, Ms. Ankit Paul Kaur**

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Prof. (Dr.) S. Shanthakumar
Director

Gujarat National Law University

Gujarat National Law University
Gandhinagar

Gandhinagar, Wednesday, 15 March 2023
Dir/SS/086/2023

## FOREWORD

I am pleased to pen this foreword to the proceedings of the international conference on "Revitalizing Social Institutions for Peace, Justice, and Environmental Protection," held on April 16th, 2022. This compendium offers a cornucopia of perspectives, interpretations, and comprehensive analysis of the problems that must be addressed to shift theories into realities that can help in achieving Sustainable Development Goals 6 and 16, particularly focusing on access to clean water and sanitation; peace, justice, and strong institutions, respectively.

I appreciate Lovely Professional University's School of Law's efforts in involving all academic stakeholders to make the Sustainable Development Goals a reality. Their voluntary commitment to SDGs 6 and 16 is commendable, and the contributions in this book highlight a broad range of issues underpinning the sustainable development goal challenge.

Furthermore, this proceeding emphasizes the pressing need for more data on who, where, and why people are left behind, regardless of gender, geography, socioeconomic status, or financial inclusion. The insights and analyses presented in this compendium will undoubtedly prove useful in estimating who is left behind in the Indian community in the future.

This Volume also underscores the importance of achieving universal access to water, sanitation, and hygiene to promote other development goals such as reducing poverty, hunger, and inequality, and promoting health. The United Nations General Assembly recognizes the right to access clean water and sanitary facilities as a fundamental human right, and this book's contributions provide a crucial milestone in achieving SDGs that India and other member countries of the United Nations agreed to in 2015.

Achieving SDG 16 entails creating peaceful, inclusive societies, ensuring equal access to justice, and establishing effective, accountable, and inclusive institutions at all levels of government. Transparency, accountability, and inclusiveness are essential to achieving this goal, leaving no one behind. As such, the involvement of various educational institutions is critical for actual participation, inclusion, and accountability.

I highly recommend this book to all those interested in sustainable development and achieving the Sustainable Development Goals. I extend my congratulations to Lovely Professional University's School of Law on the successful conference and for producing this valuable resource.

Gujarat National Law University • Gandhinagar •

**Prof. (Dr.) S. Shanthakumar,**
**Vice-Chancellor, Gujarat National University**
Koba, Gandhinagar-382426, Gujarat, India
Phone: +91-79-2327 6951/52 Email: vc@gnlu.ac.in Website: www.gnlu.ac.in

**PREFACE**

As our world continues to face unprecedented challenges in the realms of peace, justice, and environmental protection, the need for strong and effective institutions has never been more urgent. The failure of institutions, both local and global, to adequately address issues of persecution, injustice, and abuse has led to an ever-increasing need for renewed efforts to revitalize these institutions and ensure their accountability, transparency, and inclusivity.

This book, titled "Revitalizing Social Institutions for Peace, Justice, and Environmental Protection", is a powerful testament to the importance of these efforts. The result of a one-day international conference organized by the School of Law at Lovely Professional University, Punjab, India, this book brings together leading scholars, researchers, activists, and practitioners from around the world to explore the critical issues facing our society today.

The book's themes cover a broad range of topics, from evaluating the role of international and national social institutions in ensuring peace, justice, and inclusion, to addressing environmental issues such as global warming, natural disasters, and water management problems. It also delves into issues of poverty eradication, food security, and gender equality, among many others.

The contributors to this book offer a wealth of knowledge, insights, and experiences that challenge us to rethink our current approaches and chart a new path forward. Their thoughtful analyses, innovative solutions, and inspiring examples of successful social initiatives demonstrate that real change is possible, and that the power to effect this change lies in the hands of every individual and institution.

As we face an uncertain future, one thing is clear: the challenges we face today cannot be solved by any one person, institution, or country alone. It is only through collective action and

a commitment to a shared vision of peace, justice, and environmental protection that we can build a more sustainable and equitable world for ourselves and for future generations.

This book is a powerful call to action, and an invaluable resource for anyone seeking to understand the complexities of the issues we face and the innovative solutions being proposed. We hope that it will inspire and empower individuals, organizations, and institutions around the world to join us in our shared mission to revitalize our social institutions for a better tomorrow. I would like to express my sincere gratitude to all the contributors and participants of the conference for their valuable insights and perspectives. I hope that this book will serve as a catalyst for revitalizing social institutions towards creating a more peaceful, just, and sustainable world. I am grateful to have had the opportunity to work with such a diverse and talented group of individuals in bringing this book to fruition. I extend my heartfelt appreciation to Prof (Dr) Meenu Chopra, whose leadership and vision were instrumental in the success of the conference and the creation of this book. Her unwavering commitment to advancing social justice and environmental protection serves as an inspiration to us all.

**-Sincerely**

**Prof (Dr) Gaurav Kataria**

CHAPTER 1

# Transparency and Accountability in Lokpal and Lokayukta Act, 2013- An Analysis

Ms. Shipra Sharma

Research Scholar (Law), Lovely Professional University, Phagwara, Punjab.

Dr. Dallindeep Kaur Tiwana

Assistant Professor (Law), Lovely Professional University, Phagwara, Punjab.

## Abstract

*Corruption has plagued innumerable societies and has been inimical to their growth and development. It has been observed that omnipresence of corruption creates hurdles and hampers the whole prospect of having a quality life. Since long corruption and maladministration in India has repeatedly proven to be debilitating to the country's development. Government of India has set up various statutory bodies to evade this social evil such as the Lokpal and Lokayukta Act of 2013. Increased corruption and demand of its accountability underlies the ombudsman system around the world, including India. This paper is an attempt to study the need, structure; functioning and powers of lokpal along with its transparency and accountability highlight the problems surrounding the Lokpal and Lokayukta Act, 2013.*

**Keywords**: Corruption, Lokpal, Lokayukta, Maladministration, Government, Officials, Complaints

## Introduction

Corruption is a systemic and multilateral flaw in any society. In ordinary parlance, corruption is defined as the act of doing something that is debased, imputed, or unethical. As a result, it jeopardises society's foundation. Corruption is pervasive in the sense that there isn't a single country in the world that isn't corrupt, and there isn't a single government department that isn't involved in corrupt acts. Without a doubt, there is a lot of debate on how to deal with corruption and bad administration. The appointment of an Ombudsman can be seen as a result of such a discussion. To understand how the Ombudsman deals with these ills, it is necessary to first go over the definitions of the term’s maladministration and corruption (Jha, U. K. (2014)

'Mal' is a Latin word that means 'bad' or 'wrong.' “Maladministration is a terrible phrase with unfortunate associations, conjuring up behaviours such as taking bribes or bias, or extreme examples of bias or perversity," said Sir Edmund Compton, the UK's first Parliamentary Commissioner (Roy Gregory and Jane Pearson,1992)

The office of ombudsman received much attention when it was first introduced to Canada during the late 1960s and 1970s but has since received limited attention in scholarly periodicals and textbooks. This is despite the fact that the ombudsman has managed in its own functional way to emerge as a cornerstone of the modern administrative state in Canada, not only in the form of the classical (all-purpose) ombudsman but also in a number of other, more specialized ombudsman offices.( Najmul Abedin,2011)

The ombudsman in India is known as a Lokpal or Lokayukata. Before the early 1960s, then-law minister Ashok Kumar Sen presented the concept of a constitutional ombudsman in parliament. Dr.L.M.Singhvi invented the terms lokpal and lokayukta as the Indian model of ombudsman for the settlement of public concerns, and it was passed in the Loksabha. It was established in 1968, but it was dissolved with the dissolution of the Lok Sabha, and it has lapsed in the Lok Sabha numerous times since then (Tripathi, P. K., 1967)

**Need of Lokpal in the Country**

Our anti-corruption procedures have significant flaws as a result of which, despite overwhelming evidence against the dishonest, no honest inquiry and prosecution occurs, and the corrupt are rarely punished. The entire anti-corruption apparatus serves to protect the corrupt.

1) Lack of independence: Most of our agencies, including as the CBI, state vigilance departments, internal vigilance wings of various departments, and the state police's Anti-Corruption Branch, are not self-contained. They have to report to the same people in many situations, who are either accused themselves or are likely to be influenced by the accused (Dhavan, R., 1977).
2) Powerless bodies, such as CVC or CBI, are independent, but they have no authority. They've been elevated to the status of advisory bodies. They advise governments on two options: imposing departmental sanctions on any officer or prosecuting him in court. When a minister or a senior officer is involved, history demonstrates that their counsel is rarely heeded (Navlakha, G., 2011)
3) Lack of Transparency and internal accountability in addition, there is the problem of internal transparency and accountability of these anti-corruption agencies. Presently, there isn’t any separate and effective mechanism to check if the staffs of these anti-corruption agencies turn corrupt. That is why, despite so many agencies, corrupt people rarely go to jail. Corruption has become a high profit zero risk business. There is absolutely no deterrence against corruption (Johri, A., Bhardwaj, A., & Singh, S. 2014).

**The Lokpal and Lokayuktas Act, 2013, highlight the following features:**

1) The Lokpal and Lokayuktas Act of 2013 established a central Lokpal with the authority to try corruption matters involving all Members of Parliament and central government workers. The Lokpal's functions are similar to those of the Lokayuktas, except they operate on a state level.
2) The Lokpal and Lokayuktas offices deal with allegations of corruption against public person, including the prime minister's office, but with sufficient protections. Both the Lokpal and the Lokayukta deal with allegations of corruption against the government and its workers; in reality, they conduct investigations and hold trials based on the findings of those investigations.
3) The statute provides for the establishment of a Lokayukta and its set of powers for each state, but does not specify the scope of those powers. As a result, multiple Lokayuktas have been established, some with greater power than others. A suggestion has been made to implement the Lokayukta uniformly across Indian states in order to achieve uniformity. The Act mandates that all states establish Lokpal and/or Lokayukta offices within one year of the Act's enactment. Lokpal, on the other hand, will have a chairperson and a maximum of eight members, 50 percent of whom will be judicial members and 50 percent of whom will be from SC/ST/OBCs, minorities, and women.( Section 3 of Lokapal and Lokayukta Act, 2013)
4) The Act, allows for the seizure and attachment of any government official's property that he or she has acquired by corrupt methods, and this can be done while the official's case is pending.
5) The Lokpal Act requires all public officials to disclose their assets and liabilities, as well as those of their dependents. In actuality, the stated Act provides protection to any government official who acts as a whistle blower, and a Whistle Blowers Protection Act has been created as a supplementary measure.

**Transparency and Accountability under the Act**

The Lokpal was established as a much-needed shift in the fight against corruption. The Lokpal was a tool to combat the corruption that was rife across India's administrative structure. At the same time, there are flaws and omissions that must be addressed. Lokpal's appointing committee is made up of representatives of political parties who try to sway Lokpal's decisions.

There are no standards for determining who is a "eminent jurist" or "a person of integrity," which skews the Lokpal selection process. The Lokpal and Lokayukta Act of 2013 failed to provide whistleblowers with any type of concrete immunity. In circumstances where the accused is ruled innocent, the provision relating to the commencement of an investigation against the complainant discourages individuals from filing complaints. One of the most significant flaws is the Lokpal's exclusion of the judiciary from its purview (Section 4(e) of Lokapal and Lokayukta Act, 2013)

The Lokpal is not backed by the constitution. In addition, there are no effective procedures for appealing Lokpal's decisions. The states have complete discretion over the exact details surrounding the appointment of the Lokayukta. The Lokpal and Lokayukta Act, which changed the appointment process for the CBI's Director, has met the demand for functional independence of the CBI to some extent.

The Lokpal and Lokayukta Act further stipulates that no complaint against corruption can be filed until a period of seven years has passed from the date on which the alleged offence was committed ( Section 53 of Lokapal and Lokayukta Act, 2013)

**Conclusion and Suggestions**

1. The institution of lokpal has been a land mark move in the history of Indian polity, the lokpal and lokayukta act 2013 has offered a productive solution to combat the never ending menace of corruption.
2. The institution of lokpal has tried to bring a much needed change in the battle against corruption in the administrative structure of India but at the same time there are loopholes and lacunae which need to be corrected. Firstly it is not free from political influence as the appointing committee itself consist of parliamentarians There is no criteria to decide who is an 'eminent jurist' or 'a person of integrity.' Thus, this appointment can easily be manipulated. Further, the act provides no concrete immunity to the whistle blowers. The provision for initiation of inquiry against the complainant if the accused is found innocent will only discourage people from complaining. Also, there is no foolproof way to determine whether the person who is appointed as the Lokpal will remain honest throughout (Khandekar, A., & Reddy, D. S., 2015).
3. The biggest lacuna is the exclusion of judiciary from the ambit of the Lokpal. The Lokpal is also not given a constitutional backing. There are no adequate provisions for appeal against the Lokpal. The powers, composition and scope of Lokayuktas do not find any mention of the act. There is a long way to go to ensure transparency and crusade against corruption are still on and yet to reach its destiny.

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CHAPTER 2

# PRIVACY IN CLOUD COMPUTING: A COMPREHENSIVE STUDY OF DATA PROTECTION LAWS

**Shashank Rai, Ms. Ankit Paul Kaur**

**Fifth-Year B.A. LL.B (Hons.), Lovely Professional University, Phagwara, Punjab. shashankraicoc@gmail.com**

**Assistant Professor, Lovely Professional University, Phagwara, Punjab. ankit.27861@lpu.co.in**

**Abstract**

Cloud computing is all about resource sharing and direct access to the nebula of computers that store trillions of bits of information. Businesses and governments have stored our data in databases since the 1960s, when information technology capabilities expanded. Using the cloud implies giving up some control to a third party, no matter how careful a person is with their personal information. Databases may be searched, altered, and cross-referenced, and their data can be shared with organizations worldwide. Governments worldwide are significantly changing policies and infrastructure to enable economic opportunity, attract international investment, safeguard society's security, and improve institutions. Our devices and infrastructure are being built with information-gathering in mind. Individuals' ability to govern how data about their life is transmitted and analyzed is becoming extremely limited. The cooperation and mutual trust of the service providers and infrastructure providers will play a critical role in data security. We are not prepared for the future that has already taken shape. Our laws are unable to handle these dangers at this time. Our technologies are unsecure and expose personal information. The main idea of this paper is to analyze what cloud computing is and in the light of right to privacy which has been recognized as a fundamental right, explore the complexities of data leakage, data processing and privacy laws by comprehensive analysis of data protection regulations in various nations.

**Keywords:** *Cloud Computing, Personal Information, Privacy, Data Leakage, Data Processing, Data Protection Law*

## LIST OF ABBREVIATIONS

| | |
|---|---|
| AWS | Amazon Web Services |
| E.U. | European Union |
| GDPR | General Data Protection Regulation |
| H.P. | Hewlett Packard |
| I.T. | Information Technology |
| IaaS | Infrastructure as a Service |
| IBM | International Business Machines Corporation |
| KYC | Know Your Customer |
| PaaS | Platform as a Service |
| PDPB | Personal Data Protection Bill |
| SaaS | Software as a Service |
| VC | Virtual Computers |
| VPN | Virtual Private Network |

## 1. INTRODUCTION

Cloud computing refers to a computing model in which processing is shifted from individual computers or application servers to a network of computers. Cloud users have to worry about their computing demands because all underlying complexities are concealed. Cloud computing enables on-demand access to a vast pool of dynamically scaled and virtual resources.

A cloud's services are not restricted to using online apps; they may also provide I.T. administration services like requesting a software stack, system, or web appliance. Storage, servers, databases, networks, software, and other resources are all part of a cloud. As a result, cloud computing is defined as distributing applications, infrastructure, and platforms as a package over the internet. These subscription-based applications may be accessed from an internet browser, so consumers do not have to worry about the service provider's system or where the software and data are stored on the servers. Cloud computing is famous for various reasons, including the fact that it provides storage capacity above the conventional limit and saves computer expenditures.[i]

Outsourcing data storage and administration is the primary difficulty of cloud computing. People utilize cloud services unknowingly through e-mails, remote storage services, social media, backup services, and so on. They have no clue where their data is kept geographically, who has access to it, who retains it, or what happens when they ask to delete the same. In general, privacy concerns are not new. In the cloud computing context, privacy concerns are becoming increasingly dangerous. As a result, these regulations may not be appropriate in such a dynamic and public setting, and they will need to be tailored to address all privacy concerns. However, there is no certainty that these rules will be enforced in the cloud. Different roles in the cloud value chain can propagate and regulate privacy and security risks while utilizing cloud services: providing platform and services, software, intermediate and end-users of cloud services, and so on.

However, the legislation across the globe is continuously attempting to cope with the ever-expanding trend of Information Technology. Then again, for the attempt made by the legislature, technology appears to be way ahead. It has progressed so rapidly that regulatory authorities seem to never be able to compete with it. The fact is that legislature of other jurisdictions is now employing digital signals to monitor our day-to-day work. It tracks our digital footprints by analyzing the information we post on the internet. Our personal information is not private; our e-mail addresses are being shared with internet service providers, our online searches are shared with firms, and our cellphone conversations are shared with telecom companies. In today's world, our data is not only our government or any other organization that has access to our personal information, including bills payment details. In the worst case, they even have access to our credit or debit cards information and bank account details. In the

case where these data are not adequately managed by legislation, they will have access to each and every data that we desire to keep private without a legal warrant. As privacy tends to be a necessary prerequisite for democracy to work, and if the government does not allow individuals to act freely, it effectively undermines the concept of democracy.[ii]

As a result, both the public and commercial sectors collect and exploit personal data on a massive scale and for various objectives. While data can be helpful, the uncontrolled and indiscriminate use of personal information has generated worries about an individual's privacy and autonomy. Some concerns center on database centralization, individual profiling, more excellent monitoring, and the resulting erosion of human autonomy. Hon'ble Supreme Court's historic decision in aadhaar case by nine judges' bench,[iii] came up with a reasoning that the concept of privacy is an integral fragment of human life; hence, under the Constitution of India it is considered as a fundamental right. When it comes to personal data protection and right to privacy, both are said to be inextricably linked; both aim to protect comparable concepts, such as an individual's independence and dignity.

On 31st July 2017, the government established a Committee on Data Protection, which is headed by Justice B.N. Srikrishna. It was given the task of evaluating the critical concept of data leakage problems. The Personal Data Protection Bill of 2018 was developed by a committee led by Justice B.N. Srikrishna and some proposals and recommendations were made based on it. The enactment of the abovementioned Bill, namely, the Protection of Personal Data Bill, 2019, was set in motion based on the recommendations stated in the committee's report and proposals received from various stakeholders. The Bill's primary goal is to create a reliable and straightforward personal data protection framework for India.

The concept of right to privacy in addition to personal data protection stands not the same in terms of wording and extent. The right to privacy entails a blanket restriction on interfering with one's private life, subject to specified public interest standards that may allow intervention in some circumstances. Whereas the personal data protection is considered to be a current and active right, with checks and balances to safeguard persons where their information is to be processed. Also, processing of private data is considered as a critical element of personal data protection, including independent oversight and honor for the individuals' rights.[iv]

## 2. CLOUD COMPUTING EVOLUTION

The concept of cloud computing is said to have emerged around the 1950s-60s. The Foundation block for the same is set to be kept by IBM, who, for the first time, introduced the concept of virtual computers (hereinafter referred as V.C.) around the 1970s. The concept of V.C. is simple yet technical to

understand; to put it simply, a V.C. can be defined as a software computer that does working like a real computer, which has the capacity to run an operating system and programs installed into it. The V.C. is programmed in such a way that the actual resource files are with the host. Every V.C. has the capacity to perform the exact same functions as a regular computer will do. However, more onto that, it provides extra benefits like mobility, easy management, and additional security. When IBM released its first V.C., customers could operate their computers on hardware maintained and controlled by the host.[v]

In the 1990s, when telecommunications businesses switched from point-to-point data connections to Virtual Private Networks (hereinafter referred as VPN), the concept of cloud computing truly gained popularity. During the 1980s computer boom, several industries were seeking a means to connect all of their computers being operated under a single roof to be associated with each other so that they could have easy access to each other's shared data, and here in this case VPNs enabled them to do so. You could tell that the cloud would take off when the price dropped and the service improved.

In 1999, Salesforce.com became a cloud computing pioneer by providing business applications through a simple website. Any client with an Internet connection may access the apps, and businesses could acquire the service cost-effectively.

Microsoft debuted the Azure cloud application platform in 2008. People can use cloud apps to exchange data via the internet, and for the reason that they are on the cloud, they do not require any additional storage space on their computers or devices. Anyone having access to the internet may utilize these programmes. Microsoft Azure provides users with the ability to host websites, manage their data, and much more.

Google Play joined this race in 2009 by offering Cloud Computing Enterprise Applications. As soon as other organizations became aware of the advent of cloud computing, they started offering their cloud services. Following that, other firms such as H.P., IBM, Oracle, and Alibaba announced their Cloud Services.

Following its announcement in 2011, H.P. entered the "cloud wars" in 2012 by introducing a public beta of 'H.P. Public Cloud.' OpenStack was used to deliver storage and Content Delivery Network services through the service. In 2012, another H.P. business unit (The Converged Cloud Unit) unveiled 'H.P. Converged Cloud,' which offered private, managed, and public cloud choices. In 2013, the two business divisions and clouds united.

Satya Nadella took over as CEO of Microsoft in February 2014, succeeding Steve Ballmer. This was a watershed moment for Microsoft and its cloud division, working diligently to catch up to Amazon. Satya was a driving force behind Microsoft's shift to cloud computing before he became CEO, and he

has continued to place a strong emphasis on the cloud since then. In 2014, Satya described his cloud-first strategy in his first letter to staff. Microsoft's technique was incredibly effective.

After recognizing it would be nearly impossible to compete with Google, Amazon, and Microsoft, a few cloud suppliers opted to close their public IaaS clouds in 2016. Verizon said in February that it would discontinue its Public Cloud products, while H.P. announced in October that it would stop its H.P. Helion Cloud and instead work with public cloud suppliers.

Amazon made a couple of purchases in 2019 to assist clients in migrating to its cloud. Amazon revealed in January that it had purchased Cloud Endure, an Israeli business focusing on cloud disaster recovery, for $200 million, as well as TSO Logic. This startup was working on cost analysis to compare cloud and on-premises expenses.

As we reflect on the history of cloud computing, it is clear that this area, which was the enabler of digital transformation for many enterprises, underwent its evolution over time. And this is only the start; the greatest is yet to come.

## 3. CLOUD COMPUTING CLASSIFICATIONS

### *3.1. Public Cloud*

The public cloud model, one of the most common cloud computing platforms, allows organizations to host their applications or consume services on a public cloud. This I.T. approach offers on-demand computing resources controlled by a third-party service provider and used by several enterprises. Cloud computing service providers divide their infrastructure into virtual machines, often provided to businesses on a pay-per-use basis. This strategy may be utilized efficiently by enterprises to manage traffic spikes.

### *3.2. Private Cloud*

A private cloud approach is better ideal for organizations with compliance or storage constraints for keeping data on the public cloud. Businesses may centrally consolidate I.T. resources in a private cloud and enable dynamic provisioning and de-provisioning via a centralized portal. This private cloud is exclusively available to customers from a single firm or set of organizations, and the organization can tailor the private cloud to its own needs.

### *3.3. Hybrid Cloud*

It allows businesses to reap the benefits of both private and public cloud computing technologies. When an enterprise's internal I.T. capacity is wholly used, for example, the public cloud model might be used

to accommodate the additional demand. The hybrid cloud architecture is also preferable for hosting workloads that must meet compliance or data security standards.

## 4. CLOUD COMPUTING SERVICES

### *4.1. Infrastructure as a Service (IaaS)*

IaaS enables individuals to use infrastructure on a pay-as-you-go basis. Infrastructure comprises development tools, operating systems, servers, networking firewall, and storage.

### *4.2. Platform as a Service (PaaS)*

PaaS is often used to launch apps. It provides individuals with a comprehensive infrastructure configuration that includes a database, development tools, middleware, servers, storage, and networking. Developers, for example, can utilize a PaaS provider's framework to design and configure cloud-based apps and use in-built software components.

### *4.3. Software as a Service (SaaS)*

Individuals can access software products using the SaaS model on a pay-per-use or subscription basis. The service provider is responsible for managing the infrastructure for the application software, which avoids the requirement for any upfront expenses for I.T. infrastructure. Because apps are hosted centrally, and upgrades are performed automatically, there is no need for time spent on new installs.

## 5. DATA LEAKAGE ISSUE IN CLOUD COMPUTING

A cloud can be defined as a vast collection of computers that are connected together over the network. These computers might be private or public and personal or network servers. Let's take the example of Amazon which offers a cloud comprised of both small computers and more considerable large networked computer servers. Amazon's is a private cloud, i.e., Amazon owns it, but that is publicly accessible by the customers on a pay-on-use basis.[vi] While the cloud computing concept has been immensely beneficial to many businesses, it has also presented new hazards. As more firms store information in the cloud, there is a greater risk of sensitive data leaking. Data leakage can be demarcated as an unintended or unplanned transfer of personal or sensitive information to an unsanctioned entity.[vii] This might occur if firms are unaware of the need regarding implementation of good cloud security policies. Unsecured storage has resulted in a slew of cloud-related data breaches.

Similarly, cloud misconfiguration is another major cause of cloud-related vulnerabilities that hackers might exploit. When private corporate data including client or patient information, intellectual property

and information related to trade secrets are breached, this is referred to as data leakage. When these are disclosed, the company is no longer protected and falls outside of the corporation's jurisdiction. This unregulated data leaking exposes businesses to risk. At the time when the information is not under the private domain, the firm stands in significant jeopardy.[viii]

Now the question arises, when is data more vulnerable to getting leaked? Most data get leaked during transit, i.e., when information is transferred from one point to another via wireless or wired connectivity through the internet. The risk of data leakage is very high during transit. Data leakage risk is medium when the data is being used, i.e., a state in which data is currently being utilized, altered, or held in memory of the computer or in the form of cache files at network endpoints. When the information is not being utilized for any reason and is just stored in the any of the storage medium like in a hard disk, in this case the risk of data leakage is medium or low.

In a cloud system, the client is always responsible for assuring security. While cloud service providers have their own rules and practices to ensure safety, organizations' responsibility is to configure the apps. Customers frequently make the typical error of keeping default credentials enabled, resulting in data breaches.

No matter how cautious you are with your personal data, subscribing to the cloud means ceding some control to an outside source. This distance between you and your data's actual location creates a barrier. It may also make it easier for a third party to access your information. However, to get the benefits of the cloud, you are requiring to relinquish direct control over your personal data, but we should not forget that most of the cloud service providers will have extensive expertise in keeping your data secure. A service provider is expected to have greater resources and knowledge as compared to a typical user to safeguard their computers and networks.

## 6. INCIDENTS OF DATA LEAKAGE

With the ever-expanding cyber world, incidents of data leakage are also becoming very common nowadays. Some of the data leakage incidents are as follows:

### *6.1. Facebook (2012)*

This incident happened in 2012 when it was found in one of the investigations done by KerbsonSecurity. In that investigation, it was discovered that the company was storing the passwords of around 60 crore users in an unencrypted and simple text file format on their servers. But before any kind of mishappening, data was safely secured by Facebook.[ix]

### *6.2. State Bank of India (2018-19)*

SBI data leakage occurred from December 2018 to January 2019 when they left one of their servers in Mumbai unprotected, exposing data of around 42.2 crore people. Data leaked contained phone numbers, partial account numbers, and balance details of the customers using State Bank of India Quick service.[x]

### *6.3. Domino's Pizza (2021)*

It happened in February 2021 in which order details of around 18 crores[xi] customers were hacked and sold, which was later made available on the Dark Web. This incident happened because the AWS key was compromised due to which details like phone number, name, e-mail address, and location were leaked.[xii]

### *6.4. MobiKwik (2021)*

This incident happened on 26th February 2021 and 4th March 2021 when a hacker claimed that he had access to data of around ten crore users, which contains some crucial information like card details and KYC details, and the same was made available on Dark Web for around Rs. 63 Lakh.[xiii]

### *6.5. Aditya Birla Fashion and Retail Ltd (2022)*

This incident happened on 11th January 2022 when data of around 54 lakh customers and employees was leaked containing e-mail addresses, phone numbers, and passwords. Later, Aditya Birla Group decided to engage some cyber forensic security experts for investigation, and also, they reset the passwords of all the customers and employees.[xiv]

## 7. COMPREHENSIVE STUDY OF DATA PROTECTION LAWS IN THE E.U. AND INDIA

### *7.1. EUROPEAN UNION*

To deal with the ever-expanding cyberspace, hike in numbers of data leakage incidents, and safeguard the personal data, European Union in January 2012 decided to come up with a new framework that will be uniformly applied to all countries under E.U.

General Data Protection Regulation was adopted by the European Parliament in April 2016, which was made enforceable in May 2018. GDPR framework demarcates rules regarding collection of data from the people residing in countries under E.U. and processing of that data.

Article 4(7) of the GDPR defines a controller as a decision-making body that takes decision regarding the processing of data. In contrast, when we talk about the processor, it can be referred as a body that deals with the actual process involved in the processing of data and is defined in Article 4(8). The primary difference among the controller and processor is controller will be accountable for complying with the GDPR framework and ensuring that data processing is done with appropriate procedural and legislative measures, whereas the processor has fewer compliance duties.

Article 5 of the GDPR can also be called the entire framework's soul. It contains provisions related to personal data processing principles. To fulfill their obligations, controllers must first comply with these fundamental principles.[xv] There are six principles given under Article 5(1), which are as follows:

1. The first principle states that processing of data has to be completed in a transparent, fair way, and for a lawful purpose only. Also, the individuals must be having each and every information related to processing or collection of data.[xvi]
2. Secondly, the processing of data is to be done for a legitimate purpose only.[xvii]
3. The third principle states that the processing is to be done only when the objective cannot be achieved by other means.[xviii]
4. The fourth principle states that the controller has to take every necessary step to verify that the data is accurate and valid for its processing; where he finds that data is inaccurate, he must erase or, if possible, rectify those data on an immediate basis.[xix]
5. The fifth principle talks about the storage of data which states that the data should not be stored for any extra time period which is required for processing.[xx]
6. The sixth principle provides for the safety and secrecy of the personal data, and the controller has been given the duty to make all the necessary arrangements to confirm that data of the individuals are safe and will never get leaked.[xxi]

Article 7 states that the controller requires the person's prior consent whose data is subjected to processing, and the matter must be easy to understand if any clause has an ambiguity that makes it against the GDPR. In that case, it will not be binding. Also, individuals are free to withdraw the same at any point of time.

Article 15 provides individuals right to get information regarding their private data, as if their personal data is being processed or processed or whether their data for any reason has been transferred to any third party or any other international organization. These information's can be obtained from the controller.

Under the GDPR, the notion of privacy has been considered as the most crucial aspect. In order to safeguard one's privacy, they incorporated a provision that provides the right to be forgotten. Under Article 17, any individual can approach the controller and ask to erase all the personal data without delay. Also, under Article 21, individuals can object to processing their data when the same is being used for marketing purposes, and the controller has to stop processing.

Article 24 talks about the responsibility of the controller. Article 30 provides that the controller has to record each and every activity concerning the data processing, which shall contain details like the information of the controller and reasons regarding the processing. In the occurrence of a data leakage, it requires that the Supervisory Authority must be notified by the controller within the period of seventy-two hours, calculating when the controller became aware of the same. Each member nation of the E.U. is free to appoint any number of supervisory Authority as they think fit. The supervisory Authority has been defined under Article 51, which provides that there shall be an independent authority who shall act to protect the people's fundamental rights by monitoring, promoting awareness, and to handle complaints. If required, they can also conduct investigations and act as an enforcement agency under the framework.[xxii]

In case of infringement, compensation can be claimed by the individuals whose data has been compromised, from the controller or the processor as a matter of right under Article 82 of GDPR for the damages suffered. Also, under Article 83, the supervisory Authority can impose an administrative fine as per the facts and circumstances of the particular case that will be up to twenty million euros or four percent of the total annual turnover worldwide.

### *7.1.1. Drawback of GDPR*

The major drawback of this framework is that it hampers the growth of the companies as they are dependent on the customers, and nowadays, when customers want to have a user-friendly interface, due to this framework, customers have to give endless consents that have increased the burden on customers. Also, corporate firms are facing difficulties complying with this regulation. The compliance cost has also been increased; these things affected the present firms and created a hurdle for the new firms to enter the market. Fines are also one of the primary concerns for businesses.

## *7.2. INDIA*

At present, India does not have any dedicated legislation related to Privacy and the concept of Data Protection. Indian legislation has Section 43A of The Information Technology Act, 2000 (I.T. Act) and The Personal Data Protection Bill, 2019(PDPB).

### *7.2.1. The I.T. Act, 2000*

Section 43A of I.T. Act provides that whenever an enterprise, dealing with or storing personal data of the individuals, fails to keep that data secure, has to pay compensation to the individual whose data has been compromised. But this provision is of no use due to the existence of Section 79,[xxiii] which provides an exception in the case where the body corporate can establish the fact that there was no fault on their side and the leakage that happened is not a part of the transaction initiated them. Hence, in all these cases, it is very easy for the body corporate to establish these facts and make a way out of the scope of Section 43A of the I.T. Act.

### *7.2.2. Personal Data Protection Bill, 2019*

PDPB which is still pending before the parliament, was introduced in the Lok Sabha on 11th December 2019 by then Minister of Electronics and Information Technology, Mr. R. S. Prasad. It was referred to the Standing Committee on the same day, and the committee submitted its report on 16th December 2021.[xxiv]

To understand the Bill, one may require to understand what is meant by data fiduciary, data principal, and data processor, defined under Section 3(13), 3(14), and 3(15) of the PDPB respectively. As per the provisions of Section 3(13), data fiduciary has been defined as a body concerned with making decisions relating processing of data like what needs to be processed, how the processing is to be done, and for what reason the processing is required. The data that needs to be processed is related to a particular natural person, and that person, as per the act, is known as the data principal,[xxv] and the personal data is defined in Section 3(28) of PDPB. Then comes the data processor, who is actually concerned with the processing that will be done on behalf of the fiduciary.[xxvi]

Section 4 of PDPB provides for the prohibition on the processing; as per the provision in order to do the processing of data, primary requirement of the Bill is that there must be a clear and legitimate purpose for which the processing is to be done. Also, the data fiduciary is required to serve a notice to the individual from whom data is essential to be collected for the purpose of processing, and the notice shall contain details like the purpose regarding the processing and what kind of information is to be collected for that purpose.[xxvii] Under Section 8, data fiduciary has the duty to take care that the data which has been collected from data principal is correct and up to date which is required in the processing. In those case where processing is to be done of data related to a child, in that case, the data fiduciary requires to take consent from his parent or legal guardian after verifying the age of the child.[xxviii]

Every individual, by virtue of Section 17 of PDPB, has a right to get information from the data fiduciary regarding his private data which is processed or being processed, and fiduciary has the duty to provide

the same in a simple language which is easily understandable by a lay man. Also, under Section 20, the data principal (individual whose data is concerned) has a right to be forgotten which provides that an individual can approach the data fiduciary and ask to erase all his personal data where the purpose is fulfilled, consent has been withdrawn, or a particular act has been carried out which is against this Bill or any other law.

Privacy is the soul of the Bill, and to ensure privacy of an individual, the fiduciary has duty to manage and do the processing in a way that the privacy of the individual is not compromised and also all steps taken in the process shall be informed to the individual or as per the Bill the data principal.[xxix] In case of data leakage, the data fiduciary, without any delay, has to report to the Authority with every necessary detail like what kind of data has been compromised, the number of individuals affected, and the consequences and actions taken by them in relation to the leakage occurred.[xxx]

There shall be an officer appointed under Section 30, and will be known as the data protection officer. The primary responsibility of the data protection officer is to instruct data fiduciaries and monitor the data processing process to ensure that no activities are performed in contravention of the Bill's requirements.

Section 32 of PDPB prohibits the transfer of sensitive personal data (defined under Section 3(36) of the PDPB) outside the territorial jurisdiction of India without the consent of the data principal. Also, regarding critical personal data, it is restricted to transfer the same for the purpose of processing and any processing thereto has to be carried out within the territorial jurisdiction of India.[xxxi]

There shall be a Data Protection Authority of India,[xxxii] that will be acting as the adjudicatory and enforcement body under the Bill. They shall also be doing functions like monitoring, examination of the reports submitted by the data auditor, promoting awareness, and providing advice to state and central government.[xxxiii] Under Section 57, as per the facts and circumstance of the case, the Data Protection Authority may penalize the data fiduciary with the penalty that will be up to rupees 15 Crore or can be even asked to pay 4 percent of the turnover across the nations of the company, and the turnover shall be calculated with respect to preceding financial. Aggrieved by the decision of the Authority, an appeal can be filed under Section 72 of the Bill within 30 days before the Appellate Tribunal, which is established under Section 67. Within 90 days from the decision of the appellate tribunal, one can file an appeal before Supreme Court under the provision of Section 75.

### *7.2.3. Key Issue with PDPB*

One of the primary concerns of the PDPB, is the exemptions given to the government; legislation must review the same and amend the provisions related to exemptions to the government. The Bill was

proposed to safeguard the private data of the individuals as the Hon'ble Supreme Court has acknowledged privacy as a fundamental right. Hence, to protect the right of the individuals, the Bill has to be made enforceable on the state and their authorities, but the Bill provides an exemption to the state, which can be held as a violation of fundament rights.

## 8. SUGGESTIONS

The Personal Data Protection Bill has been enacted in order to ensure the privacy of individuals and protect their data from being misused. To achieve the very objective of the Bill, it is required that the state and state agencies or data fiduciary acting under the state must not be provided with any kind of exemption under the Bill, as an individual has the right to privacy that can be violated by the state itself; hence, the Bill must be amended and exemption must be provided for some specific provisions only. Also, the scope of Section 91 of the PDPB, 2019, is much wider in nature, and in some cases, it would be very difficult to distinguish between personal and non-personal data; hence, proper legislation is required to deal with the concept of non-personal data.

In cases where consent is taken form the parents or the legal guardian of a minor child whose data is concerned; it is required by the data fiduciary must get the consent from the child after he attains the age of majority.

If the data transfer seems to be against the public policy, such data must not be transferred outside the jurisdiction of India even after the consent has already given by the individual whose data is concerned.

There has to be a specific timeframe provided in the Bill for the reporting of data breach incidents. If one goes by the provisions of Section 25 of the PDPB, 2019, it only provides that the reporting has to be done without any delay. A similar provision is there in Article 33 of the GDPR, 2016, which also provides a timeframe of 72 hours.

## 9. CONCLUSION

In this ever-expanding cyber world, it is necessary to take care of your private data. To keep the private data secure, legislation across the world needs to enforce data protection framework. In order to cope with this issue, countries like E.U., China, Australia, etc., successfully come up with data protection framework. Also, India is able to draft a bill regarding this, but it is pending in the parliament, and also, some considerable changes are required to be made in order to satisfy the need of the society. But when you look at the darker side, you will find that many countries like Pakistan, Afghanistan, Sri Lanka, Nepal, etc., do not have any framework regarding the protection of data. In this present epidemic

situation where countries are trying their best to make a way out of the current situation. Every sector depends upon the internet, whether it's for working or academics. A tremendous amount of data is being stored and transferred across the globe, resulting in increased pressure on the digital platform, which may lead to data leakage. Hence, it is required by every nation to enact and enforce the data protection bill without any delay.

## 10. REFERENCES

## CHAPTER 3

# GENDER DISCRIMINATION AND INEQUALITY IN FAMILIES IN TERMS PROPERTY RIGHTS

Dr. Dalliandeep Tiwana, Associate Professor at Lovely Professional University, Phagwara, Punjab.
Ms. Megha Sood, Ph.D Research Scholar at Lovely Professional University, Phagwara, Punjab.

**Abstract**

Women, holds a significant place in every segment of the society. But history reveals that she is often overlooked when it comes to the equality in the rights, be it in terms of any phase of the life. 'She' is at times designated with the term home-maker. Right from the home till the point of ruling the nation women has always proved beyond the expectation. This Amendment to Hindu Succession Act, 2005 has raised the status of women in the property holdings of the Hindu undivided family. Prior to this rule women were not having any say in the property matters of the family. Earlier daughters just have the right over the things which are gifted to her before her marriage, during her marriage and after her marriage that is in common parlance known as 'Stridhan'. This research paper will bring into lime light the rights devolved over Hindu women after the advent of the Amendment to Hindu Succession Act, 2005. The researcher will also study association of inheritance right to property with sons and dowry substitution to daughters under the shade of patriarchal social practices. In addition to this the author will also highlight the level of denial towards the daughter with regard to social and economic equality in the Hindu family. The researcher will also make an effort to study the acceptance of the amendment. This paper will highlight how this new change has affected the lives of the daughters of the Hindu Family. This paper will also look upon the initiative taken up by the states to uplift the standard of living of the daughters of the Hindu Undivided Family. This research paper will also emphasize upon the level of awareness among the daughters of the family. In addition to this, it will also highlight the attitude of the male members of the Hindu Undivided Family. Last but not the least the researcher will likely to portray some of the suggestive measures highlighting the loopholes in the existing statutory provisions.

**Keywords** Amendment of 2005, Historical Evolution, Property Rights, Hindu Women, Comparative Study, Critical Evaluation.

## 1. INTRODUCTION

*"Both men and women should feel free to be sensitive. Both men and women should feel free to be strong; it is time that we all perceive gender on a spectrum not as two opposing sets of ideas."*

*-Emma Waston*

Women, this term itself comprises of the word men. It can be interpreted that this term itself signifies the fact that both the genders of the society holds an equal place. This term connotes that what so ever rights and privileges are available to men by the governing laws of the respective country, the same should be enjoyed by both genders by the same token. Men and women together have evinced to be the caster of the same cart so as to maintain equilibrium in the society at large. However the reality is different. What has been enumerated in the huge piles of the grundnorm of the land has no semblance with the practical scenario. The facets of gender inequality are known to be the glared matters of the daily headlines. The major kind of gender inequality existing in the present scenario is related to property rights. Such disparity has its roots since ancient times. Inheritance of property has never been considered as cup of tea for women. Society has bifurcated both men and women with regard to property rights in a democratic country like India. Under ancient Hindu Laws women had used to be considered as incapable for holding property of the family as compared to sons. In primordial period women were not allowed to roll their eyes on books, neither any education nor rights in society were given. Henceforth women had used to hold a very low status in the society in terms of property rights in India. Even the laws in India, the Mitakshara School of law prior to the amendment of 2005 gives upper hand to men in terms of property rights. According to this school it was only son, grandson and great grandson had the ability to hold family property and consequently form themselves as a part and parcel of a coparcenaries clan. Unfortunately women were not used to be subjects of coparceners. (Dr. Ashok K. Jain, 2019).

The struggle to make a place in law governing the developing nation Indian women has gone through a long way just like any other developing or under-developed nation. During this journey the aspirants has witnessed a scuffle between status quoits and progressive forces. Much later in 2005 their struggle

has brought forth the fruits in the form of an amendment to Hindu Succession Act in favor of women. It is only after this amendment that now women can count themselves in the line of coparceners. This has allowed Indian daughters to hold their share as well place for equal rights in ancestral property. Not only this but also daughter if born prior to 2005 still has the capability for inheriting the family property under the shade of the amendment of 2005 to Hindu Succession Act. According to this landmark amendment if father has lost his life prior to 2005 on records even then this amendment enables the daughter to accede to the family property and holds a place in the line of coparceners of the family respectively. Supporting the same the honorable Supreme Court of India, in one of its landmark judgment has decided that regardless to the fact that the father of Indian daughter has died prior to 2005 does not deny the right of inheriting the ancestral property of that daughter and to hold her share as coparcener in the Hindu Undivided Family. In addition to this, amendment holds the retroactive effect also. This will enable the daughters who were born prior to the year when the said amendment has come into effect. While delivering the judgment, the bench comprising Justices, 'Arun Mishra, S. Abdul Nazeer and M.R Shah' asserted the stree on section 6 of the Hindu Succession Act bestows same rights, liabilities and privileges to the daughters as coparceners born before or after the advent of this amendment of 2005 in a similar manner as son of the Hindu Undivided Family holds the place in the line of coparceners for inheriting the family property. (R.K Aggarwal, 2011)

This amended law has been formulated to raise the social status of the women in the society. The ameliorated condition of women has knocked the doors of the law making bodies to come with laws for the betterment of the condition of women both in terms of quantity and quality. However pripor to this landmark judgment of 2020, in 2016 if the father of the Indian daughter has died before 2005 then such daughter does not holds neither any right nor any liability towards the property falling under the Hindu Undivided Family. But the practical implementation of this ruling has failed to find the place in the orthodox clan of the society. Still families show their reluctance to give the share to their daughters in the ancestral property.

## 2. MEANING OF GENDER

In general parlance gender can be explained as a state typically referring of being male and female. Though, the term "Gender" has coined to define the biological differences. But in the modern scenario, wherein society is composed of diverse people belonging to accorded clan, variant status, dwelling in

the various strata of the society, has more often begin to put in use of this term "Gender" to refer social and cultural differences rather than biological ones. (Shalu Nigam, 2020)

## 3. HISTORICAL EVOLUTION OF PROPERTY RIGHTS OF HINDU WOMEN

This amendment is not the only law in favour of daughters of Hindu Undivided Families. The 1929 Hindu Law of Inheritance Act devolves the share of ancestral property amongst the three female heirs of different generation namely

3.1 Daughter of Son

3.2 Daughters as well as Sisters of the daughters of the family.

Another Act in the line of inheritance of property by female of family is 1937 Hindu Women's Right to Property Act, gives the widow women of the family share similar as that of the son of the family. Mere death of the son does not hamper the right of his widow to hold the share in the ancestral property. Although such widow cannot count herself amongst the coparceners of the family but still the above mentioned law enables her to hold her place amongst the ancestral property of Hindu Undivided Family. After such Act but before the commencement of Hindu Succession Act of 1956, the property held by women of the family is broadly bifurcated under following stated two heads

3.3 Stridhan

3.4 Estate belonging to Hindu women

Stridhan majorly comprises of movable property such as jewellery, gifts which women gets before, on and after her wedding. This is a property over which female as per sec. 14 of Hindu Succession Act 1956 has an absolute right. A female can hold, manage and dispose off her Stridhan
a manner she aspires without any interference. After her death such property has a likelihood of getting into the hands of her legal heirs. However the later property that is any estate belonging to Hindu women majorly comprises of immovable property and consequently her rights in association with such property are accompanied by certain limitations. Women holding later property cannot willingly alienate such property without the prior consent of the other family member.

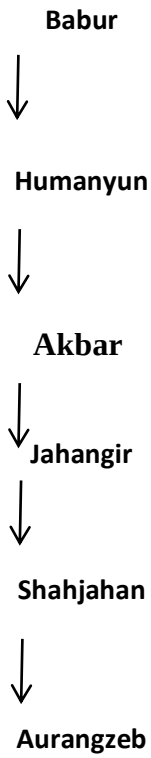
The basic aim behind the amendment of the above stated Act is to uplift the ameliorated condition of the women in the sphere of the property in the present society. However this amendment has reached to its aim but upto some extent. Beside the fact that in 21$^{st}$ era of the century women is still forced to face such inequality in terms of inheritance of the property under Hindu Undivided Family. Under the shade of feebleness women in the present scenario also strained to confine her within the four walls. The miseries and hardships faced by women are always remaining indiscernible to the eyes of the men

at large in the society. History reveals that women has a competency to hold up half of the sky but still the dominant wing of the society across the world has always remain dragging back their feet in terms of sharing the property belonging to family of which that women is known to be a daughter, sister, and last but not the least a mother. Such inequity not only endorses the orthodox thinking of the ascendant clique of the family but also obstructs the overall growth of the nation. Considering the present status of the women despite of the advent of the above stated amendment the women is still deprived of her rights with regard to property of the family. Since the birth of the girl, it is a preconceived notion that she will be given her share at the time of her marriage only. (Shruti Mahajan, 2020)

Once a Hindu woman got married the society begins to shun her share from the family to which she was born and brought-up. To put it differently, to the family to which she has got married treats her as not the part of the family at times as she wasn't born in the said family. Henceforth by one reason or other a women has to suffer such discrimination when it comes to the alienation of the property. It is only the men of the family who has a right to decide upon such matters, despite of the new amendment the women are not offered even to keep their opinion their opinions in such matters.

If either of them shows valor to keep their say in such matters is often threatened with the fact of being thrown or forced to leave her marital house. Therefore keeping these consequences in mind women hardly raises her voice in such alienation matters. This amendment has given the sword back into the hands of daughters. Earlier daughters were not allowed to present their opinion in the matters of property of the family. The birth of son was associated with legacy to carry forward the entire prestige as well earnings of the family. Due to these believes only women in the society were not placed at the footing equal to men. By virtue of this amendment now daughters of the family do share the place equal to that of the sons in the family. Prior to this amendment daughters cannot hold the share in the family property if the father has died before the amendment. To put in a different terms the daughter is not allowed accessing the share in the family property if the father has died before the enforcement of the amendment. But now the tables have turned this amendment has uplifted the voice of the daughters of the Hindu family, depicting the fact that they do have a share beyond their marriage also. The basic principle, around which the concept of gender justice revolves, is the belief that no individual should be denied of, for availing any benefit from any opportunity because of the gender. When one begins to discuss the concept of gender justice, he should not ignore the fact that this concept explains the bunch of wide range of cases of injustices based on the gender of the individual. The supreme law of land, i.e The Constitution of India, also provides various provisions giving equal status to both men and women. Various efforts have been made to bring into the effect, the provision for equal pay for equal work, so

enshrine in the supreme law of the land. Gender Justice on a whole has enabled to fit itself within the walls of the sweeping rule, which is flouncing every aspect of the life of every individual. It may evident in the modern era, that women is allowed to pursue the profession of her own choice, but at the end of the day, this male dominating society, simultaneously desires that women should pay heed to the house-hold work more, looking after the children, thereby wishes to enclose the women within the four walls. Due to this reason woman always remains for her whole life as an unpaid worker or an employee who is just a call away. The major reason for such a pitiable condition of most of women that too in the 21st century is due to the social and financial dependence of women over their husbands. Since her birth, a female was taught that, it's her father and brother who are the care-takers of her, care in terms of economic necessity. After her wedding this dependency, got shifted to the shoulders of her husband, thereby subjecting her again into the hands of another man. This discrimination has its roots clutched way back, which is evident enough from the era of Mughal Rulers, ruling India. Even at that time also the succession of thrown is crowned only to the son of the previously demised ruler, not his daughter. History reveals the fact that women are often considered being inferior to man. For instance, the chain of Mughal Rulers was dominated by the males only such as,




Therefore the awareness about the rights of the women so as to restructure the whole society is the dire need of an hour. There is a greater need to mould the social, economic, moral and political framework, simultaneously, though the legal constitutional structure is composed of many such provisions giving

the equal status to both men and women, but there is dire need of implementation machinery to take the proper charge of operation of these provisions so hallowed to constitute a legal framework. (Prachi Bhardwaj, 2020)

## 4. RELEVENCE OF GENDER JUSTICE

Everyone in today's scenario, gender justice has evinced to be the state of affairs of every executing authority. Even government before taking its charge over any particular nation, talks about gender justice in its manifesto. But unfortunately, the use of this term is restricted to those pages of the manifesto only, has in reality failed to achieve the designated status. When circumstances are such that leading to

4.1 the unequal treatment between men and women on the basis of their gender or

4.2 placing either of the gender over another leading to nepotism of either of gender, or

4.3 wherein one gender is offered with higher power and greater number of opportunities as compared to another,

Then only Gender Justice begins to play its role, to maintain the equipoise, so as to cause the development of the every wing of the society on a whole. (Prof. Kusum, 2018)

## 5. COMPARATIVE STUDY WITH THE OTHER DEVELOPED NATIONS

Women, dwelling in the every corner of the world are largely denied of the property rights. Studies has reveled that growth of the nation largely depends upon how much ratio of the women are well aware of their rights. The growth of nation can be counted on the level of protection to the rights of the women is secured by any particular nation. The key to the success of every nation in term of economic development lies onto the growth of women in terms of intellectual level. However there are certain nations though are counted in the rows of developed ones but still lags behind when it is the time to measure the equality in terms of property rights between men and women of the country. Even the flourished countries such as USA, U.K have the notion that the land falls into the hands of men while the product fetched through that land lies into the hands of women. Even women in the developed nation also have to suffer a lot to get their holding written after their names. The struggling phase of every women be it within the boundaries of the country or the across the borders has the similarity when it comes to the rights and share of women in the property. The studies have revealed the status of women in the West Africa is also somewhat similar to Hindu women in India prior to the enforcement of the Amendment. Women in African countries do not stand on equal footing with that to men in terms

of property rights. Therefore It can be traced that women has to fight for its rights in every sector of the world. (Noshirvan H. Jhabvala, 2015)

## 6. EFFECT OF SUCH UNEQUAL FOOTING OF MALE AND FEMALE

Due to the certain factors triggering in twisting the concept of gender justice into gender injustice has place the fate of the women is an oppressive state under the hefty social structure to be termed as patriarchy, as a result women not only suffers in developing like India, but also faces shackle of glitches in the developed nations such as United States of America and also in United Kingdom as well. (Prof. PC Jain, 2019)

6.1 Firstly, every possible effort is made to restrain the birth of female.

6.2 Secondly, if by luck female gets the birth, then initiative are made to kill her in her infancy period only,

6.3 Thirdly even if she has managed to survive, then she is subjected to such an environment, wherein she is always surrounded by utmost neglect and subjected to abuse, be it the physical or mental.

There are numerous instances which proves that regardless to the field, women outshines in building the foundation of most of the foreign policies, thereby strengthening the international relations. Therefore it can be taken in the sense, that if the count of both men and women is placed in an equal proportion then there will be more chances of stable negotiations, thereby fortifying the international relations.( Dr. Mukesh Aggarwal, 2019)

Thus such equal proportion is not only going to contribute in the political arena, but also going to bridge in the gap between the accorded nations by virtue of maintaining the stable international relations. But unfortunately, the ground reality is this that women often have a very less say in the dogmatic field as compared to men. Gender is the first and foremost concept, considered as the milestone to achieve stable political process and valued structural growth of any particular nation. Gender is now-a-days considered to be the building bloc on any nation, its non-consideration can often questions the credibility of the distinct perspectives set up by the administrative authorities of any particular nation. The decade of 1990's is considered to be very significant with regard to amalgamation of gender issues along with the concept of international relations. Even similar initiative was taken by UN in its 1995, fourth UN Conference of women, which had held in Beijing, wherein endeavours were made to place both male and female on equal footing while formulation of any policy, be it to be of Domestic nature or of International nature. (Prof. P.K Gupta, 2019)

Therefore it is only the aftermath effect of this conference that state legislations have come up with certain effective legislations eliminating any sort of discrimination in almost every field of work and has therefore lead to the development in various branches of International Law, such as

6.4 Asylum,

6.5 Human Rights,

6.6 Humanitarian Intervention

## 7. CRITICAL INSIGHT AND SUGGESTIVE MEASURES

The evolutionary growth of the accorded laws curbing the dysphoria is not of much success because of the lack of awareness among the people at large. Government should show its observance to the provisions of the supreme law of land, which has placed both men and women at equivalent foothold. International Relations can be cordially balanced by two or more nations only if its respective subjects are satisfied with the existing laws of that particular nation. Thus in the end it is only these lieges, who are going to portray the nation over the international platform in a positive manner. To place both men and women at equal footing today is the dire need of an hour. Therefore, development of any nation will solely depend upon the equivalent ratio of both male and female, which is reflecting the:-

1. educational status,
2. Political infrastructure,
3. employment opportunities,
4. ties with other developed nations,
5. funding from developed nations

Under developed nations often aspire to ace in the race of development. There are certain instances wherein under developed nations often depict themselves to be below average in order to extract more and more funds from the developed nations on a whole. India being a country with diverse culture consists of people belonging to diversified cultures keeping them over equal footing success because of the lack of awareness among the people at large. Thereby flowing with trend the entire imposition of the responsibility & duty is over the court of laws.

7.1 The institutional framework has to be followed up in the following three stages:-

7.1.1 Awareness,

7.1.2 Acceptance,

7.1.3 Implementation.

7.2 The mechanism of the prevailing legal system is required to be more viable, meaning thereby the inflow of the cases can't be stopped because the doors of justice can never be closed for anyone who's aggrieved.

7.3 Need for the adherence of the laws in a view to profound a change in the Indian Legal System.

## 8. CONCLUSION

While framing any policies for the betterment of the society on a whole, the framers of any particular nation should place their reliance in elimination of all sort of discrimination both at domestic as well as international level. Strivings should be made in promoting the interest of each and every citizen of the nation heedlessly to their gender. Government should show its observance to the provisions of the supreme law of land, which has placed both men and women at equivalent foothold. International Relations can be cordially balanced by two or more nations only if its respective subjects are satisfied with the existing laws of that particular nation. Thus in the end it is only these lieges, who are going to portray the nation over the international platform in a positive manner. To place both men and women at equal footing today is the dire need of an hour. Therefore, development of any nation will solely depend upon the equivalent ratio of both male and female, which is reflecting the:-

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Under developed nations often aspire to ace in the race of development. There are certain instances wherein under developed nations often depict themselves to be below average in order to extract more and more funds from the developed nations on a whole. India being a country with diverse culture consists of people belonging to diversified cultures keeping them over equal footing this is the foundation of every democratic nation. Therefore it is the responsibility of the forerunners of the state to provide equality to every individual without discriminating on the basis of gender.

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# CHAPTER 4

## PLASTIC POLLUTION: SILENT DEATH FOR ANIMALS

Mr. Avadhut V. Joshi

Ph.D. Scholar, Lovely Professional University, Jalandhar, Punjab, India. Email- avjoshi2009@gmail.com

Dr. Varinder Kaur

Assistant Professor of Law, Lovely Professional University, Jalandhar, Punjab, India. Email-

varinder.25104@lpu.co.in

**Abstract**

Life is the most precious gift given by nature. All living beings depend on natural resources such as air, water and soil. And when these resources are polluted all forms of life get under threat. One of the major pollutants in the environment is plastic. Plastic is super useful but it also harms the life of humans as well as non- humans. Plastic pollution affects lands, oceans, waterways, humans, wildlife, wildlife habitat and all kinds of animals in an adverse manner. In India, the open garbage system is a menace for the stray animals. It is a very common scene that a stray cow or a bull is chewing on something from the open garbage bins searching for anything edible just for its survival. The plastic from the garbage gets accumulated and stuck in their rumens and becomes hard. These animals look healthy but it is actually an illusion. They often die a slow and painful death due to starvation.

The article focuses on the problem caused by the plastic waste. It discusses the laws and policies made for the reduction of plastic waste and for the management of the plastic waste. The articles further analyses the adequacy of the laws and policies and makes an attempt to determine that whether more strict laws are needed or the awareness and education is sufficient for reduction of plastic waste.

Keywords: - Animals, Environment, Fishes, Plastic, Pollution

## Introduction

Environment is the key component for life on earth. It includes the surrounding and condition according to the geographical areas around humans, animals and plants for their survival. It plays an important role in the existence of life on earth in a healthy manner. All the species on earth including humans are dependent on the environment for food, air, water and other needs.[1] We most often read or listen about the threat to the environment. It may be the consequences of climate change, pollution, deforestation or any other event. It can be very difficult to distinguish which problem is affecting the environment most. The environment impacts our daily life and therefore it is very crucial to protect and save the environment.

The constitution of India imposes the duty on all its citizens to protect, improve and safeguard the environment including lakes, rivers, forests and wildlife creatures. It also imposes the duty to have compassion towards all living beings.[2] The constitution also includes the idea of a welfare state under the directive principles of state policies. The constitution in particular directs the state to take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. According to article 48A of the constitution, "the state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country."
The Constitution of India under part III provides the rights which are important for the development of an individual as well as the progress of the society. As per Article 21 of the constitution, "no person shall be deprived of his life and personal liberty except procedure established by the law." The term personal liberty has been broadly interpreted in the *Maneka Gandhi* case.[3] The right to live in a healthy environment is covered under Article 21 of the constitution. This was recognized for the first time in the Dehradun Quarrying Case.[4] Thus we can easily understand that the right to a healthy environment is an important attribute of the right to live with human dignity.[5]

## Plastic as pollutant

A polymer is a large molecule consisting of many equal or similar subunits bonded together. The environment is full of polymers and polymers are not invented by humans. Horns, DNA, rubber, cellulose, silk, hairs, etc. all are polymers present in the environment. On the other hand, plastic is invented by humans. Plastic is the synthetic term used for man-made or synthetic polymers.

Plastic can be very useful in human life. It is a material that may save lives in the field of medicine, it adds safety to the vehicles, it protects food from being wasted and can perform any other service to ease our life.[6] Plastic and its derivatives have become so abundantly used in our daily life that life without plastic is unimaginable. Plastic has also revolutionised electronics we use in our day-to-day life. At the same time, plastic is causing havoc on our environment. It is the most visible threat to our oceans. The issues linked to disposal or recycling of plastic and avoiding the pollution of soil and water is a worldwide concern. The quantity of plastic debris in the form of mega plastic, macro plastic, micro plastic and nano plastic as well as the plastic particles known as micro beads has reached the level that is a threat to waters of our rivers and oceans endangering marine wildlife as the animals are mistaking the trash for food and consequently it is also affecting human health. Several hundred marine species including marine mammals and seabirds have been found with plastic in their stomachs which affected them to their death.[7]

Plastics revolutionised medicine with life-saving devices, made space travel possible, lightened cars and jets—saving fuel and pollution—and saved lives with helmets, incubators, and equipment for clean drinking water. The convenience offered by plastic led to throw-away culture and this reveals the dark side of the material. Many of the plastic products such as plastic bags or food wrappers have a very less utility span but it persists in the environment for centuries.

Due to the rapid increase in the production of disposable plastic products, plastic pollution has become one of the most focused issues of the environment. The plastic pollution has overpowered the ability of humans to deal with it. In the developing nations, plastic pollution is more visible because the garbage collection system is either inefficient or it is not in existence. Apart from the developing nations, the developed nations which have low recycling rates are also responsible for the plastic pollution if they face problems in collecting discarded plastic properly.

From coastal nations, about 8 million tons of plastic waste escapes into the oceans every year. That is equivalent to setting 5 garbage bags full of trash on every foot of coastline around the world. Half of all the plastics ever manufactured have been made in the last 15 years. To increase the strength, durability and flexibility of plastic, additives are used. But any of these additives can extend the life of the product if they become litter. It might take 400 years to break it down.[8]

Mixed action of sea, wave, sunlight and wind breaks down the plastic waste into small particles. These particles are called microplastic and their size is about one fifth of an inch. These micro plastics are

spread across the globe throughout the water columns from Mariana Trench to Mount Everest.[9] These micro plastics further break into smaller and smaller pieces. These pieces are called microfibers and are found drifting through air or in the drinking water.

**Effect of Plastic on Non- Human Animals**

Humans use plastic for keeping their food safe, but the same plastic can adversely affect the animals if they are poisoned by the components of plastic. Accumulation of plastic in our oceans and on the beach is becoming a global issue. The plastic which is floating continuously in the ocean makes up about 40% of the world's ocean surface and it is anticipated that by 2050 the plastic waste in the ocean would outweigh all the fishes in the ocean if we keep littering at the same pace.[10]

Plastic pollution has a direct and deadly effect on the wildlife. Thousands of species of birds, animals and marine mammals are killed each year after they consume plastic or by getting entangled in it. Endangered species like Pacific loggerhead sea turtles and Hawaiian monk seals are amongst those many animal species that die due to plastic waste either by eating it or by getting entangled. And it is high time to look into the matter and to get to the root of this crisis caused due to plastic waste.

We are surrounded by plastic and it is urgently needed to take action against the global plastic pollution epidemic. The studies estimate that from equator to poles, from Arctic ice sheets to the sea floor, there are 15-51 trillion pieces of plastic in the world's oceans. That means not even one square mile of ocean surface is free from plastic pollution, anywhere on the earth.[11]

From small fishes to blue whales, thousands of animals die horrible deaths from eating and getting caught in plastic. Plastic consumption by animals reduces storage volume of the stomach; due to this the animal starves to death. It is estimated that 60% of all seabird species have eaten pieces of plastic, and that number is predicted to be increased to 99% by 2050.[12] Dead seabirds are often found with their stomach full of plastic, reflecting how the amount of garbage in our oceans has rapidly increased in the past 40 years. In various researches it has been found that Sea turtles worldwide have consumed a lot of plastic. And plastic pollution of beaches is so common that it has affected the reproduction of sea turtles. New research shows that larval fish are eating nanofibers from the first day of their life.

One of the most dangerous aspects of plastic pollution is that it has entered the food chain. Small fishes eat plastic which causes its death, or that small fish will be consumed by the bigger fish or marine

mammals or by the humans who love to eat seafood. And through this plastic enters the human body and causes further damage to the body.[13]

Plastic is also consumed by many land-based animals including hyenas, elephants, tigers, camels, cattle and other large mammals. Animals shows symptoms of pain exhibited by depression, arched back and grunting.[14] Apart from this, there is sudden drop in the milk yield of the animal. This further causes their death by starvation. It has also been confirmed by the various tests that due to plastic eating the liver and other organs get damaged and disruptions to the reproductive system are also observed. It is regular news stating that surgeries are performed on animals to remove plastic from their bellies.[15]

**Steps taken by the Government to fight Plastic Pollution**

According to the United Nations there was a boom in plastic production in the last few decades because plastic is cheap, light weighted and easy to produce and it is expected to continue in coming decades. But not many countries are struggling and facing problems in the management of the plastic waste that they have generated.

India is tackling a massive garbage problem due to the absence of an efficient and well-organized waste management system. The land, water and air of the country are polluted by the tons of unsegregated and untreated waste.

The general and far-reaching use of plastic in India has reached an alarming stage and everyone should be worried about it. The Annual Report of the Central Pollution Control Board (CPCB) on implementing the Plastic Garbage Rule, 2016 is the only regular evaluation of the amount of plastic waste produced in India. According to the report, the plastic waste produced in 2018-19 was 33, 60,043 tons per year that means 9,200 tons per day. According to the science breakthrough study of 2017, only 9% of the plastic waste has ever been recycled, approximately 12% has been burnt and the remaining 79% has accumulated in landfills.  Plastic waste blocks sewers, threatens marine life and generates health risks for the humans as well as the natural environment.

Plastic pollution due to single-use plastic has become an important environmental challenge for all the countries. In 2019 at the 4$^{th}$ United Nations Environmental Assembly, India had led a resolution on addressing single-use plastic pollution recognizing the urgent need for the global community to focus on this extremely important issue. India is committed to take actions for mitigation of pollution caused by the single-use plastics.[16]

The Government of India has announced a ban on various low utility or single-use plastics. In August 2021, the central government announced the ban following its 2019 resolution to address plastic pollution in the country. The adoption of the resolution at the 4th United Nations Environmental Assembly was a significant step. The major reason for announcing the ban is the adverse effect of plastic on the environment. India has collected around 60% of the plastic waste and the remaining 40% that amounts to 10,376 tons of plastic still remains uncollected.[17] Independent waste pickers collect plastic waste from households or landfills and sell it to the plastic recycle centers or to plastic manufacturers at a low cost. But the plastic used in India has low economic value and is not collected for recycling. Therefore, it becomes a common cause of air and water pollution.[18]

Many countries including India are taking steps to reduce plastic waste by encouraging the use of biodegradable alternatives which are less harmful to the environment in comparison to plastic. Food vendors, restaurant chains and some local businesses have shifted towards using biodegradable cutlery and cloth or paper bags as an alternative to plastic. Currently, in India, there is no guideline related to the alternative to plastics. Therefore, it could be a problem when the ban on plastic will be implemented. Clear rules are needed to promote alternative options, which are expected to become commonplace in future. The new rules also lack the guidelines on recycling of plastic.

Many environmentalists have the view that a ban on plastic is not sufficient on its own. Other initiatives are also necessary to be taken to beat the plastic problem. Recycling of plastic can be done seven to eight times. The problem is created when the plastic is down-cycles. Down-cycling is a process where high quality plastics are recycled into new plastic of lower quality and then it has to be disposed of after its one or two lives. Thus, it is necessary to regulate manufacturers and ask them to mark the down-cycled and recycled plastics clearly so that it can be recycled or disposed appropriately. Apart from focusing on recycling of plastic, development of alternatives should also be the priority and proper investment should be made in that area. India is a price sensitive market where plastic alternatives could be produced in bulk and can be sold at an affordable price. Many states in India have announced restrictions on plastic bags and other single-use plastic but most of them were not strictly enforced.[19]

In India, from 1st July 2022, the manufacture, import, stocking, distribution, sale and use of following single-use plastic, including polystyrene and expanded polystyrene, commodities shall be prohibited. The single-use plastic items which are covered under the ban are ear buds with plastic stick, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene for decoration, plates, cups,

glasses, cutlery such as forks, spoons, knives, straw, trays, wrapping or packing films around sweet boxes, invitation cards and cigarette packets, plastic or PVC banners less than 100 micron.[20]

**Conclusion and Suggestions**

Environment protection is part of our cultural values and traditions. Earth is considered to be Man's paradise according to the Atharvaveda. It is our duty to protect our paradise. Earth has the blessings of nature's bounties. The constitution of India also embodies the framework of protection and preservation of nature without which life cannot be enjoyed. Right to environment, environment free from danger and infection is inherent part of Right to life guaranteed under Article 21 of the Constitution of India.

Land and other water bodies are affected by the pollution caused by the plastic. The plastic hurts animals, marine life and birds. Even the small insects are not spared by the plastic pollution. From small fishes to sea turtles to jelly fish to whales every marine creature is having the effect of plastic and hence when such marine creatures are consumed by humans then that plastic affects humans too.

The animals which are exposed to the plastic pollution suffer from various problems like developmental defects, reduction of weight or more often starvation to death. Plastic is one of the most dangerous components which are disturbing the balance of nature.

The problem of marine plastic pollution should be tackled from various sides.

- To reduce the plastic waste from the environment it is necessary to identify the plastic items that can be replaced with non-plastic, recyclable or biodegradable material. It is necessary to find the alternative to single-use plastics.
- We must focus on recycling of plastic.
- The state must identify the hotspot of the plastic pollution so that it can develop effective policies that address the plastic problems in the environment.
- We can focus on technological developments, to assist the government in measuring and monitoring the plastic garbage in the cities. The United Nations Economic and Social Commission has launched a project 'Closing the loop' assists the cities in developing more incentive policy solutions to tackle the problem. A similar approach can be adopted in India.

- The catering businesses must use reusable items or more sustainable single-use products as an alternative to single-use plastic. This will encourage the workers and clients to improve their habits. Therefore, the state shall prohibit the usage of single-use plastics by all catering operations. This initiative can save tons of plastic waste each year.

- We can also make the producers responsible for collection and recycling the products they launched into the market. That means the extended responsibilities can be applied to the packaging sector.

Apart from the above-mentioned steps, the state can take several other steps to combat plastic pollution in the environment. These steps can certainly reduce the plastic pollution and save enormous amounts of plastic from being wasted.

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**CHAPTER 5**

# Contemporary Society and the Act of Body Shaming: A Critical Discourse on Perceptions of Beauty and Shame within the Indian Society

Aiswarya Mathew

Dr. Vijay Kumar Chechi

-M.Ed.

Research Scholar, School of Education, Lovely Professional University, Punjab/ Deputy Dean & Professor, School of Education, Lovely Professional University, Punjab

## Abstract

Body shaming as a growing vice has been garnering attention around the world. It has been associated to being a means of violence, bias as well as humiliation of individuals, who do not fit the 'normalized appearance' notions of the society. As something that affects democratic foundations of an inclusive society, body shaming is becoming a growing threat to individuals, their self-perception as well as their mental, physical, and emotional health. This paper explores and reports the findings of a qualitative study, conducted in order to understand the perception of the Indian society on notions of beauty and body shaming, that lead to perpetuation of this vice. The study employed the use of Discourse Analysis on 1034 comments. These comments were associated with various articles present on the Facebook media page of Youth Ki Awaaz (user-generated Indian youth media platform on social justice issues). The comments within the platform, on articles pertaining to body shaming, were analyzed using Critical Discourse. The perceptions of the user base with regards to the concept of beauty, body stereotypes and body shaming were further brought to light.

**Keywords**. Body shaming, Inclusive society, Cyber-crime, Fundamental freedom

## 1. INTRODUCTION

Weight and appearance-based discrimination has been closely associated with being a means of perpetuating oppression of members within the society (Fathi, 2011). In a democracy like India, where discrimination of any form is prohibited, there is a lack of awareness about the concept of body shaming as well as provisions to tackle the same. Body shaming in the contemporary times is emerging as a social vice that is leading to abuse and mockery of people, due to their unique differences from the widely accepted norms of beauty around the world. As per Cambridge dictionary, body shaming entails the act of criticizing an individuals' physical appearance. Research has revealed that people from all genders, including males, females as well as members of the

LGBTQIA+ community, have been subjected to body shaming (Shain, 2016). This is a significant pointer at the failure to form an inclusive society within the country, where there is acceptance of people's diversities.

Despite having been identified as a rising contemporary issue in various countries, there is still lack of awareness among people about what constitutes body shaming and how it is propagated unknowingly, as well as purposefully. It has been recognized as a crime persisting under bullying across many countries around the world, due to the extreme effects it has on individuals. There is immense ignorance among people regarding the mental, physical, emotional, and social effects that the victims of body shaming experience. Review of available literature has revealed various aspects of trauma and sickness associated with the act of body shaming. It has been found to be closely linked with increased Bulimic and Anorexic symptoms, which are two extreme forms of eating disorders (Dally et.al., 2019). It has further been connected with shifts in dietary habits, leading to negative effects on individual health and well-being (Kar, 2019). The above-mentioned are grouped as certain physical indicators of the negative effects of body shaming. Furthermore, binge eating has been identified as a way of coping with mental trauma about shame, among the victims. In recent times, studies around the world have thrown light on the negative effects of discriminatory societal perceptions on beauty. It has been revealed that as a result of wanting to fit into the world's beauty standards a significant amount of female population is constantly trying to lose weight. In case of male members of the society, efforts are made to achieve muscular bodies and facial hair. The mockery resulting from the absence of these has been found to be a major predictor of eating disorder among adolescent boys and girls (Mustapic, Marcinko and Vargek, 2016). In addition to studying the concept of body shaming as a whole, there is a need to understand its propagation among various genders, including males. Certain studies have revealed how body dissatisfaction and shame cause men to have strained social as well as romantic relationships. This has been pointed out as a significant indicator of understanding male body shaming within the society (Cole, Davidson, and Gervais, 2013). Subjection of females into shame and guilt about their appearance has been identified as a means of oppression of the females within a patriarchal society. They have been described as 'anchors' that keep women under control (Atik, 2014).

Apart from the physical effects, victims of body shaming have been found to suffer from a range of mental health conditions, issues in social relationships etc. Among adolescents, a significant fall in self-esteem, decreased social connections and onset of mental health issues and self-doubt has been observed as a result of body shaming

(Gam et.al., 2020). The dispensing of trauma on to one's own body has also been talked about in relation to the same. It has been revealed that being exposed to body shaming leads to an increase in negative self-concept, which is then displaced by the individuals onto their own bodies. This displacement and hate become the cause of increased depressive symptoms within the victims (Woodward, McIlwain and Mond, 2017). All this has been observed as factors that pave way to self-objectification as well as increased material pursuit and body dissatisfaction (Sun, 2018).

The role of media as a major propagator of promoting falsified body standards has been pointed out by various studies in the recent years. Portrayal of idealized body images on media platforms has been associated with spreading appearance anxiety among viewers (Monro and Huon, 2005). Increased involvement with the appearance standards of social media was found to cause low self-esteem and increased body consciousness among both men and women (Manago et.al.,2014). It has been discovered that exposure to unrealistic body standards on social media as well as being shamed online by cyber-bullies on their appearance, cause low self-esteem in adolescents. This in turn leads to dependence on 'image control' on social media sites. This is achieved through the use of filters and editing techniques that help contain the imperfections and blemishes that the victims perceive within their photographs (Gioia, Griffiths and Boursier, 2020). Studies show that when the norms of a society are constructed through a patriarchal or hierarchal perspective, exertion of power is used to keep the masses under control. This use of power is what dictates the rules of the society. In such a place, the minority are oppressed and shamed for who they are, as they do not fit into the constructed notions of perfection. This in turn is a threat to an individuals' fundamental freedom to exist as they are, as well as a violation of basic human rights. Research has further revealed how in such society's violence, oppression of the weak and shaming has been used as a means of exerting control and dominance (S.G., 2018).

The above-mentioned studies highlight the importance of understanding the construct of body shaming, its effects, and the need to curb it. The paper is an attempt to report the study conducted for understanding people's perception in India, with regards to 'norms of beauty,' 'body shaming,' and the propagation of these perceptions through social media platforms leading to further victimization. It discusses the findings related to a) What are the perceptions related to beauty and body image in India? b) What are peoples' perceptions in India on body

shaming? & c) How are these perceptions being propagated through comment sections of online media platforms?

## 2. METHODOLOGY

The study made use of the qualitative research technique of Critical Discourse, which comes under Discourse Analysis. Discourse analysis employs the study of written or spoken language in relation to the existing societal perceptions, beliefs, and ideologies (Luo, 2019). It is used to deconstruct the text or oral statement in light of a particular context, in order to understand the ideas that led to the formation of the speaker's opinion. Critical Discourse is a part of Discourse Analysis that focuses on understanding social issues based on people's perceptions on them. It focuses on understanding society through its influence on people's belief system, thereby drawing a connection between society, culture, and written or spoken language (Ifversen 2003). The technique was employed in the study to deconstruct written language available in the form of comments. These comments belonged to the articles on body shaming, found on the Facebook page of Youth Ki Awaaz (an online media platform that covers issues of social injustice). These comments were further analyzed using the method of critical discourse, in order to understand the prevailing notions about beauty and body shaming in India, as well as their propagation online. For selection of the data, the Facebook page of Youth Ki Awaaz was accessed. Further, commands were run to search for articles under the key word 'body shaming.' 1034 comments, spanning over 8 articles were selected for the study, after exclusion on the basis of comment thread availability as well as congruence with the research purpose. These were published between the years 2016 to 2017. Body shaming is a rising social issue within the contemporary scenario that could rattle the foundation of peaceful and fair societies. As the media platform of Youth Ki Awaaz focuses on issues of social justice, including articles with firsthand experiences of victims with body shaming, the decision was made to utilize the comments under the same for the purpose of the study.

## 3. DATA ANALYSIS

The critical discourse of the comments under study have been done based on the 'post-structuralist' view of Alan McKee related to analysis of texts. It states that "the analysis of a piece of text can be used to make educated

guesses about the closest interpretations of the text within a given cultural context (McKee, 2003).” This view suggests that based on the cultural setting, texts can have a varied interpretation. It therefore focuses on “interpretations based on context that leave space for further discussions negating the idea of ‘right or wrong’ explanations (McKee, 2003).” The study made use of this notion to interpret and understand the selected comments, in order to gain insight into perceptions of the user base on the concepts of beauty and body shaming. For extended comprehension of the intended actions behind the text, ‘speech acts’ were coded based on Suzanne R. McMillen’s speech act coding for comment analysis. “Speech acts can be defined as linguistic expressions that not only present relevant information, but also perform certain action (Britannica).” These were framed based on argumentation styles of the conversation, and other characteristics involved in civil discourse (McMillen, 2013).

The speech acts coded were as follows:

1. Trolling
2. Personal Attack
3. Supportive Comments
4. Respectful Disagreements
5. Unrelated Comments
6. Clarifications
7. Elaborations
8. Challenges or Objections

The following framework was further used to analyze and interpret the content.

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| ▪ **Context of the article** | Body shaming and its related aspects as discussed by each article - including experiences of people, their fight against body shaming. |

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| ▪ **Excerpts from the discursive text under analysis** | User or Reader comments on these articles. |
| ▪ **Interpretation and analysis of the text** | Analysis of perception of the users, societal conditioning revealed through the discursive texts, stand of the user with respect to the context. |

## 4. RESULTS

The following table discusses in brief the results that were derived from the analysis of the 1034 comments. The comments by the users have been mentioned as it is, without changing the grammatical structures.

| **Articles** | **Significant Comments & Derivations** |
|---|---|
| **Article 1-** Title: Was being 'Fat' the reason I didn't become the head girl?<br><br>**Published:** 4th February 2017<br><br>**Author:** Suchetana Sinha<br><br>**Comments:** 31 | ▪ The comments under the article gave an insight into the perception of the user base with regards to the act of body shaming in schools and its propagation in general.<br><br>*"Body shaming/bullying does not previal only amongst students; it is deeply entrenched in the school system itself."*<br><br>▪ The words '*slim and zero figure'* are used as the apparent standards of beauty that prevail in the current society for the female gender.<br><br>▪ User comments discuss the connection of patriarchy in contributing to the notions of beauty within the society. |

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| | ▪ The concept of gender bias is being associated by certain comments with body shaming and the resultant injustice. |
| **Article 2-** Title: 6 Ridiculous ways Bollywood continues to glorify fair skin<br><br>**Published:** 9th February 2017<br><br>**Author:** Saumya Anand<br><br>**Comments:** 35 | ▪ The user comments revealed 2 sections of belief. One section retorted against the fair skin complex promoted in the Bollywood industry while the other believed that forms of entertainment and what they show should not be taken seriously.<br><br>*"being desired is not linked with skin tone"*<br><br>*"No one should be demeaned and dehumanized for something they were born into, something they cannot control."*<br><br>*"Some things are pretty clear cut. Not a lot needs to be debated when the gay dude is almost always portrayed as effeminate, which somehow makes him less of a man. The question of that fine line of balance between expression and responsibility comes in when one talks about stuff which might unknowingly speak of things which must not be said."*<br><br>▪ The comment threads talked about the portrayal of unrealistic standards of beauty depicted in Bollywood. They were considered as a means of propagating unfair notions leading to biasness and mockery of people who failed to fit the standards.<br><br>▪ There were users who displayed clear aversion towards dark skin and vocalized their preference of fair skinned people. |

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| | *"Ab jakie ki chitti kalai hai toh kya kare.....ab kali kalaiyan aacha thodi lagta hai"*<br>(so what else can be done if the actress has fair wrists. black wrists do not look good)<br>"*Yup for me its a personal choice..I like fair and I am not ashamed to admit it.."* |
| **Article 3-** Title: Finally! A bra commercial that boldly smashes body image stereotypes<br><br>**Published:** 17th February 2017<br><br>**Author:** Lipi Mehta<br><br>**Comments:** 129 | ▪ Most of the user comments appreciated the initiative by the brand to display body positivity while others brushed it off as a marketing strategy.<br><br>*"at least people's thinking about bodyshaming has changed... see the ad once"*<br><br>*"I'm glad thick is normal now."*<br><br>*"Brands pretend to care. Don't fall for it."*<br><br>▪ The comment section also involved users who engaged in direct fat and skinny shaming through their responses.<br><br>*"Its women to be blamed for making the stereotype of women being skinny and shit like that... No man would prefer a woman who's skinny anyways... Nor do skinny women look normal... Women who have a bit of fat look actually beautiful... But a MINIMILISTIC FAT amount... ���� not the snowman bodied people... That's weird"* |

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| | ▪ The analysis of comments under the article revealed a lack of acceptance of body diversity, ingrained notions about healthy bodies and instances of body shaming among males. |
| **Article 4-** Title: Yes, I am fat. Now, shut the fuck up and move on<br><br>**Published:** 5th April 2017<br><br>**Author:** Jogitha Josey<br><br>**Comments:** 752 | ▪ The comments revealed a significant amount of user experiences with regards to body shaming as personal experiences were revealed in response to the article.<br><br>▪ Certain sections of the users commented in appreciation of the authors courage to talk about her experience with body shaming and fighting against it.<br><br>▪ A separate section of the users resorted to victim blaming and claims that the author was promoting unhealthy lifestyle and unfit body goals by talking about being comfortable in one's own skin.<br><br>*"I've been skinny ever since I was kid, and almost every day, random people come up to me and ask me to "eat something"*<br><br>*"Ur fat they want u to become thin, u become thin they say ur skinny become bit fat, y do looks matter?"*<br><br>*"If you're fat be prepared to be called fat as simple as that. You don't wanna be called fat start working out it will be good for you as well ﷺ "*<br><br>*"Just another loser who cant take criticism and can't get in shape... If you are fat, accept it! Why be sad when people tell you* |

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| | *what you are? After all, health issues are not imaginary, you dreamy fools!"*<br><br>*"Please avoid public transport then Otherwise I'll kick you for occupying extra space****"***<br><br>▪ Majority of the user comments depicted extreme levels of body shaming and fat phobia. |
| **Article 5-** Title: An ode to my extra pounds<br><br>**Published:** 14th April 2017<br><br>**Author:** Barkha Manocha<br><br>**Comments:** 5 | ▪ The user comments challenge the article as a glorification of obesity based on misunderstood beliefs.<br><br>▪ The comments reveal lack of awareness about causes of obesity and the concept of body shaming.<br><br>▪ Aversion towards people who speak up about their experiences with body shaming is displayed within the user comments.<br><br>*"What you are talking about is a seperate clinical entity they include anorexia, bulimia etc What I was talking about is obesity caused by over eating Obesity cause by other causes like metabolic disorders hormonal disorders etc should be treated medically and expert advice sought."*<br><br>*"body proud warriors are promoting a dangerous narrative that obesity is good and everyone should be proud of their bodies as they stand thats stupid and moronic."* |

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| | ▪ The thread further included the perception of an ideal and fit body type which must be achieved by every individual. People outside of the perceived body image are described as people who need to change their appearance and get fit. |
| **Article 6-** Title: Next Time Someone Comments on Your Body, this is Why You Should Reply Back<br><br>**Published:** 19th April 2016<br><br>**Author:** Binita Kakati<br><br>**Comments:** 7 | ▪ The comments under the article involved extensive body shaming.<br><br>▪ Lack of awareness about the negative effects of body shaming were displayed from the user comments.<br><br>*'don't make fun of fat people. They have enough on their plates.'* Along with the dialogue, the meme also has the image of a lady holding a plate brimming with food.<br><br>*"You're fat. Don't sugarcoat it cause you'll eat that too."*<br><br>*"life is like a box of chocolate. It doesn't last as long for fat people."* |
| **Article 7-** Title: Making fun of dark skin is not a roast: Actor boldly slams comedy show for body shaming<br><br>**Published:** 28th September 2016 | ▪ The user comments revealed the use of humor as a medium of justifying body shaming.<br><br>▪ One section of the users spoke against the propagation of body shaming within comedy shows while others argued that humor should not be taken seriously.<br><br>▪ The gravity of the act of body shaming was scaled down with the pretext of harmless comedy. |

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| **Author:** YKA staff<br><br>**Comments:** 40 | *"Get some sense of humor or die! You want roasts to be ethical? ��"*<br>"*I remember the original roast where Ranveer and Arjun had appeared. In it there was so much of body shaming on all men and the only woman in the group. Everybody took it in good humour and forgot about it. May be her tolerance level was low."* |
| **Article 8-** Title: To those who body shamed her online, this girl had a confident response<br><br>**Published:** 14th October 2016<br><br>**Author:** Suhani Chandhok<br><br>**Comments:** 35 | ▪ The comments present below the article exhibited inherent victim blaming.<br><br>▪ Lack of understanding and empathy towards victims of body shaming were displayed within the comment section.<br><br>*"if you wanna live peacefully, just keep the Instagram profile private. But yeah of course, its just too hard for the attention seeking people."* |

## 5. DISCUSSIONS

The careful analysis of the selected comments revealed inherent notions of beauty and fitness standards prevailing within the society. The comments further revealed the intensity with which the user base tried to disregard anyone who spoke of being victimized by body shaming. Clear instances of misuse of freedom of speech are laid bare. The study further revealed how users utilized the power of voicing out their opinions on online platforms from behind the screens, to propagate falsified notions inherited from the society they live in.

The findings reiterate the significance of the research and the need to understand the concept of body shaming better in a culturally diverse country like India. The user statements and their choice of words reveal deep rooted perceptions on what physical features are considered beautiful on human beings, as well as how an individual should look in order to be considered beautiful. Apart from strongly held ideals, concrete instances of propagation of body shaming on the online platform were also revealed. This indicates how social media has become one of the major propagators of falsified beliefs on beauty as well as a medium of body shaming.

Keeping in view the post-structuralist view of Alan McKee on text and its analysis, it can be said that the opinions of the user base revealed through the study are a mirror of the ideals being propagated within the Indian society. The analysis further helped identified certain key themes related to the study. They are as follows:

**Perceptions on standards of beauty:** The study revealed a general aversion among people towards the darker skin tone. Fair skin tones were seen to be connected with idealized beauty standards. Glorified body proportions prevailing within the society were brought to light, where women are expected to be slim and fair, while men are supposed to be tall, muscular, and have a glorified amount of facial hair. It was observed that BMI (Body Mass Index) is being used as a means to justify the propagation of idealized body proportions. A narrow-minded perception towards what makes a human being beautiful was being displayed from time to time. The study further reveals a lack of understanding among the user base with regards to individual differences.

**Perceptions on the concept of body shaming:** It is observed that a certain section of the user base recognizes body shaming as a vice that needs to be addressed and prevented, while the other section considers the notion of body shaming as an excuse to justify unhealthy lifestyle. A significant amount of aversion was seen to be diverted towards individuals who are underweight or overweight. Lack of awareness regarding the mental, physical, social, and emotional effects of body shaming on the victims as well as the perpetrators was found. The study revealed instances of rampant body shaming within the comment sections that were induced with a total disregard for the discussion that the article was trying to have. The use of humor as a means of commenting on people's bodies was observed as being an acceptable act to pursue. Furthermore, the impact of the standards propagated by the entertainment industry with regards to beauty were seen to be undermined by the community.

**Attitude towards victims of body shaming:** It was observed that there is a certain section of the user base that empathizes with the victims of body shaming. A significant number of personal experiences of body shaming

were revealed inspired by those who spoke about it. Another section of the user base's comments revealed the presence of victim blaming prevalent within the society. Victims of body shaming were labelled as attention seekers during instances where they tried to open discussions about their experiences. The study reveals the prevalence of the belief within the community that what does not fit the standards of the society, must change itself to be accepted.

**Perceptions on gender and body shaming:** The study revealed insights about the perception of the female user base regarding the connection between patriarchy and notions of beauty. It was observed that many believed the current societal notions of beauty prevalent within the country to be a result of India's inherent patriarchal system. It noted from the study that females vocalized their experiences with body shaming more, while males tend to keep it to themselves. The study further revealed how certain section of the user base associated body appreciation to feminism. This in turn was connected to cultural erosion and westernization in India.

The above-mentioned findings reveal a significant amount of information about the standards of beauty within the Indian society. It also reveals the lack of awareness prevalent within India about the concept of body shaming, as well as its negative effects on the victims and perpetrators. The comments studied act as a mechanism to propagate these inherent belief systems that the users inherited from the teachings within the family and society. Their words act as a mirror of the notions prevailing within the society. The study therefore helps in answering the research questions put forth as the base of the research with regards to prevailing perceptions of beauty and notions of body shaming within the country.

## 6. LIMITATIONS & SUGGESTIONS

The major limitation of the study tends to be the fact that the comments were from a user base limited to the platform of Youth Ki Awaaz. Further studies can be conducted using users from other media platforms. The results can then be corroborated and expanded upon. Youth Ki Awaaz majorly has a user base that hails from the northern parts of India. Thus, further studies could be conducted based on region specific media platforms in order to understand the prevalence of region-specific notions of beauty and body shaming. There are very few instances under analysis which reveal the extent of effects of body shaming on genders other than the female

gender. Study needs to be conducted to understanding experiences of other genders with regards to body shaming and the society's expectations of them.

## 7. CONCLUSION

The purpose of the study was to act as a catalyst towards understanding the notions of body shaming and standards of beauty persisting within the Indian society. It was not an attempt to generalize the findings, but to add to the construct from the point of view of the Indian society, so as to act as a base for further studies. The review of literature as well as the study revealed a lack of research in India on body shaming and the resultant bias, victimization, abuse, and lack of inclusivity. It reports areas that need to be addressed in order to prevent the propagation of the vice of shaming and the need to create increasing awareness among the population, so as to ensure the existence of a fair society. The study also points towards the need of having a legal remedy within the country to tackle the issue of body shaming. The need to have responsive institutions within the country that addresses the issue and holds people accountable is highlighted. With the conclusion of the study, it is anticipated that the results and findings will be used for further exploration of the prevalence of body shaming in India as well as to spread awareness among the masses about the same.

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**CHAPTER 6**

# Impact of Crime Based Television Series on Human Psychology: A Socio-Legal Study with special reference to State of Punjab

Dr. Geeta & Dishant Singh

Assistant Professor, School of Law, Lovely Professional University, Phagwara, Punjab.

geeta.26154@lpu.co.in

5th Year, B.B.A LL.B. (Hons.), Reg. No. 11718461, Lovely Professional University,

Phagwara, Punjab.

**"*T****elevision enjoys a de facto monopoly on what goes into the heads of significant part of the population andwhat they think*."- Pierre Bourdieu

## 9. ABSTRACT

Across the world people; enjoy watching different television shows, especially crime-based series. In India, crime-based series, "*Sansanikhez Kahaniya*", "*CID", "Savdhaan India", "Crime Patrol", "Saaksshi", "Special Squad", "Siddhant", "24", "Adalat", "Powder*, *"Suraag", "Karamchand", "ByomkeshBakshi", "Saboot"* gained popularity amongst the viewers. These series have been in trend and surprisingly, continue to grow in popularity, attracting all kinds of audiences irrespective of age group, sexes, religions, race, and cast influencing general perception, thinking cycles, and behaviours of the viewers on both aspects negative and positive. The present paper focused on the impact of crime-based television series on human psychology of the State of Punjab and suggested means and modes for ensuring the active part of Television Regulatory Authorities in crime prevention with the help of doctrinal and non-doctrinal research methodology.

**Keywords:** Reality Show, Victimization, Television Regulatory Authorities, Society, Crime, Behavioural outcomes.

## 1. INTRODUCTION

Psychologist Professor Sarah Niblock, CEO of the UK Council for Psychotherapy, believes the "our obsession with true crime and drama comes from the vicarious thrill of experiencing someone else's

problems, without having to go through them ourselves" **(Wright, 2018)**. Supreme Court of India also accepted "*The television is unique in a way in which intrudes into our homes. The combination of picture and voice makes it an irresistibly attractive medium of presentation. It has tremendous appeal and influence over millions of people. Television is shaping the food habits, cultural values, social mores and what not of the society in a manner no other medium has done so far*…."**(J, 2018)**.

Generally, crime-related shows depict a story of examination of a crime by the police and investigation agencies. Most of the crime based television series or shows viz., "*CID*", "*Dastak*", "*Crime Patrol*", "*Dail 100*", "*Savdhaan India*", "*Gumraah*", "*Saakshi*", "*Special Squad*", "*Siddhant*", "*24*", "*Adalat*", "*Powder*", "*Suraag*", "*Karamchand*", "*Byomkesh Bakshi*", "*Saboot*" have been in the list of most-watched crime-based television series. However, the idea of such shows has always been for well being of the society but somehow eventually possesses a harmful side to the society **(Nijhawan, 2015)**.

The general behavior of an individual is influenced by a crime-based television series,people found it difficult to act typical in their meetings with outsiders, and they do not trust outsiders or even their own neighbors' relatives. On the passing of a van or vehicle on the road by their sides, a threat of offense against body and property came into their mind. Peoplehesitate even to drink water in an unknown place due to the impact of crime-based television series **(Narahari& Mukherji, 2018)**.

How would you react to a situation? How do you take a matter? How do we lead our life? All our behaviours depend upon the surroundings and environment around in which we live. Our family background, friends, religion, and daily life leading affect our behaviour and dealing with the people. During the period, crime-based television series became one of the significant factors to bring behavioural change (either good or bad) in the viewers irrespective of their age, sex, religion, caste, or country. Crime-based television series have been more common among teenagers they believe easily what they see on television. Theytry to do what was being displayed before them. For instance, after getting influenced by a crime-based television series (*'Savdhaan India'*), a boy planned his fake kidnapping with his friends to celebrate Valentine's Day party in Goa. A sum of Rs. 1 crore was demanded from the father of the boy but, the deal settled at Rs. 60 lakh. A similar fake kidnapping was also planned after getting influenced by *'Crime Patrol'* again a crime-based television series **(Misra, 2015)** and many more.

Moreover, the young generation remained a victim of such programs; numerous marriages

ended, and some are on the edge of their dissolution for the brainwashing of their partners. But, we cannot undermine the good effect of such crime series for making the people aware of their rights and providing ways to protect their life, property, reputation, and their dear ones.

However, a different study showed both negative and positive impacts of the series. This Paper focused on tracing the factors for the commission of a crime, accessing the impactof crime-based television series on human psychology particularly in the State of Punjab, and suggesting modes and means be adopted by the Television Regulatory Authorities to ensure their part in crime prevention. Doctrinal and non-doctrinal research methodologies were utilized for the study. Secondary data was collected from textbooks, journals, newspapers, judgments, reports, and information available on various websites to study the concept. Primary data was collected with the help of questionnaires with random sampling to access the impact of crime-based television series on the State of Punjab.

## 2. CONTRIBUTING FACTORS FOR CRIMES

Generally, (i) poverty, (ii) peer pressure (iii) religion (iv) politics (v) unfair justice framework (vi) unemployment **(Nair, 2022)** had been one of the contributory factors to the commission of a crime. But, with time, crime-based televising series and crime-based movies played a vital role in the life of a person and become one of the significant factors contributing to the commission of a crime.

In addition to this, different theories have also thrown light on contributing factors to the commission of crimes.

### 2.1. SOCIAL LEARNING THEORY

Albert Bandura in his theory emphasized on the significance of observing, modeling, attitudes, and imitating behaviors with the emotional reactions of others people. The hypothesis of the theory proposes that “one of the ways by which individuals learn is by the method involved with displaying or reflecting other's activities” **(Garg, 2020)**.

### 2.2. SOCIAL COGNITIVE THEORY

This theory is built upon the social learning theory. According to the theory, “behavior of the people

is guided by the cognitive scripts which are learned through experience and observation of other people's behavior" **(Garg, 2020)**.

### 2.3. CATALYST MODEL

The catalyst Model explained the etiology (cause) of violence. As per the catalyst model, "personality is shaped by a combination of genetics and learning, in which family or caregiving influences are predominant" [8]. The Model accepted media as one of the causes of aggressive behaviors **(Garg, 2020)**.

## 3. REGULATING AUTHORITIES

Broadcast Audience Research Council found more than 197 million Indian families with television connections in the year 2019. On July 31, 2020, about 920 channels were allowed to operate by the Union Ministry of Information and Broadcasting (MIB) **(Broadcast Audience research Council, 2019)**.

### 3.1. CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995

All the programs on television are regulated by the Cable Television Networks (Regulation) Act, 1995, and Cable Television Network Rules, 1995 **(Jain, 2021)**. Crime-based television series regulated by the Act for their non-news television channels. The acts deal with program codes and advertising codes. However, due to an inadequate mechanism for redressal of grievance, new rules have been passed in the year 2021.

### 3.2. CABLE TELEVISION NETWORKS (AMENDMENT) RULES 2021

Recently Cable Television Networks (Amendment) Rules 2021 passed by the Government to provide "a statutory mechanism for redressal of grievances/complaints of citizens relating to content broadcast by television channels following the provisions of the Cable Television Network Act, 1995''**(Ministry of Information and Broadcasting, 2022)**.

A three-level redressal mechanism (i) Self-regulation by the broadcasters (ii) Self-regulating bodies of the broadcaster and (iii) Inter-Departmental Committee at the Union level have been established under the new rules. The Union level committee consisted of six members a head (Additional Secretary, Ministry of Information and Broadcasting) and a representative from the other ministries viz., Ministry of Home Affairs, Defence, Women, and Child Development, Electronic and

Information Technology, External Affairs to hear the appeals regarding the complaint on any program.

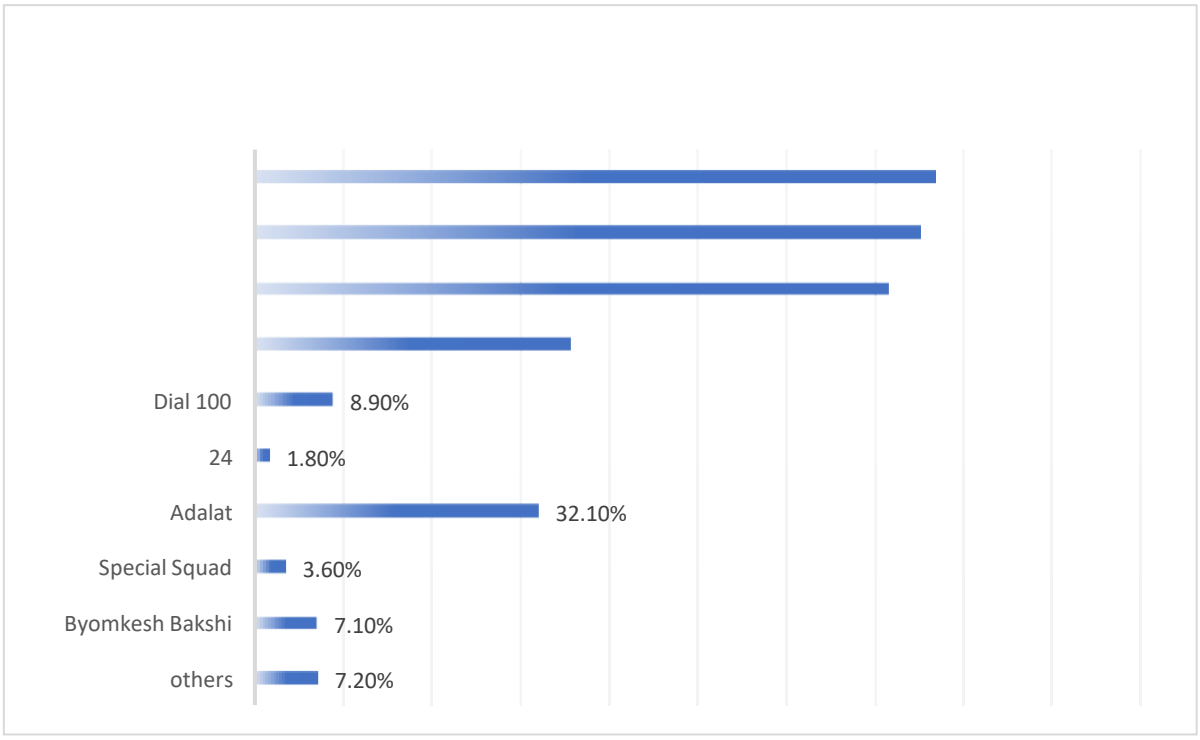
## 4. FINDINGS

Details of the Respondents among which research was conducted:-

The questionnaire was responded by 55 respondents among whom 25 were males and 30 were female residents of Punjab. The respondents majorly consisted of youth, 89% belongingto the 18-30 age bracket, 6% from the 30 to 50 age bracket. Only 5% were above 50 years of age.

## 10. MOST VIEWED CRIME RELATED TELEVISION SHOW/ SERIES BY THE RESPECTIVE RESPONDENTS:-FIGURE NO. 1

Among the famous shows related to crime, the most viewed among respondents standing at the top with 76.8% found the "Crime Patrol Series " followed by the Savdhaan India series atsecond position with 75%, and the CID series at third with 71.4% of the respondents viewing.These were the top three shows most viewed by the targeted audience as shown in figure No. 1




**11. FIGURE NO. 1 (MOST WATCHED CRIME TELEVISION SERIES)**

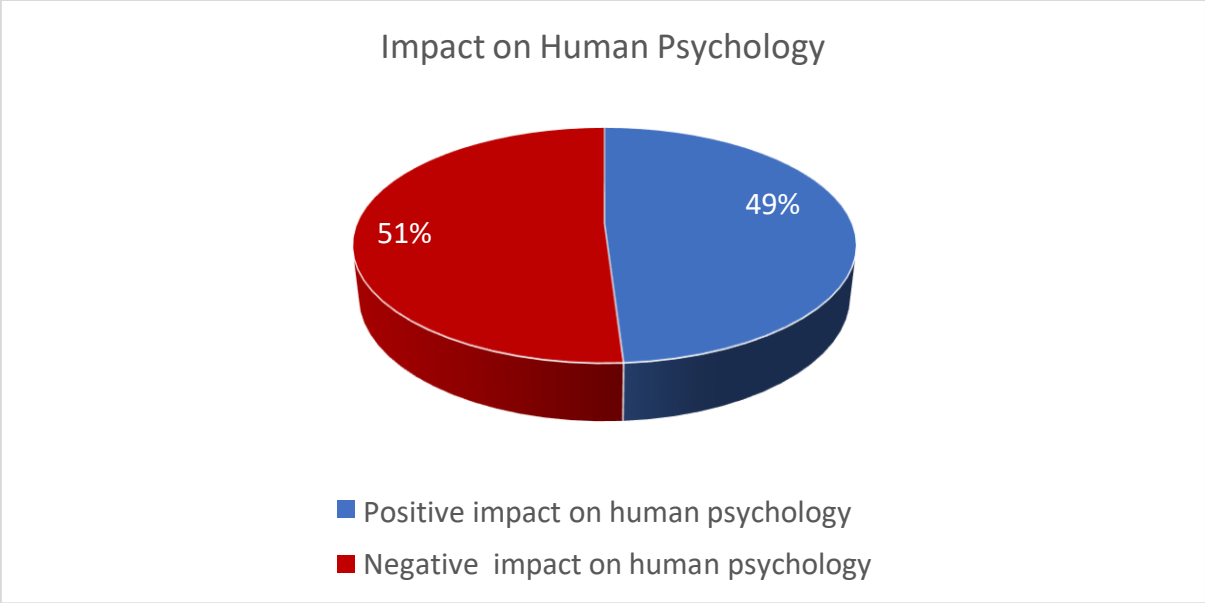
**Psychological impact of Crime based Television Series ( Figure No. 2)**

Responses received from the respondents between 18-30 years of age showed crime-based television series were from the entertainment industry depicting a story in such a way makingpeople addicted to the series.

From the age group between 30-50 years, the negative impact of crime-based television seriesis found in society at large.

Age group above 50 years recommended for eradication of such series as soon as possible fortheir negative vibes ruining the environment in a well-cultured family.

However, both negative and positive impacts of crime-based television series were found with the help of random sampling from the State of Punjab. A total of 51 percent of respondents found the series with a positive impact on human psychology and 49 percent of respondents found the negative psychological impact of the series on the human psychology shown in figure No. 2.




**12. FIGURE: 2 PSYCHOLOGICAL IMPACT OF CRIME BASED TELEVISION SERIES**

## 5. Conclusion & Suggestions

There is no doubt about the fact that crime-based television series spread awareness and makepeople alert about the commission of a crime against them. The problem comes when people choose the wrong way after getting influenced by these series. The present study showed both the good and bad impact of the series in Punjab. A positive impact of the series is found by 49 percent of respondents. On the hand, the negative impact of human psychology accepted by 51 percent of respondents in Punjab. A provision of filing a complaint in case of offensive contents of programs incorporated under the Cable Television Networks(Regulation) Act, 1995, and Cable Television Networks Rules, 1995. In the year 2021, of theinadequacy of earlier mechanisms to protect the larger interest of the society, the Cable Television Networks (Amendment) Rules 2021 framed with the introduction of a statutory mechanism for redressal of grievances/complaints concerning the contents of television programs. The new rules are an appreciative initiative by the government in the area but, further there requirement for (i) a mechanism for regulating the program even without receiving any complaints about the contents of all the programs on television and (ii) additional responsibility on broadcasting agencies and distributors to measure the negative and positive impact of such programs on the society at large (iii) Filter for the contents of allthe program on parameters of different age groups of the people. Hence, it is submitted that crime-based television series leave both a good and bad impact on human physiology in a given area. Therefore, with the help of

suggested measures, the negative impact of crime- based television series may be lower with an increase in the degree of the positive impact of the television series on human psychology and society at large.

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**CHAPTER 7**

# CONTEMPORARY LEARNING ENVIRONMENT AND EQUALITY OF OPPORTUNITIES : A NARRATIVE REVIEW

Vaishnavi Mishra (M. Ed Research Scholar), Dr. Vijay Kumar Chechi (Dy. Dean, SOE
Lovely Professional University,
Vaishnavimishra97@gmail.com , Vijay.chechi@lpu.co.in

***ABSTRACT***

*The idea of equity and equality are of prime importance to ensure inclusive society for all the children. The SDG – 4 'Quality Education' ensures inclusive and equitable opportunities for lifelong learning. The constitution of India also ensures Equality in Opportunities to all. The Government has undertaken many plans and policies to ensure Equality. Even though the admissions at various institutions have the equality approach still the fact cannot be underestimated that the history, background of the people is different for everyone and it significantly impacts their present conditions too. Equal opportunities not just consist the gender differences but also the multiculturalism, anti-racism, trans-gender, socio-economic disadvantaged. For this the educational institutions that primarily consist learning environment at School and Parents that create learning environment home are essentially important to enhance the self- efficacy, self-esteem, achievement and ensure holistic development of the students. The institutions also need to address the emotional and social needs of the students as there are students from diverse background being more vulnerable to gaps. The issue of digital divide came into broad light due to Pandemic. For this, various organizations and stakeholder need to come together and reframe economic, education and digitization polices. Following reviews throw light on the issues, challenges and measures taken by different organizations.*

***Keywords*** *– Equality, Inclusive, Learning Environment, Fair, Pandemic, SDG - 4*

## 1. INTRODUCTION –

India's School system is world's second largest school system after China. The best learning environment for the students is said to be when it is fair and positive for all students at home or at school. India's education has made significant progress since Independence. The goals of education are being set up pertaining to the Sustainable Development Goals (SDG). The SDG – 4 aims at 'Quality Education.' India aims to eliminate the gender disparities in education, ensuring equal accessibility to

all levels of education and a holistic system of inclusive education by 2030. The slow but somewhat steady progress in the growth was abruptly ended due to pandemic. Shutting down of educational institutions seemed to be the only solution in order to avoid the spread of the virus. But the prolonged closure has led to negative impacts on the students and it has widened the gap of inequalities which was already there before the pandemic. Challenges in education system were already there but the pandemic has intensified the problem. We cannot quantify everything and the feeling which is there in the heart of students due to this isolation, some are not even able to identify it. Everyone was made to adapt to new normal but the transition was not so smooth for everyone. Other than the generalized impact of pandemic on students, there has been impacts such as rise in inequalities related to opportunities, digital divide, self – efficacy etc.

As per the Education Minister, 15 crore children are presently out of education system. the National Right to Education forum's policy, 10 million girls are at risk of dropping out. The financial crisis has put many students towards labor instead of rejoining the school. The burden of household work also increased on the girls. It became really difficult for them to continue their studies. More priority towards accessibility to devices was given to male children as compared to females. A survey also revealed that 64% of girls said that the boys have higher accessibility to internet, whereas 33.6% didn't have the access to devices. The teaching of male child is prioritized. A large proportion of girls' dropout in higher class who had earlier enrolled for the primary education. An NGO in Mathura (India) also reported exceptionally more calls regarding incident of child marriage during pandemic

Studies have suggested that closure of schools has led to raise in vulnerability of unprivileged children as they are deprived of education. Affordability for the devices was also one of the biggest issues that the stakeholders have faced. All these issues have decreased the scope of equality in education for children in India.

## 2.1 BACKGROUND OF CONTEMPORARY LEARNING ENVIRONMENT :

According to (Machado) for the learners of 21st century, the role of technology is very crucial. The learning environment is not limited to a physical space only but an integration of technology, multiple modes comprising modern elements such as time, space, people and technology. Skills and training to the teachers is being given in order to develop competencies whereas the students are also adapting on how to use technology for learning. As per Z. (2013) the approach of teacher centered education has been shifted to student centered with real life application and integration of technology in the 21st century. The students' role in the modern learning environment has been shifted to discoverer,

collaborator, an active participant, highly motivated, in learning process. Krishnaprabu (2019) it is the active role of the educators and teachers to create a learning environment that is favourable for modern learners' need. A complete framework requires to be made that comprise of all the requirements and needs of modern learners. As per article in WISHART, the learners and the teachers create contemporary learning environment in accordance with the need of modern learners. With the help of portable devices, students are given online access which adds to personalised learning experience. Parents are also involved in the learning process. According to NSW website (2021) Effective teaching practice comprise of integration of many teaching styles and practices. It consists of activities such as assessing students' need, talent, evaluation of impact, feedback. Modern education and learning aim at raising children to use critical and creative thinking for acting in difficult situation.

According to Teacher Boards Learning difficulty is problem of many students. Oxford learning found out that 70% of the children faced problem in focusing and doing a task. The classroom needs to be redefined using modern tools to make learners' needs met. Proper cushioned seating arrangements should be made. Modern equipment that gives comfort to the students should be used. Other than infrastructure, online tools and equipment must be used. The classrooms must be bright and combined with outdoors. the contemporary teaching method is activity and learner centered. The teacher acts as a facilitator where they plan activities for students. The class is enriched with experience using resource, collaborating learning, flipped classroom, self- learning, gamification. Such activities help in cognitive skills, affective skills. The 21$^{st}$ century learning integrates technology, engagement of students, interaction, collaboration, active learning and primary constructor of the knowledge

The tools of learning are such that supports the learner through exploration of ideas, deep and powerful learning. The learning is such that enables and engages the learners of contemporary world with the help of reflection, high order thinking skills, creativity, in depth understanding about themselves and world.

## 2.2 BACKGROUND OF INEQUALITY OF OPPORTUNITIES :

Article 26 of the Universal Declaration of Human Rights (United Nations, 1948) proclaims that "everyone has the right to education", that "education shall be free, at least in the elementary or fundamental stages" and that "education shall be directed to the full development of the human personality...". According to an article by Drishti (2021) Inequality in India is formed due to variation in consumption, income and wealth of the people. High level of inequalities in opportunities is also being noticed in India. Studies suggest that children who are from the disadvantaged sections, have less

chance to progress and move to higher level. The pandemic has widened the educational inequalities due to labor market conditions, income inequalities. The lockdown has also increased the learning gaps among the students. The younger children, girls were deprived from the access to digital devices. Maclean (2003) Several International Conventions state that equality in opportunities means a condition where everyone has fair and equal access to educational opportunities regardless of background, race, gender, religion. There should be equal grounds of selection and people should get the access to all these regardless of discrimination.

Inequality may arise due to different factors or situations. Inequality, poverty and unemployment are interrelated. In fact it is a vicious cycle. According to a report, India is on second rank in terms of inequality. India is among 10 richest countries of the world on the other side, average Indian is relatively poor as compared to other countries. These inequalities are being reflected in the education sector also. Educational inequality arises because of unequal distribution of resources among the children. The children may face such due to less or denied access to resources. There may be historical, disadvantaged or oppressed reasons. These inequalities arise in the form of regional, sex, social stratification, family income, occupation. It is not necessary that those who have been put into the school are learning. A study has suggested that students from richest 20% of society are seventeen times more likely to be studying law than those from poorest 20%. Less girls get admission into English schools as compared to boys and also more females opt for humanities than males in India. Taneja (2020) India already face several inequalities. Education seemed to be an equalizer but due to inequalities in the society the aims of education are not achieved properly. Segregation in the education leads to inequality and exclusion. There are legal provisions that helps to reduce the inequality and ensure fair access to all resources. Teachers are sensitized regarding the issue and Government also take steps to enhance, plan, monitor, evaluate that helps to ensure equity. In India, the new National Education Policy and SDG 4 share the goal of universal quality education. Sarva Shikha Abhiyan is aimed at achieving universal quality education for all adults. The targets of SDG 4 aims at ensuring all students complete free, equitable and quality education, proper development, easy access, affordable education, skill development, removing gender disparities, providing effective learning environment,

As cited in the article on NSHSS (2021)The concept of equity and equality might sound same yet they have different implication in education system. When the children are brought to school despite pf socio -economic disparities or any from other diverse systems, it is termed as equality whereas in equity the individual differences are being taken care. Equality is about sameness whereas equity is about fairness. When we focus on the weakness of the student, giving personalized instructions and necessary

interventions as per need it is called equity. According to Mason (2019), the condition of mere equal opportunity is not enough. There are social and economic circumstances such as background of the people, their location, financial conditions, culture that has significant impact on their future prospects. The people born into higher economic class will have more access to resources as compared to other. The differentiation is made in the terms of 'social – construct' ; race, gender, sex, different abilities, age, class, religion or educational achievement. Care should be taken from displaying content related to sexism, negative images, stereotyping. Such as for example "boys are better at…" , 'policeman' or 'good girl'. Research shows that boys receive more criticism and praise than girls. Institutions must refrain from activities such as taunting, bullying. Example of high ambitions must be set before students.

According to Maclean (2003) Equal Opportunity means everyone has a fair and equal access to a good equality of education despite of any other differences. Article 26 of the Universal Declaration of Human Rights (United Nations, 1948) proclaims that "everyone has the right to education", that "education shall be free, at least in the elementary or fundamental stages" and that "education shall be directed to the full development of the human personality...".According to Litow (2022) The education system needs to Maintain diversity, equity and inclusion at all levels. Institutions have also initiated diversity training policies to train various stakeholders. Alber (2017) found that participation of females in primary class was more than the females in secondary class. Authors also found that there was unintended gender-bias in the class. Male- dominant curricular is prevalent in the schools. Disparities are also seen in pay scale despite of same profession and job. UNICEF stated that barriers to girls' education are poverty, child- marriage, gender-based violence, sanitation facilities, lack of health education, safety. Male education is prioritized in case of poor families.

## 2.3 DIGITAL LEARNING ENVIRONMENT AND UNEQUAL OPPORTUNITIES :

Kim (2018) the idea of digital learning is inclusion. These aims provide opportunities to all but not too few. The cost of education and acquiring infrastructure is costly and is not affordable by all. This does not ensure accessibility to all students. The quality gap in online education is a matter of concern. Suleiman (2020) the usage of internet is not limited to classroom only. But online education has its threats and challenges. Literacy has been an issue for the students. The teachers and students need to possess basic computer literacy. There has been a lack of personal interaction between students and teachers. There has been lack of intrinsic drive-in case of discipline. There has been lack of awareness

and consciousness among the parents. Lack of Wi-Fi connectivity, limited access to devices are also problems.

The online class leaves the learner at their own pace. The students have to manage themselves, their tasks and work. One important issue during pandemic *was* the threat of transmitting virus. The intensity of the impact could vary but most of the issues are present in some form or the other in the life of students.

According to Sahni (2020) In India , Pandemic has impacted life of as many as 320 million students. The aspect of 'digital divide' in India was ignored along with gender and class divides. The 2017-18 National Sample Survey reported only 23.8% of household with Internet access. The data showed only 23.8% percent of rural household with internet access as compared to 42% in urban areas. The data also showed higher number of male users than females. According to Khan Z., Equality is needed to ensure Egalitarian society that is needed for Nation's development. Many problems give rise to inequality in India such as difference, gender disparities, regional imbalances, physiological Imbalances, socio – economic classes. In order to overcome this; constitution provisions, debarring restrictions on admission in educational institutions, scholarships, special treatment for S.C., S.T., OBC, special education, residential schools have been initiated. The recent studies as per India Today (2021) have suggested that due to gender based digital divide and pandemic, as many as 10 million girls in India could drop out. Those from unprivileged background facing economic crisis, used the Limited resources for the education of male child only. many girls had a gap in the studies on the notion that they will continue once the things get normal.

Sonawane (2020) the burden of household chores, domestic reasons were prominent reason given by girls for discontinuing their education. The families facing economic hardships, reconsider the education for girls. One of reasons could be that the secondary education is not free as primary education. Bright future of girls is judged with their marriage. So parents think that safety is ensured with the help of marriage and this is done by pulling them out of school. Alasuutari (2020) Due to pandemic, students with disabilities or diverse/special needs are sidelined. Phenomenon like poverty, gender, ethnicity, age, disability can result in discrimination and exclusion. In order to keep all students and communities safe; educational content is being shared in local and minority languages, using sign language, captions, audio and graphics. As per the article published in OECD (2020) many things in students' life got affected due to Pandemic such as lack of social life and support, belongingness, self – worth. Various groups such as low – income group, single parent families, immigrant, refugee, ethnic

groups, special educational needs. Other than physical learning students are being deprived of other facilities such as social, emotional support, school meals, guidance

As per the article in World Economic Forum (2020), due to various disparities, the transition from offline to online was not favorable for many children. Inequalities have risen due to socio – economic conditions, digital divide, gender stereotype etc. Specialized Policies must be built in order to bridge the gap of digital divide and to move the country towards attainment of sustainable development Goal. As per an article namely "Years Don't wait for them" (2021) throw the light on the need of reframing policies to tackle the issue of inequality. It's not limited to bringing the students back but also to bridge the level of learning which was created during pandemic. Students had to travel so long to find good internet connectivity. The students were being deprived of Government facilities, lack of learning environment at home. Acosta (2020) stated that girls are facing obstacles like health crisis, dropping out, early marriage and pregnancies and doing other breadwinning activities for the survival. Girls reported either less confidence in computer skills or less access to devices. Whereas boys faced the challenge of being pushed into labors or other dangerous activities for financial needs.

**2.4 STEPS TO ENSURE EQUAL OPPORTUNITIES** –

According to Murphy (2021) as per the report of OECD, students were left behind due to lack of support factors, environment at home, digital divide. For this OECD gave various recommendations and suggestions for schools, universities and Govt. These organizations work together to create an online learning environment. In order to ensure equality, more access to digital learning is given. The teaching is aided with the help of technology. Students are being given proper training, skill development courses in order to end 'digital divide'. Archer (2020) due to pandemic, Students with sound financial background were able to continue their studies but there were as many as 1.5 billion children who had to temporarily drop the school. Children were pushed to child labor. Girls face challenges related to early pregnancies, early marriages. UNESCO's call of action laid down such steps aiming pandemic as an instrument of equality and inclusion. Actions were suggested to enable the countries to double their spending on education, health, other services.

For this OECD also suggested policies such as providing equitable and inclusive access to digital learning resources and favorable learning environment. Fostering partnerships of Government and other educational institutions. Distribution of free electronic devices and learning material. Increasing parental engagement. Facilitating guidance, counselling and developing social competencies. Kollmayer (2020) suggested that occupational awareness and gender typed motivation is influenced by

the teachers. In their study they found out that teachers who were given special training program 'REFLECT' showed significant increase in knowledge about gender differences, promoted students' autonomy, increase in self – efficacy belief of teachers to shape the students' thinking.

As per article by Pearson (2020) Gender roles are everywhere that unintendedly stereotypes minds of the children how ideal 'boy' and 'girl' look like. Gender – normative behavior is being set up like girls playing with only dolls, boys buying cricket or other sports kit. The interaction with peers and teachers plays an important role in shaping the beliefs and the self – image. UNICEF also works in the favor of promoting girls' education by establishing partnerships with volunteers, institutions and Government to remove barriers. It tackles discriminatory gender roles, supports the Government, sharing data to frame policies, regular teacher training and developing their skills, removing stereotype from the learning materials, addressing issues relating to menstrual hygiene, young girls.

Wolohan Sean (2016) digital divide has been a major issue in the case of online learning. Most of the people below poverty line do not have access to high-speed internet. Though this is a factor which is not in the control of teachers but still the teachers can take initiatives that can mitigate the loss. The teachers need to do complete research regarding the access of students to digital devices and internet. The teachers need to be thoughtful about creating lessons, such tasks must be designed that can be done with slow internet through mobile phones. Students should be gradually made familiar with the online tools and how to use them. Maintaining rapport with the parents is also required so that a conducive environment is created at home.

## 2.5 SUGGESTIONS –

People from local places should volunteer to identify children from vulnerable group and ensuring their return. Down to top approach could be used to monitor the presence of children in the schools. Parents should be encouraged to send their wards to the schools. Possible assistance should also be given. The needs of the students such as academic, emotional, special, psychological must be taken care of. Specialized guidance and counselling must be provided. Ensuring extra classes for the students with to decrease learning gaps. Adequate training to the students and teachers so that the online learning can be undertaken in future smoothly. Setting out real life examples in front of students with which males and females so that they are inspired.

## 3. CONCLUSION –

The pandemic has disrupted the learning and development for both boys and girls as they face their own challenges. Research at local, state, national and global level is being going on to identify the problems in order to frame policies aiming at solution. These changes require will and participation of all the stakeholders. Many countries are responding positively to adapt the change but many nations lag behind it. There are several problems being faced by students where the equality is compromised so all the stakeholders have to take initiative in order to overcome these barriers and ensuring fair access to education for all students.

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**CHAPTER 8**

# "COMPARATIVE ADVERTISEMENT AND TRADEMARKINFRINGEMENT- A STUDY"

Author: -Aarushi Jain, Student- Lovely Professional University
Co- Author: - Richa Gaur, Assistant Professor- School of Law, Lovely Professional University

## 13. ABSTRACT: -

***"Comparative Advertisement"*** is considered as a wide term that is formed with the commercial advertising around the globe. However, this type of advertising tends to influence the behaviour of the consumer by comparing the unique feature of the product with the product of their competitors. The aim behind this scenario is to show honest comparison between the trader product and the competitor's product. The ***"law on comparative advertising"*** and ***"product disparagement"*** in terms of trademark is entirely based on the situation of the law that has been laid down. This paper highlights the overview of the "trademark infringement" and "comparative advertisement" by showing the use of ***"competitor's trademark"*** in order to understand the entire framework of it.

***Keywords:*** Comparative Advertisement, product disparagement, trademark infringement, trader product and competitor's product.

## 1. INTRODUCTION:-

### *1.1 Statement of the Problem*

Companies utilize comparative advertising to highlight, promote and compare the product superiority in terms of their competitors. Therefore, it can be stated that there is a potential for the advertisers in drifting into product depreciate. In the US, "comparative advertisement" is being motivated as it advertise the innovation and improvement of the product that can lead to fewer prices within the marketplace hence providing benefits to their customers (LSI, 2019). This paper will analyze the ***past paradigm*** and ***recent judiciary system*** by discussing the shifting lies among comparative advertising and trademark infringement. Furthermore, the guiding principles in terms

of comparative advertisement have been laid down in the case of ***Amul*** where the court has announced that Amul may get exaggerated claims by illustrating the product superiority. However, the company could not advertise on air minimizing the frozen desserts even though it does not have any trademark used against its rival company such ***Kwality***. Recent paradigm has shown that the court has appeared to acknowledge the flexibility that the advertiser needs to be permitted for exaggerating the product strength and gets indulge in publicity as long as the similar does not get failed or misleading. However, in an advertisement it has been shown that Amul has compared its product with the frozen desserts indicating that the products that are manufactured contain ***100% of milk***. On the contrary, the frozen desserts are produced by using the ***"hydrogenated vegetable oil"*** [i]**.** Additionally, there was no particular reference in terms of the symbol of ***"Kwality"*** as it contended that advertising has an impact on frozen dessert. It is also highlighted that the products are produced by using the edible oil for both ice- cream and frozen desserts that contain 90% of milk. Therefore, it is not significant to understand whether the advertisement is depicting the trademark of their competitor in order to compare their products or not.

### *1.2 Research aims and objectives*

The aim of the study is to compare the advertising and trademark infringement by identifying its impact on the customers.

*Objectives:*

- To study comparative advertising and trademark infringement.
- To determine whether there is any existence of trademark infringement by comparative advertisement.
- To understand the method of comparative advertising that impacts the consumers.
- To identify various case laws in terms of comparative advertising and trademark infringement.

### *1.3 Research Questions*

**RQ 1:** How to identify the intention of the comparative advertisement?

**RQ 2:** How to consider the trademark infringement by comparative advertisement?

**RQ 3:** How comparative advertising affects the behavior of the consumer? **RQ 4:** Is comparative advertising authorized under the Trademark Act, 1999?

## 2. Literature Review: -

### *2.1 Theoretical Underpinning*

#### *2.1.1 Regulatory Framework of "Comparative Advertisement"*

"Comparative advertisement" indicates the competitors in order to guide the users that their product is considered as the best while comparing it with the others that are available in the market. However, in comparative advertising, it is significant to compare the new product with the existing competitor's product, which can be done through making a comparative price list. Furthermore, it can also escort to "trademark infringement".

In India, commercial ad is modulated by different codes and law such as the ***"Constitution of India", "Consumer Protection Act", "Trademark Act, 1999"*** and ***"Advertising StandardCouncil of India".*** However, the ***"Trademark Act, 1999"*** took position after the ***"The Tradeand Merchandise Mark Act, 1958"*** was abolished[ii]. However, India established its new *"Trademark Act, 1999"* and *"the Trademark Rules, 2002"* since "15th September, 2003" inorder to make sure about the enough security to owners of the brand of both national andinternational in agreement with the compliance of TRIPS. According to the "section 29(5) of the act", it provides that the act is a recorded mark that is applied in a commercial ad in terms of infringement in case there is any unfair advantage. On the contrary, "section 30(1)" states that the "comparative advertisements" that are accurate and fair does not affect any users and should not be accordingly restricted by utilizing the "authorized trademarks" in terms of the third parties. Despite of the regulations, the ***"Advertising Standards Council of India (ASCI)"*** highlights that the "comparative advertisement" is allowable in case of all the factors of the compared products that are substantial, factual and clear[iii]. However, the comparison does not negotiate the artificial advantages of the advertisement as there is no such unfair disparagement for product comparison and hence is unlikely to misguide the customers.

According to "Article 19(a)" under the "Constitution of India", the "right to freedom" in terms of "speech and expression" is secured and number of the "advertisements" is arguing the similar matter. However, it is significant to assess the "article 19(1) (a)" under the rights in terms of "comparative advertising" [iv]. Although, the ***"freedom of speech and expression"*** has various challenges and the similar matter is being restricted. This has been done by striking a reasonable limitation by the area "under the article 19 (2)" of the "Constitution of India". In the case of ***"Tata Press vs. Mahnagar Telephone Nigm",*** the "Supreme Court" announced that the

*"commercial speech cannot be denied the protection of Article 19(1) (a) of the Constitution merely because the same is issued by the businessmen".* The Court did a detailed evaluation regarding the "Article 19(1) (a)" of the "Constitution Supreme Court" that commercial ad is considered as a "commercial speech" with two angles. Advertising proclaims the data about those products which are being advertised on a digital network [v]. The public is successful in gathering the information that is available through various advertisements. Therefore, in the "democratic economy", commercial information with free streaming is considered to be essential. However, the democratic of the economic system would be disabled without the freedom of "commercial speech". ***"Mahanagar Telephone Nigam Ltd"*** does not have the capacity to come along the manner of ***"Tata Press Yellow Pages"*** with regards to "public interest" as no such regulation is provided in the "Article 19(2)". Furthermore, business speech is found to be delighted as much of the protection is found in terms of the speech[vi]. But in case of the "comparative advertising" is violating the rights and hampering the goodwill and the trade of the other person, hence the advertisement does not get any protected under the "Constitution of India".

### *2.1.2 Remedies obtained against the Infringement of Advertisement*

Any court that is not indifferent to the district court within the control can permit reassurance in both of the infringement cases and thus pass through the suit [vii]. There are different types of reliefs that are granted to an entitled plaintiff:

1. The order of restraining the further use of infringement marks.
2. Account of profits or damages.
3. Order for the delivery- up in terms of infringement marks and label for destruction.

*"In the case of M/s South India Beverages Pvt Ltd" vs. "General Mills Marketing Inc. and Anr"*
In the current interest of sign at the "Delhi High Court" cases beyond two similar supposedly ranks such as **"HAAGEN DAZS"** and **"D'DAAZS".** However, both the respondents and the appellants were busy with the firm of selling ice- cream and dairy products, however within variable price groups[viii]. However, the Court helps the order up of the single judge who has granted for the "interim injunction" against the implementation of final mark by the respondent- petitioner.

## 14. PERMANENT INJUNCTION

*"In the case of Colgate Palmolive Company" vs. "Anchor Health and Beauty Care Pvt Ltd"* The state terminated the suspect for using the "red and white color" collection and hence business it as its suspect that indulged with "proprietary rights" on the merger while using the toothpaste. As a result, the application has been allowed and the suspects are in a way of "ad interim injunction" hence restraining from utilizing the color mixture of the tooth powder with red and white contained in the container of the product[ix]. However, granting the injunctions was considered as a usual remedy where the Indian court specifically the High Court had recently started to award both the punitive and compensatory damages for the infringement of trademark.

The awarding tendency of "punitive damages" in the domain of trademark has incorported with ***"Time Incorporated" vs. "Lokesh Srivastava".***

## 15. DIFFERENT SOLUTION

The different laws and regulation under the disturbedagents that can claim for "trademark infringement" in "comparative advertisements" are listed as follows:

1. The Consumer Protection Act, 1986
2. The Prevention of Food Adulteration Act, 1954
3. The Emblems and Names Act, 1950
4. The Drugs and Magical Remedies Act, 1954
5. The Indecent representation of Women Act, 1986
6. The Drugs and Cosmetics Act, 1940
7. The Pre- Natal Diagnostic Techniques Act, 1994
8.

Other acts consist of ***"The Young Person Act, 1956", "Motor Vehicles Act, 1988", "The Prize Competition Act, 1955", "The Transplantation of Human Organs Act, 1944"*** and so on. Under all the acts, it can also be stated that the person has the ability to declare the "infringement compensation" for their authority.

In other countries such as the UK, EU and US, remedies for trademark infringement are also provided. However, in the US, the trademark infringement is being secured under the "Lanham Act" where the suspect should be displayed (1) having a valid rank and (2) the defendants use the similar rank to excuse dilemma in the consumers' thought to receive the remedy for trademark

infringement [x].

In the European countries, destruction are measured by taking into consideration the amount of goods that are provided by the plaintiff, in case the suspect has not "infringed the right" of the plaintiff. The propensity of the European court is to set the symbol for the owners in the similar position as they would have the suspect that is not violated with the plaintiff's right. However, the court also needs to take into consideration the infringement duration during identifying the damages. When the defendant is unable to show evidence regarding the actual loss, then the court has to award a lump sum amount that is based on royalties, which the defendant can earn if the plaintiff acquires authorization from the defendant[xi]. Furthermore, reimbursement is also awarded with regards to goodwill depreciation and trademark reputation. "Penitentiary damages in the form of coercive payments", "double royalties", and "huge damage" for "intentional infringement" are not being granted in the EU countries beside Bulgaria.

Therefore, the overall review of literature provides a clear justification that ***"Trademark Act, 1999"*** does not only give for "remedy in case of the infringement of trademark" but other countries and other laws too provides the amenities for the protection of the landlords in terms of the trademark infringement.

### *2.2 Literature Gap*

The gap involved in the literature is about the appropriate information of the overall subject matter. However, the review of literature is based on the past studies that are studied by different researchers or scholars but this does not mean that the researcher covers all the important aspects

that will fill the gap within the literature. Moreover, this study covers a limited area of research rather than covering the entire population of the world that creates a qualitative research method rather than conducting a quantitative research method. Although it was important to address all the important research questions within the literature, the study does not provide detailed solutions of the research question that occurs due to lack of studies. It can be said that the goal ofthe research was to find out the appropriate gap involved within the study however, contributing to a new research method.

## 3. RESEARCH METHOD: -

The research method provides the overall techniques and procedures that are required to select, analyse, process and identify the information related to the subject matter. In this paper, the methodology section provides detailed information by allowing the reader to evaluate a critical study with an entire reliability and validity. Although, this research paper is considered as the analytical research that provides critical thinking and evaluates the facts and information [xii]. Furthermore, the study provides detailed concepts regarding the "comparative advertisement" in terms of trademark infringement. Additionally, it is a "comparative analysis" regarding the notion of "comparative advertising and trademark infringement". The research design that has been followed through the causal research type covers the sample design of the selected area of research. However, the data collection has been done through observation and based on secondary qualitative data analysis. The data collection is done through various articles, journals,books, magazines and websites that are related to law and IPR (intellectual property rights)[xiii]. Moreover, the data has been collected by discussing the various case laws that are based on the jurisdiction of India.

The research project that has been adopted in this study is indicated to be causal research that illustrates the test based on effect and causes of the relationship, hence considering in terms ofthe reference to the effect of "comparative advertising" and its causes on the "infringement trademark".

## 4. DATA ANALYSIS: -

### *4.1. Secondary Thematic Analysis*

According to the ***"Monopolies and Restrictive Trade Practices (MRTP) Act, 1984"*** a new segment on the *"unfair practices of trade"* was being modified under the "section 36A" that

shows any unfair and damage practice or method that displays a faulty or misguide information about another product resulting in product disparagement in terms of the rivals. Therefore, this inturn will impact the business of other people directly [xiv]. The "Delhi High Court" defines the disparagement aspect by indicating that the producer can generate any statement to identify that the products are with the best quality as compared to the products of their competitors. In particular cases, the owners can also drag their own products that will not give any "cause of action" to the manufacturer in terms of other products as there is no defamation or disparagementof the products. However, the producers do not mention that the products of the competitors are poor so as to expand and advertise their own goods.

*"Reckitt & Colman of India Ltd." vs. "Kiwi T.T.K. Ltd. (India) 1996"*

The defendant *"Reckitt & Colman producers* "and market producing "liquid shoe polish" named as the brand as ***"Cherry Blossom Premium Liquid Wax Polish".*** However, the plaintiff KIWI has also been occupied with the marketing and manufacturing that claims with the advertisement as superior as the defendant as presumed that ***"Cherry Blossom"*** consist with less wax and contains more acrylic which in due time causes and crack damages for the footwear [xv].

Furthermore, this information has been posted on the defendant's website displaying the bottle of"KIWI" that does not drop and on the other side placing a bottle of wax polish that is marked as abrand X that continuously drops. The brand X has been displayed with a red droplet on the surface that represents the cherry looking same as the cherry displaying on the bottle of plaintiff. The defendant also spread the posters with the bottle indicating the brand X consisting of faulty adhesive that is similar to the suspect's adhesive. The court held that the suspect was minimizing the products of the suspect and was asked to restrict from the advertisement against the rival products in a minimizing manner [xvi] . Furthermore, the "Delhi High Court" stated that the proclaimed can blast the products or create statements that the products of the defendant consist of higher quality but however, this should not be defamed or disparaged the reputation of the rival company.

### *15.1. 4.2 Systematic Analysis*

| Author | Findings | Justification |
|---|---|---|
| • Aksoy (2019) | • Advertisement Comparative<br>• Advertising Trademark infringement | Comparative advertising is considered as the comparison of the products and services with its rival[xvii]. However, it is against the law to express the competing and advertising of the sign and trademark. This study provides the "Right of infringement trademark" by comparative advertising. |

| | | |
|---|---|---|
| Duru (2018) | • Internet Trademark Intellectual<br>• Scholarship Unfair Competition | The intellectual property and legal scholarship has been challenged with the normative question[xviii]. While considering the internet, the potential impact on the economy of the country raises the question of utilizing the trademark as internet advertising keywords. However, it has become the most major issue in both the US and Europe. Moreover, the growth of the internet has accompanied new and uncontrolled territory shifting from the "well- known" structure of the market. |

## 5. CONCLUSION AND RECOMMENDATION: -

| | | |
|---|---|---|
| Attanasi (2019) | • Functions of trademark Comparative<br>• advertising Unfair advantage | The study deals with the trademark evolution at initial stage considered as the most important innovative ideas that have been introduced after the amendment[xix]. The paper has focused on the reputation of a trademark by examining the long path where the trademark has followed the explicit recognition in terms of the legal category. |

It can be concluded from the above research that there is no existence of any doubt regarding the comparative advertising as it is advantageous while it increases the rivalry among the traders, maintains consumer awareness and hence brings the product identification within the market. However, at the same time, there must be an investigation where it has to look into those matters where the traders in the comparative advertising process have not been misguiding or playing any unfair trade practices or product disparagement of the competitor's product. In this paper, theresearcher has discovered that India introduced its new ***"Trademark Act, 1999"*** and ***"Trademark Rule, 2002"*** in order to ensure enough protection against the national or international owners of the brand. Moreover, it is found that from the intellectual right property point of view, an individual requires protection against their trademark where the third person is not allowed to take the owner of the trademark for the ride at reputational cost. Therefore, it can be further concluded that the "comparative advertisement" is frequent in the US and UK and is widespread within India. However, due to the increase in the "trademark infringement" within the "comparative advertising" by using the misguiding or "unfair trade practices" has become moderately similar. Thus, the court and their legislation play a significant role to stop the disparagement by "using unfair practices" and serve appropriate remedy to this.

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## CHAPTER 9

# ACCOUNTABILITY OF INDIAN POLICE: NEED OF THE HOUR

Baidya nath Mukherjee , Dr. Bhupinder Singh

Research Scholar, School of Law, Christ (Deemed to be University), Delhi NCR Campus, Email: baidya.mukherjee@res.christuniversity.in.

Associate Professor, School of Law, Christ (Deemed to be University), Delhi NCR Campus, Email Id:

bhupinder.singh@christuniversity.in.

## ABSTRACT

In India, the use of force by the police is a major issue. So far, the reforms have mostly focused on the functional autonomy and independence of the police from political demands. However, this raises the question of whether just improving the political–police relationship will result in more accountable cops. While top-down changes have been in the works since independence, they have missed the need for bottom-up methods that focus on police empowerment. In order to rethink police accountability in India, two key areas must be prioritised: community policing and improved training. These institutional changes aim to change the police–public power relationship, signalling a move from a colonial police force to one that adheres to democratic policing principles.

This paper aims to analyse the concept of accountability of the police in India in four parts, starting with describing the main features of the police system established by the Britishers in this country, followed by the post-independence changes and the need to make police accountable, and finally the need for the police reforms. In this research, analytical and descriptive methods were used and data have been collected from the secondary sources.

Keywords: Atrocities, Colonial Act, Community Policing, Police Accountability, Police Reforms.

## INTRODUCTION

The assassination of George Floyd by police sparked political pressure to "defund the cops," which also influenced the outcome of the US presidential election. Similar instance was spotted in India, while people protested in Sathankulam, a town in Tamil Nadu's Thoothukudi district, a month after the event, against the deaths of Jayaraj and Fenix in custody (Nath, 2020). Followed by the encounter of Vikas Dubey (Chauhan, 2020), and most recently the instances of handling the Hathras Gang rape case (Dixit, 2021) have time and again put the spotlight on the criminal justice system of the country. The conduct of the police personnel amid the nationwide protest against the Citizenship (Amendment) Act and the violence in the Lakhimpur Kheri, followed by a week earlier the killing of businessman in Gorakhpur by the police in pretext of midnight hotel search, brought further attention to the Human Rights violation by the police.

The use of force by the police personnel in India is a genuine concern as it is in the United States. The pandemic intensified the problem as in the initial phase of pandemic lockdowns the government embraced the use of police force to implement their strategies (Sircar, 2020). In most cases of casualties by the police personnel, an initial hierarchical coverup (Bhattacharya, 2021) is boosted with liberal dose of compensatory blood money, promptly released by the state government as compensation or transferring of officials which hardly have any effect in ensuring rule of law. These responses are arbitrary, frustrating and misleading for the public because they hardly have any substantial impact in ensuring rule of law.

Against this context, we explore existing accountability mechanisms and the reasons for their failure to achieve intended objectives. In order to rethink police accountability in India, two key areas must be prioritised: community policing and improved training.

## MAIN TEXT

### POLITICAL PRESSURE: FAILURE OF ACCOUNTABILITY MECHANISM

The government has such tight control over the police that even the Supreme Court's order for the filing of FIRs for cognizable offences is ignored by the police system. The Justice Malimath Committee suggested in 2003 that the police officer's responsibility to register FIRs be made mandatory, and that failure to do so should become an offence punishable by law, in order to prevent officers from abusing their authority. Following that, a Supreme Court decision stated that if the information provided plainly specifies the commission of a cognizable offence, there is no other alternative but to file a FIR right once. Even now, non-registration of complaints requires going to magistrates' courts, where the issues might take months to resolve. As per the 2020 National Crimes Record Bureau Data the total number of complaints made is 192.4 lakhs whereas number of FIR registered is 66 lakhs only (Ministry of Home Affairs, 2021).

Politics has a greater effect on action and inaction than the drive to uphold the rule of law. That is why the political forces have ignored reports on police reforms and criminal law reforms, including the 14-year-old Supreme Court decision in Prakash Singh (*Prakash Singh & Ors. V. Union of India*, 2006). Since the uniformed force is the visible expression of the state's authority, no political party in the centre or the state is willing to relinquish its grip on the police. The Police Act's definition of police supervision (*The Police Act, 1861*) does not imply that the political administration has the authority to overturn operational orders issued by professional police chiefs. It implies that the elected political leadership must keep its eyes and ears open to guarantee that police officers do not abuse their authority to annoy residents (*The Police Act, 1861*).

Currently, police officers are held more accountable to the ruling political party than to the general public. Most atrocities go unpunished because of the complicated procedure and necessity of punishment in beginning legal action against police officials, as well as the police's reluctance to probe these charges against their peers. According to 2020 statistics from the National Crime Records Bureau (NCRB), just 06 of the 20 complaints filed against police personnel for human rights violations, final report had been submitted and only in 3 cases charge sheets had been filed, and no accused police officer was convicted (National Crime Records Bureau, 2021).

The lack of an independent body to deal with civilian complaints against police officers exacerbates the problem of police accountability. The Supreme Court ordered state governments to create the Police Complaint Authority (PCA) in 2006, an independent body that would investigate complaints of police misconduct at the state and district levels. Even after several court orders, many states, including Uttar Pradesh and Andhra Pradesh, have failed to follow the directive.

Police violence is not the same as the authorised use of force by police. It should not be tested on administrative parameters. It is unlawful, yet it is embedded in policing methods and attitudes as one formidable habit that cannot be overcome by training or discipline. To make a difference, the proposed standing committee will have to justify an autonomous and time-limited existence for itself, well beyond the scope of administrative red tape or judicial delays.

## THE INDIAN POLICE SYSTEM: A COLONIAL LEGACY

The Police Act of 1861 established the Police as an organised entity in this country. Following the Indian Sepoy Mutiny of 1857, when Indian troops in the colonial army rose against their British leaders, this statute was enacted. The mutiny evolved into an insurgency against British control in India. Though the insurrection was quickly and effectively put down, it jolted the British into taking various efforts to strengthen their power in India, including the development of an authoritarian police force to back the colonial administration.

Section 3 of the 1861 Police Act delegated superintendence[xxxiv] authority over state police units to the state governments. The same Act established a system of dual control at the district level (*The Police Act, 1861*, Section 4). The police forces were placed under the authority of District Superintendents of Police, although they were still subject to the District Magistrates' overall control and direction.[xxxv] This was done on purpose since the District Magistrate's role as the district's leading officer was seen as critical to the continuation of British rule in India. The British colonial paradigm of control did not allow for the police to be responsible to the community or other democratic or local indigenous institutions. The police force was taught to be military and dictatorial (Arnold, 1976). There was a strong emphasis on maintaining a regimented sort of discipline that required the lower levels to mindlessly accept commands. While executing their responsibilities, the constabulary were not required to wear their thinking hats. They didn't have to have any at all. That's why, when it came to recruiting for the constabulary, the emphasis was on strength over brains (Maheshwari, 2001). Understandably, the 1861 Act failed to generate a countrywide police force that was efficient, competent, and responsible. The Britishers themselves realised this. Hence, Sir. A.H.L. Fraser, Chairman of the Indian Police Commission appointed in July, 1902 mentioned-

*"The police force is far from efficient; it is defective in training and organisation; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people"* (Fraser, 1903).

The Commission offered several suggestions, but failed to recognise or wilfully ignored the reality that the majority of the organisation's problems could be traced back to the structure established by the Police Act of 1861 and the police ideology that it dictated. Despite discovering significant evidence to the contrary, the Commission determined that the 1861 system was, on the whole, a sensible and efficient system (Dhillon, 1998).

## POLICE COMPLAINT AUTHORITIES IN INDIA: A SHATTERED SYSTEM

The landmark judgement of the apex court in the *Prakash Singh & ors. versus Union of India and ors. (2006) case* (*Prakash Singh & Ors. V. Union of India*, 2006) led to the introduction of the Police Complaint Authorities (PCA) at every district and state level. The Supreme Court established broad guidelines for the Police Complaints Authority's composition, mandate, and powers. These principles were filled out further in the Model Police Act 2006 (later revised as the Model Police Bill 2015), which was produced by a high-level group appointed by the Ministry of Home Affairs (Bureau of Police Research and Development, 2006).

Nevertheless, successive state and union administrations have failed to incorporate the suggested legislative norm into the composition of their complaint's agencies. On paper, it appears to be

impressive: Since 2006, 23 states have established State Police Complaints Authorities (SPCAs), and 16 have established District Police Complaints Authorities (DPCAs), either through provisions in their new/amended police statutes or by government decrees. Despite this, not a single authority established completely complies with the Court's directives. Rather than forming a balanced composition, the authorities are controlled by members of the political executive, undermining the objective of operating as an external, independent oversight body. Their mandates have been narrowed. The overall image that emerges is one of political inaction, which appears to be linked to a fundamental opposition within police leadership to enforce accountability, confront police wrongdoing, and act legally against errant officials.

In order to establish Police Complaints Authorities, nine states passed executive ordinance and seventeen states passed legislation through new police laws or legislative amendments.
The lacunas are as follows:

- Disobeying the court's decision begins with the very first step of not establishing a Police Complaints Authorities at multiple levels (Ministry of Home Affairs, 2010).

Table: 1.1 Police Complaint Authority at various levels (Commonwealth Human Rights Initiative, 2020)

| *Only at State Level* | *Only at the district level* | *State and district levels* | *No authority* |
|---|---|---|---|
| Arunachal Pradesh | Bihar | Andhra Pradesh | Uttar Pradesh |
| Chhattisgarh | Madhya Pradesh | Assam | Jammu and Kashmir |
| Goa | Himachal Pradesh[xxxvi] | Gujarat | Telangana |
| Meghalaya | | Jharkhand | |
| Sikkim | | Karnataka | |
| Tripura | | Kerala | *Assigned to Lokayukta* |
| West Bengal | | Maharashtra | Odisha |
| Nagaland | | Manipur | Himachal Pradesh (State Police complaints Authority) |
| | | Mizoram | |
| | | Punjab | |
| | | Rajasthan | |
| | | Tamil Nadu | |
| | | Haryana | |
| | | Uttarakhand | Total: 4 states (plus Himachal Pradesh SPCA) |
| Total: 8 states | | Total: 14 states | |

| | | | |
|---|---|---|---|
| | Total: 3 states | | |
| Number of states with a State PCA: 22<br>Number of states with a district PCA: 17 | | | |

Hence, 22 states provide for police complaints authorities at state level, 17 states provide for district level police complaints authorities and 14 states provide for police complaints authority at both state and district level. Uttar Pradesh[xxxvii] and Jammu & Kashmir[xxxviii] do not have police complaints authority at any level.

- Dominance of Political executive in the police complaints authorities. Instead of a balanced composition reflecting a mix of expertise in public administration, judicial services, and civil society, numerous states include serving officials such as civil employees, police officers, and even politicians on both state and district bodies. This is blatantly contrary to the court's and the Model Police Act's obligation to establish independent oversight bodies. Of the states that have constituted State Police complaints authorities, eight states have deviated from the fundamental requirement of having retired judges as chairperson. Whereas the states like Mizoram, Meghalaya, Gujarat and Punjab incorporate retired civil servants of the position of principal secretary/chief secretary or retired IPS officer of the position of Director General of Police as the head, Haryana keeps the criteria broad to include persons of eminence from various fields with twenty years of experience. Tamil Nadu appoints the secretary in charge of the home department as the chairwoman of the state PCA. Rajasthan and Jharkhand each appoint an independent member to serve as chairperson.

  With respect to the 17 states that have constituted District Police complaints authority, only 7 states, namely Kerala, Maharashtra, Assam, Andhra Pradesh, Mizoram, Manipur

and Uttarakhand included a retired district judge to serve as the head of the District Police Complaints Authority.

Moreover, the District Police Complaints Authority in Himachal Pradesh, Karnataka, Tamil Nadu and Bihar is headed by the District Magistrate/Divisional Commissioner, while in Gujarat the authority is headed by the Superintendent of Police. In the remaining states, such as Rajasthan, Jharkhand, and Punjab, the chairman is either an independent member or a retired civil servant/police officer.

- Presence of limited number of independent members in the State/District Police Complaints Authority. Among the independent members, the proportion of members from civil society or academics is significantly lower than that of retired police officers and retired public workers. Moreover, in as many as eight states, there is no provision for women to be included in the complaint authority.
- Transparent selection process of the chairperson and members of the authorities is the cornerstone of a democratic and efficient authority. Only five states namely Karnataka, Maharashtra, Sikkim, Andhra Pradesh and Manipur, provides for the chairperson of the state police complaints authority to be chosen from a panel of names proposed by the chief justice. With respect to the appointment of members, Sikkim is the only state to adhere with the process laid down by the court.
- Lack of adequate staff for investigations of complaints against police. The court acknowledged the necessity for a dedicated team of investigators formed by the authorities themselves to help the authorities in performing the tough work of investigating suspected police wrongdoing. "The Authority may also require the services of regular workers to undertake field investigations," the court stated. They may use retired investigators from the CID, Intelligence, Vigilance, or any other group for this purpose." A handful of states, namely Goa, Tamil Nadu, Haryana, Maharashtra, Assam, Mizoram, Sikkim and Tripura have a separate wing of investigators to carry out inquiry and investigations.
- The inability of state governments to endow them with enforceable powers, despite the Supreme Court's unambiguous mandate, is one of the most serious flaws in the complaints authorities' construction. PCAs are to suggest, upon conclusion of an investigation, either departmental inquiries or the filing of a First Information Report (FIR) against the erring police officer, or both. Because these complaints agencies are not courts, their investigations can only establish prima facie if there is enough evidence of wrongdoing to continue further. Giving them the authority to make enforceable recommendations helps guarantee that those further procedures are initiated, with some evidence already

acquired, reviewed, and documented. The substance and conclusions of their investigations can easily be dismissed without binding authority.

- The need for an expeditious trial. Until yet, only a few states have set a deadline for the authorities to conclude their investigations. One of the basic ideas of criminal law is that investigations, trials, and processes should be completed as expeditiously as feasible (*The Code of Criminal Procedure 1973*, Section 309). While the 2006 Model Police Act did not set a deadline, the 2015 Model Police Bill mandates that both the state and district authorities conduct the investigation as quickly as feasible and provide final directives no later than 90 days after receiving the complaint (Ministry of Home Affairs, 2015).

**ACCOUNTABILITY MECHANISMS AND POLICE DEVIANCE**

In India, there is significant evidence of rising police misbehaviour. In Indian media, incidents of police brutality, extortion, and other crimes perpetrated by policemen in various regions of the nation are gaining attraction. As per the statistics of National Human Rights Commission the number of complaints relating to cases of "Death in Police encounter" have increased from 137 in the year (2013-14) to 164 in the year (2017-18) (National Human Rights Commission, India, 2018). The National Human Rights Commission (NHRC) receives the bulk of complaints against law enforcement officers. Official figures show that police agencies get a large number of public complaints against officers. According to the National Crime Records Bureau (NCRB), the police committed 20 incidents of human rights violations in 2020, including encounter killings, deaths in custody, wrongful imprisonment, torture, and extortion (Thomas, 2021). Public complaints against the police can be categorised into:

- Corruption;
- Police atrocities by means of using force;
- Non registration of complaint;
- Prejudice.

The present means for holding police accountable for their acts may be divided into two categories i.e., Internal Accounting Mechanism and External Accounting Mechanism.

***Internal Mechanism for Accountability***

Internal means for holding individual police personnel accountable for their conduct are outlined in the 1861 Police Act, state government Police Acts, and state police manual guidelines. Senior police officers of the rank of Superintendent of Police and above have the authority under the Police Act of 1861 (*The Police Act, 1861*, Section 7) to dismiss, suspend, or reduce the rank of any police officer of subordinate ranks[xxxix] whom they believe has been remiss or negligent in the discharge of his or her duties or is unfit for the same. They may also impose one or more of the following penalties: (a) confinement to quarters for not more than 15 days, (b) a fine of not more

than one month's pay, (c) denial of good behaviour pay, and (d) removal from any post of distinction or special emolument.

Furthermore, the Police Act of 1861 lists the following offences for which a police officer can be disciplined: (i) wilful breach or neglect of any rule, regulation, or lawful order; (ii) withdrawal from duties of the office or absence without permission or reasonable cause; (iii) engaging in any employment other than his police duty without authority; (iv) cowardice; and (v) causing any unwarranted violence to any person in his custody. The penalty for these offences can range from a fine of up to three months' wages to incarceration for up to three months, or a combination of the two (*The Police Act, 1861,* Section 29). The guidelines categorise sanctions as major and minor. Though the standards vary by jurisdiction, dismissal, removal, reduction in rank or pay, and forfeiture of service are typically recognised as serious punishments. They cannot be imposed on any police officer without a normal departmental investigation.

Miserable political meddling has damaged the authority of police leadership in India over time, resulting in a loss of discipline in the force and the encouragement of a propensity at all levels within the force to seek outside patronage for rewards and protection from punishment.

Any mechanism for investigating complaints against the police must be fair and equitable in the eyes of both the police and the public. The National Police Commission, proposed in its First Report that investigations be undertaken by departmental authorities as well as an independent entity outside of the police. The National Police Commission suggested vast proportion of complaint against police officers to be resolved by superior police officer in the hierarchy, but suggested judicial enquiry in the following cases:

- Rape of women in Police Custody;
- Death or serious injury in police custody;
- death of two or more persons resulting from police firing in the dispersal
- of unlawful assemblies.

The government, on the other hand, has refused to embrace these proposals. The government's reaction to the NPC's recommendations has never been made public.

In any event, the departmental systems in place to deal with police misbehaviour do not often inspire public trust. There are claims that police agencies may hide incidents of misbehaviour by individual officers because revealing the truth could harm the organisation's reputation. The fact that the police handle the investigations has created widespread public scepticism. The former Prime Minister Manmohan Singh while addressing at a conference of CMs on Internal Security pragmatically mentioned:

*"... Serious internal security challenges remain. Threats from terrorism, left wing extremism, religious fundamentalism, and ethnic violence persist in our country. These challenges demand*

*constant vigilance on our part. They need to be tackled firmly but with sensitivity"* (Prime Minister's Office: Government of India, 2012).

***External Mechanism for Accountability***

***Judiciary***

One of the most significant external instruments for guaranteeing police accountability is the courts. While writs and public interest lawsuits can be brought in higher courts, criminal prosecutions can be initiated in lower courts. A number of significant judgments have been passed by the higher courts, prescribing safeguards or guidelines to regulate police conduct during arrest, interrogation, and other stages of investigation, requesting compensation from the government in cases of custodial violence, criticising the police for discrimination in the handling of communal and caste conflicts, and passing strictures in many cases where defective or inadequate police investigation was found.

***Non-government Organisation***

Non-governmental Organisation activities pertaining to the police are essentially divided into two categories:

- Matters concerned with abuses of Human Rights perpetrated by the police officers; and
- Matter concerned with changes in the operation of the police organisation.

The typical police or government response to NGO charges is denial. Documenting human rights crimes perpetrated by police officers, on the other hand, is a significant difficulty for non-governmental organisations.

The task is intimidating not just because of the nature of the labour, but also due to a lack of competence.

The police are extremely hesitant to disclose information with outsiders, particularly non-governmental organisations (NGOs). This impedes the operation of non-governmental organisations (NGOs), particularly in the area of police reform.

***Human rights Commission***

The human rights commissions created under The Protection of Human Rights Act, 1993 (the Act) provide another avenue for holding the police responsible in incidents of misbehaviour. The National Human Rights Commission (NHRC), founded on October 12, 1993, is the most significant of these commissions. The Commission is meant to operate fully independently, although several elements in the Act highlight the Commission's reliance on the government. The Act requires it to rely on the government for some of its needs, such as manpower and funding (*Protection of Human Rights Act, 1993*, Section 11 and 32).

More crucially, the Act does not authorise the Commission to investigate accusations of human rights breaches perpetrated by members of the armed forces. The term "Armed Forces," as defined in the Act, includes not only the naval, military, and air forces, but also some central armed police formations, such as the Border Security Force (*Protection of Human Rights Act, 1993*, Section 2). The Act clearly reduces the NHRC's ability to provide recourse to the public in situations where breaches have been committed by personnel of paramilitary forces, who are frequently deployed on law-and-order duty in troubled regions. In such circumstances, the Commission's only option under the Act is to request reports from the Central Government and then offer recommendations to the Government, or not 'continue with the complaint' at all (*Protection of Human Rights Act, 1993*, Section 19). Furthermore, the Commission lacks the authority to enforce its determinations under the Act. According to the Act, if the Commission's investigation reveals a violation of human rights, it can only urge the government to take action against the responsible parties or give remedy to the victim. If a state government refuses to accept the Commission's opinion, there is no mechanism in the law that allows the Commission to compel the government to follow its advice (*Protection of Human Rights Act, 1993*, Section 18). Human rights commissioners have served as a check in different ways. However, in a country the size of India, an institution like the NHRC becomes too far removed from the situation to be effective in many cases. A high number of police atrocities are committed in India's small towns and villages, where people are unaware of the Commission's existence or processes. Out of 37 states (here states include Union Territories), till now only 25 states have set up their own commission. Even among those that have been created, most of their key positions remain vacant. Neither, proper contact details reflect in their websites. It was also noticed that not all human rights commissions that had been constituted were receiving enough financial and human resource assistance (Dhavan, 2000). Similar facts have been mentioned in the subsequent reports as well.

***Media***

The media is one of the most rigorous watchdogs of the police in our nation. In India, the media has a great deal of independence. It possesses immense reach and strength. Technological breakthroughs in the last several decades have altered the world of communications and opened up frontiers that were previously unknown to or beyond the grasp of the media. Any violation of human rights occurring somewhere in the country can quickly become known to the rest of the country if the media covers it. Media have proactively reported many instances of human rights violation.

In general, mainstream national media outlets have done a far better job than regional media outlets in covering human rights abuses and holding government agencies accountable. The

government has sought to intimidate or pressurise the media, which has uncovered corruption and abuse of power by politicians and top bureaucrats on occasion. Recalcitrant members of the media have been subjected to income tax and law enforcement raids, as well as other forms of harassment (Pandey & Gunasekar, 2021).

## CONCLUSION

Formation of a police force that is efficient, honest, and professional is essential for providing a sense of security to ordinary individuals and attending to their problems. The results of numerous commissions and committees, complaints received by human rights bodies, events recorded in the press, and experiences of ordinary citizens on the streets all point to the reality that such a police force does not exist in India. Need for police reform is obvious and pressing. The issue of police reform must be pushed in two ways at the same time.

The first is to create statutory institutional procedures to ensure that the state government's power of superintendence over the police force is restricted to ensure that police performance is strictly in conformity with the law. In other words, the police serve to establish the rule of law rather than the rule of politics. This would need isolating them from illegitimate authority and granting them functional autonomy. Once the police have functional independence, they must be held accountable for any wrongdoing. The present accountability measures must be enhanced and improved.

Furthermore, new procedures must be formed that act independently to oversee the operation of the police and investigate public complaints against the police. The functioning of the police as an organisation, as well as the behaviour of police officers as people, must be constantly monitored.

The other approach is to do all possible to enhance and improve policing within the present framework. Aside from improving recruiting, training, and leadership standards, the working and living circumstances of lower-level police officers require significant improvement—a process that should begin with boosting the standing of constabulary.

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**CHAPTER 10**

# Drug Use and The Problem of Substance Misuse in Sports Professionals

Vinita Damle, Research Scholar, Lovely Professional University, Jalandhar, Phagwara, Punjab 144001. and Dr. Basant Singh Assistant professor of Law, Rajiv Gandhi National law University, Punjab

**Abstract**

Sports professionals; are dealing with the challenge of drug abuse for a long time. The pressure of winning and best performance leads to stress in athletes. For the Enhancement of sports performance, different drugs are consumed; by athletes. There are some reasons they get influenced by doping. The term doping refers to medications and drugs used to increase sporting performance. Depending upon the intensity of doping, the health situation can become Serious and; may cause various complicated problems. This type of practice may not only affect a person mentally; but also physically. There are many anti-doping policies to prevent and control criminal doping offenses. Various policies; were introduced to combat the problem of doping amongst athletes both internationally and nationally. This paper concentrates on overcoming the problem of doping in athletes by educating them with relevant information.

**Key words : Drugs usage , Substance misuse , Sports professionals**

## I Introduction

The word drug originated from the word “DROGUE” from French language[xl]. Drugs mean any article, other than food, intended to affect the structure or any function of the body of humans or other animals[xli]. Similarly, 'psychotropic substance' means; any substance which is natural-synthetic or any natural material or salt or preparation of such material, or a substance that is [included] in the list of psychotropic substances, in the schedule of the narcotic drugs. It also includes coke, cannabis, opium, poppy straw, and all manufactured goods[xlii]. In the history of Indian medicine, Charaka and Sushruta are regarded; as the foremost authority. Charaka bestows fifty herb categories. Each with a variety of plants; that was adequate for a regular doctor. Sushruta's 'Materia Medica'; is organized into thirty seven sections. The components based on the disorder which the therapies aimed at resolving[xliii]. To improve performance and

vitality, athletes in ancient times prepared unique beverages and followed particular diet plans. Players used to consume hallucinogenic and plant-based stimulants to enhance their performances. Societies have broadly accepted the notion; that such manipulation of sports by doping and unnatural sports performance is unfair to honest and fair athletes. Doping in sports is cheating and unfair. Doping harms athletes, and doping harms even non-doping athletes. Doping harms society and thus requires complex infrastructures for fair and just implementation; doping is unnatural and demoralizing.[xliv] The use of performance-enhancing drugs (doping) in sports is prohibited. Athletes found to have used such prohibited drugs, whether through a positive drug test, the biological passport system, an investigation, or public admission, may face a suspension of participation for some time commensurate with the gravity of the offense. Athletes found in possession of prohibited substances; are banned from the sport. Athletes who test positive for illicit recreational narcotics or stimulants with limited performance-enhancing effects may risk a competition suspension.[xlv] The use of specific substances produces euphoric effects on the brain. It is referred to as drug misuse or substance abuse. A large number of people use drugs worldwide, and the problem is growing at alarming rates, particularly among young individuals[xlvi].

## II Reasons for Doping

Drug usage is prevalent in all sports and at all levels of competition. For a variety; of reasons including; performance improvement, self-treatment of otherwise untreated mental illness, and coping with pressures such as pressure to perform, injuries, physical discomfort, and retirement from the sport, athletes may turn to drugs[xlvii]. Doping is motivated; by the desire to improve and maintain physical function, cope with social/psychological constraints, and achieve social and psychological goals, including economic gains. Factors such as; "win at any costs," cost-benefit analysis, and the specificity of particular doping substances; all play a role. It appears; changing athletes' attitudes toward physical improvement and developing efficient procedures to detect drug usage. The Prevalence of the most important strategies to win the anti-doping war is Important[xlviii]. To sell newspapers and; other promotional materials, the associated press covers doping incidents in sports. It might give the athlete a false idea of how common performance-enhancing substances are in sports. Athletes may directly watch or hear about their peers' usage of performance-enhancing substances. Athletes may now buy practically any product they choose over the internet instead of; more conventional avenues of drug supply. Some supplements that appear to be harmless may include residues of banned chemicals. Furthermore, some supplement

labels may not be thorough or correct. Athletes are not pharmacologists, and the abundance of information on content labels; as might be [perplexing] to the inexperienced eye[xlix].

- **Health Hazards of Drug Misuse**

  Aside from the gratification of personal success, athletes frequently strive to earn a medal for their nation or a seat on a professional team. The usage of performance-enhancing medications has grown increasingly frequent in such an atmosphere. However, utilizing performance-enhancing substances (doping) comes with health hazards. Athletes; do not take the time to educate themself about the possible disadvantages that come with the consumption of drugs. Various health dangers and numerous unknown diseases are associated with so-called performance-enhancing medications. Dangerous drugs like:- anabolic steroids, erythropoietin, diuretics, creatine, and stimulants can cause long-term or permanent health problems.[l] Besides the widespread use of performance-enhancing drugs (PEDs), public emphasis has been almost solely focused on PED usage by elite athletes to obtain an unfair competitive edge in sports; rather than on the health dangers of PEDs. It is a prevalent misconception; that PED usage is harmless or that the side effects are tolerable. The vast majority of PED users are non-athlete weightlifters rather than athletes. The negative health impacts of PED usage are vastly undervalued. It highlights gaps in understanding and seeks to draw the medical communities and public's attention to PED usage as a major public health issue.[li] Performance Enhancing Drug usage has related; to a higher risk of mortality and a wide range of cardiovascular, psychological, metabolic, endocrine, neurologic, infectious, hepatic, renal, and musculoskeletal diseases. We need observational research to acquire meaningful outcome data on the health concerns associated with PEDs since randomized clinical trials cannot ethically replicate the dosages of PEDs and any variables associated with its usage. We also require research on the prevalence of PED use, the processes through which PEDs cause harm to the body, and the interactions between PEDs and sports injuries and other high-risk activities.[lii]

## III National Context in Relation to Drug Abuse in Sports Persons and Athletes

In India, the National Anti-Doping Agency; is responsible for ensuring that sports are free of doping. The main goals are to execute WADA-approved anti-doping laws, manage dope control programs, promote education and research, and raise awareness about doping and its negative

consequences. The Government of India formed the National Anti-Doping Agency [NADA]; intending; to serve as an autonomous anti-doping organization for India with a vision of dope-free sports. The NADA is responsible for and has jurisdiction over the Improvements in Doping Control that; are planned, coordinated, implemented, monitored, and advocated. Collaboration with other relevant organizations, and agencies. Encourage national anti-doping organizations to perform reciprocal testing. It also Promotes anti-doping research; withholds some or all funding from any Athlete. Athlete Support Personnel who has violated anti-doping rules during their ineligibility; aggressively pursue all potential anti-doping rule violations within its jurisdiction. Includes; investigating whether Athlete Support Personnel or other Persons. It may involve, in case of doping. Anti-doping information and; education initiatives; are planned, implemented, and monitored by this program. The Governing body of the National Anti-Doping Agency, Ministry of Youth Affairs & Sports, and Government of India; consists of General Body Members, Governing Body Members, and Executive Board Members. Following are the hierarchical structure representation of the Governing body of the National Anti-Doping Agency Ministry of Youth Affairs & Sports, Government of India[iii] :

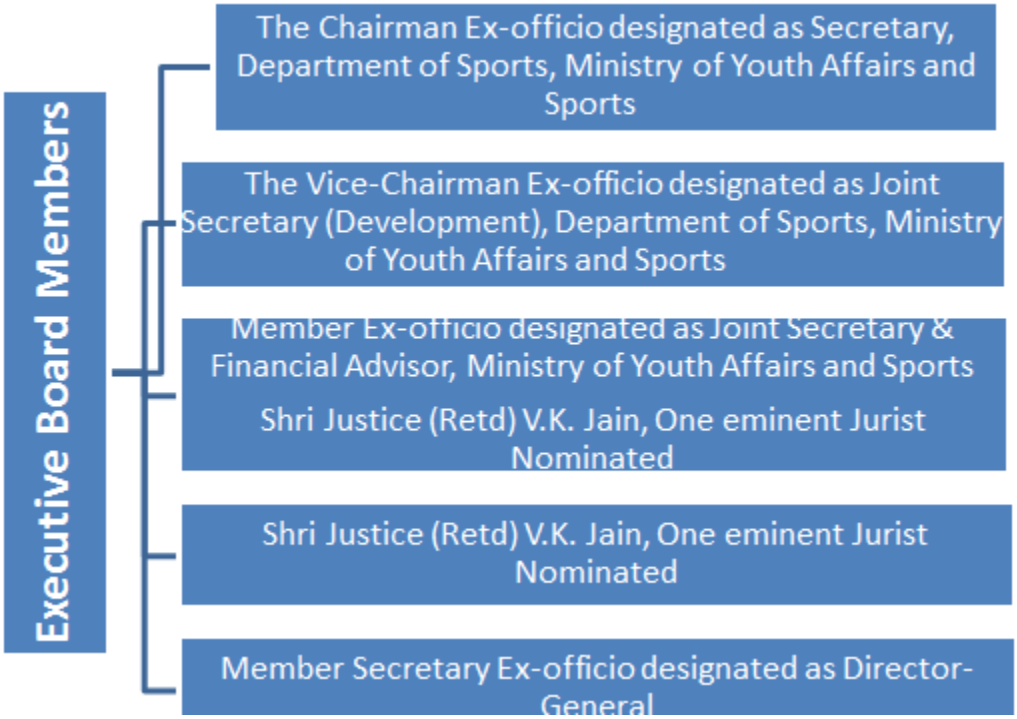
### *16.1. General Body Members Hierarchy:*


*16.2. Figure no. 3.1 General Body Members Hierarchy Chart*

**Governing Body Members Hierarchy:**


**Figure no. 3.2 Governing Body Members Hierarchy Chart**

**Executive Board Members Hierarchy**




***16.3.***

**Figure no. 3.3 Executive Board Members Hierarchy Chart**

- **Testing Programs Introduced by National Anti-Doping Agency**

National Anti-Doping Agency is constantly involved in educating athletes and sportspeople at various training institutes across India. It is actively involved; in educating the athletes/sportspersons located at various training centers throughout India and has been organizing workshops/seminars and awareness programs on Anti-Doping issues.

During the pandemic of COVID 19, National Anti-Doping Agency (NADA) has organized various events and actively functioned to keep the public aware and educate them. Below mentioned are some Programs organized by NADA:

- Online anti-doping awareness sessions
- Online interaction sessions
- e-Conclave on the topic of Doping in Indian Sports
- National Webinar on Anti-Doping and Sports Sciences
- An online session for Department of Sports and Youth Welfares

- An online session for Sports Authority of India
- Webinar on Salient changes in Anti-doping rules
- Webinar on Anti-Doping Rights of athletes vs. Therapeutic Use Exemptions (organized in LPU)
- Webinar on Moral responsibility of a citizen of the Republic of India to eliminate doping in sports
- Webinar on Substances of Abuse/ Drugs in society and WADA 2021 Prohibited substances in sports
- Webinar on Level playfield for all sportspersons and entitlement of equality
- Online reaccreditation training cum awareness for Sample Collection Personnel

Sessions organized for "Coaches of Sports Authority of India"

- Online anti-doping awareness sessions
- Session on Menace of Doping
- Therapeutic Use exemption, documents to be maintained
- Updating knowledge of new Anti-Doping Rules
- Procedure for dope sample collection[liv]

*16.4.*

- *Mass Athlete Awareness Program Against Doping (MAAPAD)*

***16.4.1.*** *The National Anti-Doping Agency (NADA) has created a comprehensive education campaign called the Mass Athlete Awareness Program Against Doping (MAAPAD). It is a comprehensive program that has been; planned to deal with many stakeholders in the country and* ***Targeted Groups for Awareness and Training Campaign***. *NADA is conducting anti-doping awareness and training workshops through Sports Institutions, the Sports Authority of India Centre (SAI), State Sports Associations, Universities/Colleges, National core group athletes (SAI Camp), Young athletes (STC Inmates and School athletes), Coaches & supporting staff, and Physical education teachers. Also, an Athlete outreach program for School level athletes. These Outreach programs; are organized during competition, especially at Junior and Sub-Junior, and Youth level events*[lv].

*16.4.2.* ***Objectives of*** *Mass Athlete Awareness Program Against Doping (MAAPAD)*

- To create anti-doping awareness among sportspersons and support personnel, including stakeholders.
- Dissemination of anti-doping information with the help of digital/electronic media.
- To decrease the incidence of doping in Indian Sportspersons and promote fair play spirit.

- *Stakeholders involved in Anti-Doping Awareness Campaign*
- Sports Authority of India
- National Sports Federations
- All India University
- School Games Federation of India
- Services/Police Sports Authorities
- State Sports Association and Departments

- **Dope testing by the National Anti-Doping Agency (NADA)**

NADA is in charge of conducting a sufficient number of in-competition and out-of-competition tests on the athletes in its testing pool. This; comprises athletes at the world and national levels who got tested by NADA. The NADA creates a test distribution plan and allocates the number of samples required for effective deterrence for each sport or discipline. In-competition testing, out-of-competition testing, target testing, and blood and urine collection are all part of the plan[lvi].

- **Test Statistics of Adverse Analytical Finding(AAF)**

| Serial number | Sports Discipline | Number of AAF cases reported for the period of 2020 |
|---|---|---|
| 1 | Athletics | 9 |
| 2 | Basketball | 1 |
| 3 | Boxing | 3 |
| 4 | Cricket | 1 |
| 5 | Fencing | 1 |
| 6 | Football | 1 |
| 7 | Kabaddi | 7 |
| 8 | Powerlifting | 7 |
| 9 | Shooting | 1 |
| 10 | Taekwondo | 1 |
| 11 | Volleyball | 1 |
| 12 | Weightlifting | 14 |
| 13 | Wrestling | 6 |
| 14 | Wushu | 1 |
| | Total | 54 |

**Table no. 3.1** Details of AAF reported from January 2020 to September 2020[lvii]
(As of Sep 24, 2020)

**Indian Legislation in the context of drug and substance abuse**

- According to the Indian Constitution,

It is the duty of the State; to raise the level of nutrition and the standard of living and improve public health [lviii]. The directive principles of state policy state: Prohibition of the use of intoxicating drinks and, drugs that are harmful to human health and also increasing people's standard of living by improving public health and level of nutrition.

- According to the Indian Penal Code 1860

  Adulteration of drugs is a violation of the Indian Penal Code. It includes adulteration of any type of medicinal preparation that hampers its effectiveness. This is a non-cognizable,

non-bailable, and non-compoundable offense. The penalty for this offense is six months in jail and a fine[lix].The Indian Penal Code prohibits; the selling of a drug disguised as another drug or preparation. This provision specifies that; if a person intentionally sells or issues a drug from a dispensary, or medical preparation as a different sort of drug for medical preparation, the person will be sentenced to 6 months in prison, a fine, or both. This is a non-cognizable offense that is bailable and triable by any magistrate. This is a non-compoundable offense[lx].

- The Narcotic Drug and Psychotropic Substance Act 1985

  The Narcotic Drug and Psychotropic Substance Act of 1985; is divided into six chapters and 83 parts. The Act's Section 2 outlines numerous kinds of drugs and their meanings. Section 31A of the Act discusses the death punishment for specific offenses. It is vital to remember that the Act defines two types of drug amounts: small quantities and commercial quantities. The legislation; was primarily enacted to manage and regulate narcotic drugs and psychotropic substance illegal activities[lxi].

## IV International Context in Relation to Drug Abuse in Sports Person and Athletes

In a highly competitive environment and the stress of winning at any cost, athletes use different products to increase their performance. The malpractice of drug abuse has been prevalent for ages in sports. Many athletes in the ancient Games strove to enhance their performance by studying their sport's skills and experimenting with their food. Charmis, the Spartan who won the stade race at the 668 BC Olympic Games, is said to have had a special diet of dried figs. Competitors consumed wet cheese and wheat flour. Dromaius of Stymphalos, on the other hand, ate meat and won the Dolichos race twice at Olympia, twice at Delphi, three times at Isthmia, and five times at Nemea (Pausanias, 1959) [lxii] . For many years, the worldwide sports community has acknowledged the hazards of all types of doping. More effective regulatory procedures; for the detection and control of drug-based doping in sports are introduced.

- **United Nations Educational, Scientific and Cultural Organization (UNESCO)**

The United Nations Organization aims at maintaining peace, dignity, and equality on a healthy planet. As the United Nations' primary organization for physical education and sport, United Nations Educational, Scientific and Cultural Organization UNESCO supports sport and physical education's educational, cultural, and social components with . Sports are widely acknowledged as a tool for development and peace since they transcend; both geographical boundaries and

socioeconomic divisions. It encourages social inclusion and economic growth in various geographical, cultural, and political prospective. The organization offers help, consulting services, and guidance to Member States seeking to develop or enhance their sports policy. The battle against doping in sports is based on two essential principles: protecting athletes' physical and mental health, Whether amateur or professional, and preserving sports ethics and ideals. UNESCO is actively involved in the anti-doping battle through its normative work, most notably the International Anti-Doping Convention. At present, UNESCO has 193 member states and 11 associate members.[lxiii] The International Convention Against Doping in Sports is a global UNESCO treaty that mandates nations to enact national anti-doping measures. The World Anti-Doping Agency issues the World Anti-Doping Code, and governments that sign on to it align their domestic legislation with it. It involves enabling anti-doping measures and assisting with national testing systems. It also facilitates; the use of "best practices" in the labeling, marketing, and; distribution of items containing illegal narcotic substances. It withholds financial assistance from people who participate in or promote doping, By implementing anti-drug manufacturing and anti-drug-trafficking actions. This convention promotes; the development of standards of conduct for athletes and anti-doping specialists. It creates an undesirable atmosphere for individuals who participate in or facilitate doping.[lxiv]

- **World Anti-Doping Organization WADA**

The World Anti-Doping Organization (WADA); was founded by International Olympic Committee in 1999. WADA's headquarters are in Montreal, Canada. The key activities of the World Anti-Doping Organization include insurance and monetary-effective implementation of the world anti-doping code. It is related to international standards of scientific and social science research, education, intelligence, investigations, and building capacity with anti-doping organizations worldwide[lxv].

- **World anti-doping code**

The World Anti-Doping Code (WADA) is the central document that unifies anti-doping policies, rules, and regulations among sport organizations and governmental bodies worldwide. It collaborates with eight International Standards that aim to promote uniformity across anti-doping agencies in a variety of areas[lxvi].

- The International Standard for Testing and Investigations (ISTI)
- The International Standard for Laboratories (ISL)
- The International Standard for Therapeutic Use Exemptions (ISTUE)

- The International Standard for the Prohibited List (The List)
- The International Standard for the Protection of Privacy and Personal Information (ISPPPI)
- The International Standard for Code Compliance by Signatories (ISCCS)
- The International Standard for Education (ISE)
- The International Standard for Results Management (ISRM)[lxvii]

- **Structure of World Anti-Doping Code (WADA)**

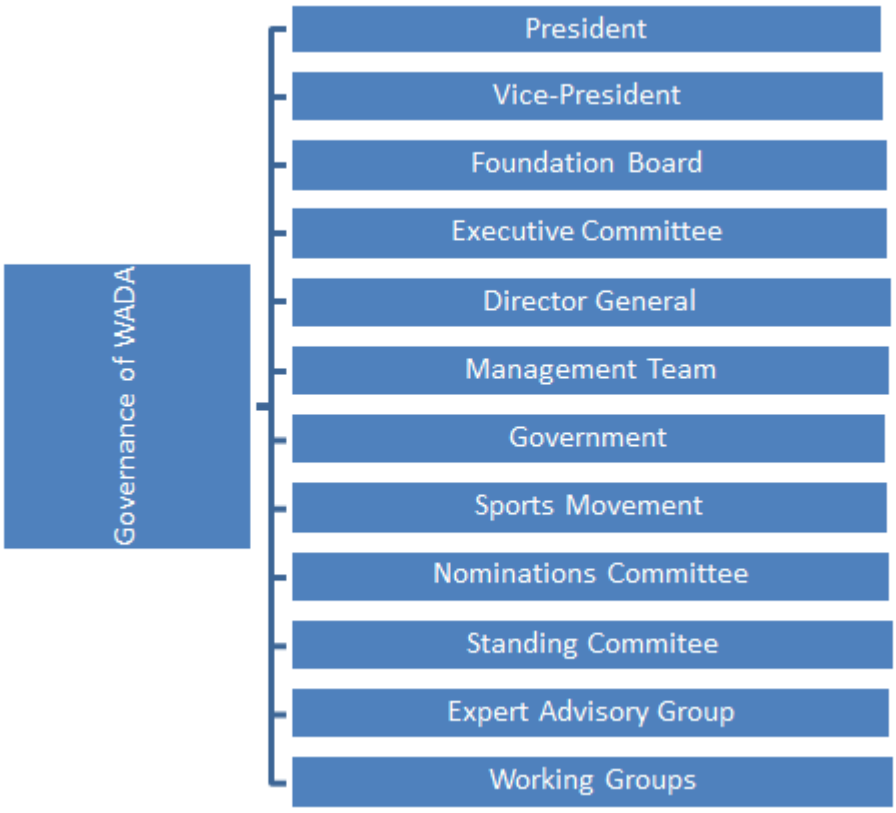



**Figure no. 4.1 Governance of WADA[lxviii]**

- **Statistics of Dope testing Report WADA**

The Adverse Analytical Findings (AAFs) measure the use of prohibited drugs, and The Atypical Findings (ATFs) measure cases of longitudinal studies on testosterone.

| Sport | Analyzed | AAFs1 | (%) | ATFs2 | (%) | Total Findings | (%) |
|---|---|---|---|---|---|---|---|
| Olympic Sports | **228,560** | **1519** | **0.66%** | **281** | **0.12** | **1800** | **0.79%** |
| Non-Olympic Sports | **49,487** | **1183** | **2.39%** | **110** | **0.22%** | **1293** | **2.61%** |
| | | | | | | | |
| TOTAL | **278,047** | **2702** | **0.97%** | **391** | **0.14%** | **3093** | **1.11%** |

**Table no. 4.1 Total Samples Analyzed (All Sports) 2019**[lxix]

## V Sponsorship Greed of Athletes

Greed has a detrimental impact on the sports sector in the form; of ticket prices, merchandising, and wages. Most people believe that the motivation in sports is to win at all costs. However, it is money. Money to compete against a rival team, money to watch, money to build stadiums, and money to represent their favorite club. The sports business has shifted from a passion for athletics to a 'passion for money' earning millions. Athletes; are paid millions. To perform in sports and, another for entertainment purposes, as well as millions of rupees, to endorse renounced companies. Players become excessively greedy with their contracts, assuming that they are significantly more valuable than their personalities[lxx]. Sports apparel manufacturing companies get into exclusive apparel partnerships with colleges, requiring their players to wear only certain branded clothes while competing for the university. It is a very competitive field, with all sponsor companies vying for connections with the top-ranked university teams and the best star players. They try to persuade gifted adolescents to attend apparel-related colleges. They also expect that; the student should remain loyal to the brand after becoming professional players or athletes. Companies would negotiate arrangements with players on their own to ensure that they attended the institution of their choice.[lxxi]

## VI Tough Challenges faced by Players

The bulk of Indian athletes come from rural backgrounds and small villages. These; New sports players have very little knowledge about performance-enhancing medications. No extreme qualification requirements for the players to play sports. Because of this, they have little formal education. Again, the primary motivation for participating in sports in India is personal rather than professional. One must grasp the one-of-a-kind motivation that sports provide in India. There are government jobs available against sports quotas, and with a billion people and few employment chances, the competition to follow the coach or other official's instructions is fierce. The lack of understanding of the dos and don'ts of the WADA code consequently influences all levels of the sport. The lack of an active awareness campaign at the grassroots level exacerbates the situation. Because; the young athletes are not mature enough and not adults. They are dependent upon their parent's decisions. Mostly Indian middle-class society where a job has given weightage, not fame. Most parents are unaware of what their children consume. Finally, when the athletes are apprehended, there is no sustained national discussion by the public.[lxxii]

## VII Suggestions and Conclusions

It is considered that; the consequences of doping on athletes are so severe that they cause various hormonal changes, damage to bodily tissues, social discomfort, and even death. Substance misuse and doping tactics cause physical illness and are recognized as unhealthy mentally or psychologically. Drug abuse problems; can be successfully treated; if people can access treatment and rehabilitation services appropriate to their needs and of sufficient quality, intensity, and duration. The financial support that underpins treatment and rehabilitation should be, directed to those services that have a proven efficacy impact. At different periods and stages in their search for [people] may require multiple forms of therapy that are successfully integrated and coordinated and should be able to obtain or be referred to the treatment that best suits their requirements. Gender-specific requirements should be taken into account while providing treatment. Therapeutic approaches should, to the extent practicable, expand on, relate to, and integrate current health and social services. Provide a continuum of care through social agencies. Government should also incorporate assistance from the community. Care coordination has a critical role in every organization. The System of drug de-addiction therapy is successful and

planned systematically. Implementation of legislation accordingly plays a crucial role in controlling drug crimes. The collaboration between the government and regional places, local governments, and governmental and non-governmental organizations on the local level plays an important role.

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## CHAPTER 11

# AN ANALYTICAL STUDY OF STANCHION RIGHTS OF CHILDREN OF SAME SEX COUPLE

Dr Vijeta Verma, Assistant Professor, Christ (Deemed to be University) Delhi NCR
Ms. Tanvi Sharma, Research Scholar, GGSIP University (Delhi)

ABSTRACT

"When you label anything, you say – this is the way it is and the only way it can be. This only serves to limit your own understanding. To be truly free from the constraints of belief systems one must be able to constantly change their views to accommodate new truths." Homosexuality is one such thing that the society needs to comprehend and welcome. Homosexuality people are forced to suppress their feelings because of the homophobic attitude displayed by the society. A gay couple or a lesbian couple can also provide their child whether biological or adopted just as much care as any heterosexual couples can. The ill-favoured attitude towards same sex couples and their children is causing much of ridicule. It is time we try to understand the changing patterns of family structure in the globalising world. This paper deals with the all the problems are faced by the child of a same sex marriage and laws and legislations related to it at the national and international level.

Keywords – Children, Homosexuality, inequality, citizenship, adoption

## INTRODUCTION

"When you label anything, you say – this is the way it is and the only way it can be. This only serves to limit your own understanding. To be truly free from the constraints of belief systems one must be able to constantly change their views to accommodate new truths." Homosexuality is one such thing that the society needs to comprehend and welcome. For a long span of time world over, the concept of homosexuality was considered downright disgrace. Terming "Homosexuality" as a disgrace which is actually the product which denotes the actual thinking of the orthodox society, which has been unable to accept the fact that homosexuality is not a lifestyle or a matter of choice but it is congenital. Homosexuality has always existed in our society but the people were forced to suppress their feelings because of the homophobic attitude displayed by the society. In fact, it is absurd to know that homosexuality is still not legalised in India, in spite of the fact that traces of homosexual behaviours are found in our very own Indian Mythology[lxxiii]. Few countries across the globe have now accepted homosexuality and have also

legalised same-sex marriages. Only 12% countries have legalised same sex marriages as against 39.5% countries in which homosexuality is still considered illegal[lxxiv]. In a historic judgement, the US Supreme Court case of *Obergefell v. Hodges, Director, Ohio Department of Health* issued a resolution in favor of making the United States of America the 23rd country that allows same-sex marriage. Recently the Supreme Court of Texas in the case of *Christopher v. The City of Houston* has filed a lawsuit challenging the city's Houston policy of providing same-sex workers with benefits equal to those offered to a married spouse. of the opposite sex. Same-sex couples want to have a family just like any other couple of the opposite sex. Some predict that a Texas Supreme Court decision could overturn a ruling in Obergefell. Couples have long been debated over child rearing and the rights of their children. Every child is responsible for the world's governing system. Until again unless the regions do not develop the status of same-sex couples the status of their children would also not improve. Currently the laws that exist have a damaging impact on the children of same sex couples. In this paper the authors would be talking about the ethical and legal rights of the children of same sex couples.

## ETHICAL ISSUES RELATING TO CHILDREN RAISED BY SAME SEX COUPLES

Everyone has the right to recognition everywhere as a person before the law. Same-sex couples may also have children born or adopted. Natural offspring are born through processes such as artificial insemination or in vitro fertilization. Studies have shown that same-sex couples give their children loving, caring homes, whether they are born or not. Children of the same sex will often have a better chance of being open-minded and sensitive, and they will enjoy all the stability and benefits of being raised in a two-parent home. Yet some people in our community who are strong-minded people were of the opinion that same-sex couples would have a negative impact on their children because of their sexual orientation. It is important to understand that being a parent is not just about doing biological work but more than that. Parents should do some important work, such as recording the child's personality, directing him to life, instilling in him good habits and teaching him to behave properly in life. As per Article 9 of the Convention on the Rights of the Child, children have the right to live with a foster family. A gay couple or a gay couple can also give their child the same natural or adoptive care as any other couple of the opposite sex. The only negative influence on foster children by same sex couples is that they need to muddle through societies homophobic behaviour.

We need to consider this union of marriage in a secular manner and not religious. Children of same sex couples should be treated just as the children of opposite sex couples are treated. Anything less would amount to violation of their human right and their right to existence. There is no uniform or a universally accepted definition of family. Majority of the constitutional laws

across the globe describe family as living community of parents, children and other relatives. There is no definition which expressly says that the parenting is to be carried out only by the married couples of the opposite sex and not of the same sex. Negative attitudes toward same-sex couples and their children cause great frustration. It is time to try to understand the changing patterns of family structure in the world of globalization. Only if society freely accepts such a family structure by deviating from the 'traditional family structure' only then the children of the same sex be able to live a normal life.

## DETERMINING NATIONALITY OR CITIZENSHIP OF THE CHILD

In the present scenario is that many new-borns to same-sex couples are not recognised as a citizen of nowhere. As there are two major issues with determining the nationality of children of the same sex. First, same-sex couples who are unable to marry in a traditional country should marry overseas and because such a union is not recognized in the country of origin, determining the nationality of their children becomes grim. There is a lot of discrimination against same-sex marriages from overseas, which ultimately undermines their children's right to citizenship. Second, when same-sex couples must find their own child, procedures can be costly. So many of them prefer to go to places like Thailand where the procedure is relatively cheaper. If so, children also have problems with their nationality. Under the UN Convention on the Rights of the Child, Article 8 states that even a child has the right to nationality, that is, to become a citizen. A person always acquires his Nationality in accordance with the rules framed by the municipal law of the respective states. Nationality can be acquired either through birth or descent. By descent means the nationality of a state acquired by a person on the basis of the nationality of any parent. Thus, a child acquires the nationality of his or her biological parents. In the case of same-sex couples, for example, a lesbian couple may become pregnant and give birth and another becomes a co-mother with. The status of being the mother also varies on the basis of methods used in childbirth. In the case of gay couples, who engage in surrogacy a few countries consider the spouse to be a legal parent. These issues therefore need to be handled with the utmost care in the interests of children. In several countries the courts have tried to deal with these issues, and these decisions can be helpful in determining the nationality of children.

On June 15, 2016, the Federal Court of Justice (Bundesgerichtshof, BGH)[lxxv] issued a ruling on April 20 stating that South African law that awarded co-motherhood to a German wife of the biological mother of a child born in a same sex marriage should be recognized in Germany. The Court granted the child German citizenship on the basis of the citizenship of his co-mother, although her biological mother holds only South African citizenship. In this case in 2008, there were two women who were living in South Africa had entered into the civil union type of

marriage. One of them had German and South African citizens, and the other woman who had South African citizens was the one who gave birth to the child conceived through artificial insemination agreed by both the spouses. They wanted to register the birth of their child in Germany. Their application was also rejected by South African law regarding parenthood was not recognised. They appealed the decision. Germany does not recognize same-sex marriages, but it does allow for the acquisition of registered life relationships that offer rights and duties equal to those of marriage.

In the case of children, when a child is born out of wedlock the other spouse does not automatically become a co-parent, and they will not be able to have a child together. However, they are allowed to choose the descent of a child is governed either by the law of the place where the child resides, by the law of the country of nationality of the parent, or the law governing the consequences of marriage. of parents. As all other alternatives to this provision lead to the application of South African law, the Court concluded that the couple were considered to be the sole parents of the child. The Federal Court of Justice then answered the question of status "successive adoption," in which an individual adopts a child already adopted by their partner or adopts the biological child of their partner. In South Africa same-sex couple are allowed to enter into a civil union which is either called a marriage or a civil partnership. If a child conceived through artificial insemination is born to one spouse during the civil union, with the consent of both same-sex spouses then both spouses are considered parents of that child. They follow the jus sanguinis principle of nationality under the German nationality law. So, if a German was born abroad, the parents or the child can apply to the registry of births in Berlin to have the birth recorded. The federal court of justice finally reiterated that foreign birth had to be recorded in the German registry of births, because the child was descended from the wife of the birth mother and therefore had German citizenship. As per the German laws the descent of a child is governed either by the law of the place where the child has his or her habitual residence, by the law of the country of his or her parent's nationality, or by the law that governs the general effects of the marriage of the parents. As all the alternatives of this provision lead to the application of South African law, the Court concluded that the spouses were considered co-parents of the child.

The Federal Court of Justice then addressed the question of status of the same-sex marriages concluded abroad and whether they had effects on parentage. The lower courts had been split on the question of whether a foreign same-sex marriage could be recognized as a marriage in Germany or only as a registered life partnership. The Federal Court of Justice held that due to the fact that same-sex marriage does not exist in Germany, German law recognizes same-sex marriages concluded abroad only as registered life partnerships under conflict of laws rules. Even if the foreign law provides more rights to the couple, German law will only award them the rights

established for German registered life partners. The Court concluded that the "rights cap" had no bearing on the present case, because the status of the wife as co-parent of the child was a result of a legal provision concerning descent and not an effect of the registered life partnership. Lastly the Court declared that the recognition of the South African rule concerning parentage did not violate German *ordre public* rules. In the opinion of the Court, growing up in a committed same-sex registered partnership benefitted children the same way as growing up in an opposite-sex marriage. The Court concluded that the best interests of the child therefore did not prevent the recognition of co-parenthood.

In yet another case, two men in a registered life partnership had entered into a surrogacy agreement with a Californian single woman. One of the men donated the semen; the egg cell was obtained through an anonymous donation from an unknown woman. In September 2010, the surrogate mother became pregnant with twins, one of whom aborted spontaneously in the 30th week. In December 2010, the biological father acknowledged paternity before the German consulate in San Francisco and declared joint custody with the surrogate mother. In April 2011, the Californian Superior Court recognized the two men as fathers of the unborn children, at the exclusion of the surrogate mother. The surviving child was born in May 2011 and travelled back to Germany with its fathers four weeks later. The registrar's office refused to certify the birth abroad; the lower courts upheld this decision based on *ordre public.*

In a judgment handed down on 30 September 2016 the Italian Supreme Court[lxxvi], First Civil Division, made civil status registrar to recognize and register a Spanish birth certificate mentioning two mothers. In the instant case, the gestational mother was a Spanish citizen, whereas the egg was donated to the partner by her Italian co-mother, who held the status of spouse under Spanish law. As the current law on assisted reproductive techniques has already been found by the Italian Constitutional Court to represent but a choice among many possibilities open to the Parliament to opt for, heterologous insemination (i.e. with donated gametes), currently accessible to different-gender couples, but not allowed to lesbian couples, cannot be said to collide with a constitutionally binding principle. Further argument based on non-discrimination, best interest of the child, citizenship rights, conflict of laws and other principles added to the conclusion that the Spanish birth must be given full recognition in Italy.

In 2014 the US Citizenship Laws were modernized to allow mothers, genetic or gestational to pass on their US citizenship to their children. US follow the principle of Jus Soli, so if you are born in US, you are born American citizen. They have tried to partially resolve the problem by allowing a few families to transmit American citizenship to their children. However, there are a few categories of families and their children that are excluded among which Bi-national lesbian couples where the biological and gestational mother is not a US citizen and Bi-national gay

couples who rely on a gestational surrogate where the biological father is not a US citizen. If there is a situation where there is a bi-national gay couple with a gestational surrogate outside of the US and the couple has twins and each partner is the biological father of one of the babies, one of the twins would be eligible for US citizenship, and the other would not. Depending on where the child is born and the nationality of the biological parent, the child might face statelessness.[lxxvii]

## ADOPTION LAWS GOVERNING SAME SEX COUPLES

Studies have shown that same-sex couples are four times more likely to be raising an adopted child and six times more likely to be raising foster children than heterosexual couples. Today, 4 percent of adopted children and 3 percent of foster children are raised by gay and lesbian parents[lxxviii].In general, the process of adoption by same-sex couples is the same as that for other parents. There are basically three types of adoption i.e. Second parent adoption, Joint adoption and equitable adoption.

A second parent adoption (also called a co-parent adoption) legally allows a same-sex parent to adopt her or his partner's biological or adoptive child without terminating the first parent's legal status as a parent. The child enjoys benefits such as inheritance rights, wrongful death and other tort damages, Social Security benefits, and child support. If the adoptive parents ever separate, the child can have visitation with the second parent, the second parent can have custody of the child, and the second parent will remain responsible for support of the child. The United States, Vermont, New Jersey, Massachusetts, Pennsylvania, California, Connecticut, New York, Illinois, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Maine, Nevada, New Hampshire, Oregon, Rhode Island, Washington and the District of Columbia-expressly permit second-parent adoption.

Joint adoption is a legal process in which two unmarried people simultaneously adopt a child who is not legally related to them. This process involves only one step and is quicker as compared to second parent adoption. Nowadays California and Massachusetts have allowed joint adoptions by gay and lesbian couples, but many other states have denied them.

Equitable adoption is a form of "adoption" that may be used by a child of same-sex parents as a tool to protect the child's rights to his or her parent's assets should a parent die intestate. In order for a successful equitable adoption to occur, five elements must be proven: (1) an agreement must have existed between the natural parents and the adoptive parents; (2) the natural parents must have performed by giving up the child; (3) the child must have performed by living in the adoptive parents' home; (4) the adoptive parents must have partially performed by raising the child as their own; and (5) the adoptive parent(s) must have died intestate. If all the elements of an equitable

adoption are proven, the adopted child will be able to inherit his or her intestate share of the parents' estates; otherwise, this child will be left without a share of the inheritance.[lxxix]

Only seven states (Iceland, Netherland, South-Africa, Spain, Sweden and Luxembourg) have expressly prescribed adoption laws governing same sex couples out of which the authors have reviewed the adoption laws of Netherland and Iceland.[lxxx]

In Netherland, the general law is that when a child is adopted by the new partner of one of the child's biological parents, that new partner must have been living with the biological parent for at least three years immediately preceding the request for adoption, and must have cared for and educated the child for at least one year. But the one year term for care and education does not apply to lesbian who have been living together for at least three years immediately preceding the adoption request. In this case female partners of biological mothers are treated differently than male partners. Then in cases where two persons seek to jointly adopt a child, it is not relevant whether they are married or not, but they must have been living together for at least three years immediately preceding the request for adoption, and they must have cared for and raised the child for at least one year. It does not matter whether these are same sex couples or not. Adoption of foreign children is open to two persons of a different sex who are married. It is also open to single persons alone hence same sex couples are debarred from taking up inter country adoption.

In Iceland same-sex couples were allowed to adopt since 2006 provided they fullfill the following requirements:

- They must be at least 25 years old, but not more than 45 years old;
- lived together in a proxy marriage (cohabitation registered with the National Registry) for at least 5 years can adopt together;
- Individuals can adopt children in special circumstances and if the adoption benefits the welfare of the child.
- They should not have any criminal record.

## INHERITANCE RIGHTS OF CHILDREN OF SAME SEX COUPLES

Gay and lesbian litigation and advocacy traditionally is known to be an unequal treatment for both the couples as well as their children in terms of providing them in-adequate rights. Children born out of such relationship are the most sufferers from unequal rights and one such right is right to inheritance. The right of inheritance means the process of inheriting property by the decedent's survivors. A recent study in this area comes from Cambridge University's Centre for Family Research[lxxxi] says that this research into the experiences of adoptive families headed by same-sex couples suggests that children adopted by gay or lesbian couples are just as likely to thrive as those adopted by heterosexual couples. It also reveals that new families cope just as well as

traditional families with the big challenges that come with taking on children who have had a poor start in life.

Modern family law has adjusted to the sexual revolution of the twentieth century, the mobility of our twenty-first century population, and the social acceptance of non-traditional[lxxxii] families.[lxxxiii] The law of inheritance, however, remains largely mired in nineteenth century values and expectations, based on the lives and needs of the landed classes, where inheritance and bloodline determined personal success and ensured social and political stability.[lxxxiv] And still in twenty first century the situation still remains the same in respect to the rights of children arising out of relationship of same sex people. The Civil Partnership Act of Ireland does not extend inheritance rights to a non-biological child of a deceased civil partner parent. This means that such children are excluded from the rules of inheritance that apply where a person dies without making a valid will. Where a parent does leave a will, the right to challenge it for failing to provide adequately for a child does not apply to non-biological children even when the deceased civil partner was in fact parenting that child.[lxxxv]

In the country like USA, most probate codes define "child" for purposes of intestate succession to be a biological child or an adopted child only.[lxxxvi] Stepchildren, foster children, or other minors raised by a decedent, even those in a functional parent-child relationship, do not qualify as "children" under most probate codes.[lxxxvii]This means that a minor who is raised by an adult, treated as a child, given that adult's name, listed as a dependent on the adult's tax returns, and treated in all ways as the biological child of the adult, will not be able to inherit from that person if the child is not formally adopted. Instead, distant collateral heirs may take the estate to the exclusion of the person who had the closest relationship with the decedent and who the decedent most likely would have wanted to have inheritance rights.[lxxxviii]

## GLOBAL SURROGACY ALL AROUND THE WORLD

Commercial Surrogacy has gone worldwide in the most recent decade. This is the practice wherein one woman bears a child for another woman which is considered to be one of the most debated procedures in the field of assisted proliferation. According to Article 23 of International Covenant on Civil and Political rights which talks about right to marry and to found a family is one of the integral right given to each and every human being throughout the globe which also applies to same sex couples.

Numerous same-sex couples are anxious to grow their families. One choice for individuals from the LGBT people group is surrogacy, and as view of family have turned out to be more comprehensive, lesbian and gay surrogacy has turned out to be progressively normal.

Every state has laws managing surrogacy, and few states don't permit or perceive surrogacy contracts. As a result of which surrogacy process among same sex couples will be a tedious task

## THE LEGAL STATUS OF SURROGACY ARRANGEMENTS

Worldwide, surrogacy policies on same-sex marriage are not the same. There are countries that support surrogacy laws and there are many that oppose it. Surrogacy can be a discouraging task, especially for those same-sex couples living in those areas where reproduction is restricted.

- Surrogacy in the USA - Prior to the 2015 decision on Obergefell vs Hodges, there was no legal statutes deals with the surrogacy in the United States of America. It used to fluctuate between national law and published law. It was presumed that the act of surrogacy is valid and legal. In mid-2015, the Supreme Court ruled in Obergefell that the right to marry is sacred right and applies to everyone, regardless of gender and social preferences. As a result of this decision, same-sex couples are entitled to marry throughout the USA. From then on, there has been a gradual increase in the influence of marriage and the fact that the states have opened up their own reproductive systems to same-sex couples.

● Surrogacy in Britain – As per the last section of The Human Fertilization and Embryology Act 2008, same-sex couples and unmarried couples will be allowed to be a safe and secured lawful parenthood in a new and simple way that prefers for surrogacy as the medium to increase their family structure.

- Surrogacy in Australia – The situation of surrogacy in Australia is very vague and well controlled. The Code of Conduct for the Australian National Health and Medical Research Council does not legally regulate fertility and does so indirectly. All areas except the Northern Territory have passed legislation allowing parties to engage in altruistic surrogacy. However, these agreements are uncertain. As a result, the birth mother is not obliged to surrender her child. Even if the laws do not support the adoption on a large scale, it is surprising that there have been no cases involving childbirth in the courts. However, in 2010 the Queensland Regional Court issued a custody order of a gay male couple[lxxxix] . Moreover, in 2012 when making orders in the New South Wales Supreme Court transferring parentage from a surrogate to a gay male couple, Brereton J commented, “this is the first application under the Act of which I am aware in which the intended parents are a same sex couple"[xc]. Surrogacy is a legally complicated process that can be even more difficult for same-sex parents, depending on state laws.

## CHILD RIGHTS OUT OF SURROGACY

The rights of children of same-sex couples cannot be declined simply because they were born without any surrogacy arrangement. The European Court of Human Rights has ruled in its favour in the case of Mennesson & Labassee v. France that the interests of the child should be considered. In this landmark decision of June 2014, the Court laid stressed on the 'best interest of the child principle', and pronounced that the France had violated Article 8 of the European Convention on Human Rights by refusing to recognize the legal relationship between parent and child, a relationship between a genetic father with his surrogate- born child.

According to the United Nations Convention on the Rights of the Child (UNCRC) the following are the rights granted to children for more than 25 years now:

a. the right to registration immediately after birth and the right from birth to the name, the right to acquire citizenship and, as far as possible, the right to know and be cared for by his or her parents (Article 7);

b. the right not to be separated from his or her parents, and to maintain a personal and intimate relationship with both parents on a regular basis, unless it is in the best interests of the child (Article 9);

c. the right to the best interests of the child to be considered primarily (Article 3)

Enshrined in the Convention on the Rights of the Child, this guarantees the right to dignity, protection from trade or trafficking, registration of his or her birth and the knowledge of his or her parents.

In India a surrogate mother is not considered a legal mother. According to the ICMR Guidelines 2005, a surrogate mother is not genetically related to the child. She has been legally and psychologically advised that she will not have rights over the child. Her rights and obligations to the intended parents and child are based on the adoption agreement. In addition, the child born by birth will be regarded as the legal child of the intended parents / parents and will have all the legal rights to maintain the parents, inheritance and all other rights of the natural child to the intended parents had[xci]. According to the Indian Council of Medical Research (ICMR Guidelines) the surrogate mother should not have biological contact with the child (Guidance 1.2.33). Indian law recognizes the surrogate mother only as the legal mother in the adoption plans. And Guidelines 3.10.1 and 3.16.1 do it very much clear that the intended parents only would be the legal parents of the child with all the attendance rights, parental responsibility etc. Also, Guideline 3.5.4 states that the surrogate mother shall not be the legal mother. But in the recent years there were incidents reported in regard to commercial surrogacy wherein the commissioning parents leave the child because of the disability caused due to surrogacy arrangements. The child is left abandoned.

During the commission of surrogacy and the birth of the child, the couple seeks divorce and get separated or any of the couple dies due to sudden event, the couple tends to change their mind after this. In these circumstances also the child is deserted and devoid of human rights.

## CONCLUSION

All over the world, there are children growing up in diverse in families and now even same sex couples wish to form a family. Even after the International Convention of Rights of Children and many other legislations related to rights of children all around the world, the rights of children of same sex couples haven't got equal rights and till now there are no strong legal mechanism which protects these children from the violation of their basic legal rights. In the landmark judgement of Levy v. Louisiana[xcii], U.S. Supreme Court drew the line at the moving sands of the life-war path and refused to allow children to be part of the government-sponsored protest in its efforts to regulate adult communication. As a general society, we think back to the treatment of unmarried children and marvel at their senseless indifference and limited sense of Parent. Today children from same-sex marriages and society are in a comparatively wealthy state. All over the world, children of the same sex are denied basic social and economic rights. Such government-sponsored discrimination is not permitted on the basis of maintaining normal family values or ensuring good governance. Globally including strong countries like the U.S.A., a child of the same sex is denied state benefits and deserves to be corrected for this violation of its equal protection of the law. Such children are part of a growing world. They need such kind of organization and law that can give them equal human rights and protection on the basis of equality.

Nations around the world need to ensure that the world must respect their all the human beings equally, without any kind of discrimination. In addition, the most important thing that should always be a concern is that the interests of the child should be taken care of.

Countries should make an effort to improve the situation in relation to same-sex children and parents. States should ensure that there should be no discrimination in the enjoyment of family rights on the basis of their birth status, or the choice of the gender or sexual orientation of their parents; to abolish any limitations of parental rights and obligations based on sexual orientation or gender identity; ensure that all children can enjoy a legally recognized and protected parental relationship, regardless of whether they have a biological link with their parent (s); ensure that children are not separated from their parents only on the basis of their birth status, or the sexual orientation or gender identity of their parent(s). [xciii]

As stated in these lines which says "It should be borne in mind that this is not a hypothetical problem. The omission of robust protections for the children of civil partners will have real consequences for the young people concerned and it is in their interests that the law reflect and provide for the reality of their lives."[xciv] It will be indeed a better place for the children of same sex parents to survive and grow only if their rights are protected.

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**CHAPTER 12**

# An Exploratory Paper on the Importance of FDI in Reducing International Territorial Conflicts

Dr. Suresh Kumar Kashyap, Mittal school of business, LPU, Phagwara
Vrujesh Jalindar Salunkhe, Research Scholar, Mittal School of Business, LPU Phagwara

## ABSTRACT.

Conflicts over boundaries have always been a matter of dispute raised between different nations. The peace dividends between nations can be enhanced through the FDI. Like trade relations, FDI helps in promoting peaceful relationships among nations. Here the Researcher would check the correlation between FDI and Territorial conflicts, and different models of FDI in reducing conditions of conflicts. The study aims to understand the necessity of resources for the countries involved in territorial conflicts and establish the correlation between FDI and Territorial conflicts from different instances. It also focuses on understanding how FDI can reduce territorial conflicts.

The Researcher adhered to a Qualitative Research Method for the study. The data collection is conducted through a Secondary Method by sorting relevant Articles and Journals from Google Scholar. The analysis of data is done qualitatively, Induction and deduction were made to select only the required Articles and Journals. There is a need to track companies which are actively indulging in pressuring governments to settle disputes peacefully and quickly if firms bear opportunity costs behind rising violence in areas where they have investments. It is more relatable with FDI because it is less mobile as compared to international portfolio investment.

**Keywords:** Multinational companies, FDI, territorial conflicts, investments, foreign investors

## 1. INTRODUCTION

The conflicts over boundaries and territorial space have always resulted in conflicts and disputes. The nations sharing borders claiming and blaming each other over space or specific areas have resulted in wars or terrorism. The political conflicts over boundaries between different nations affected the civilians and created hatred for the neighbouring countries. Wars have never benefitted anything, rather it has only resulted in the destruction of life, property, and peace. Can FDI reduce these conflicts is still a question of debate, but some studies have shown FDI has the

potential power to establish peace dividends among the nations with conflicts? Territorial conflicts are found long back in history and it is still on a continuous note. This paper would descriptively examine the impact of FDI on Territorial disputes. Maintaining healthier trade relations has a chance of having fewer conflicts over boundaries.

### *1.0 Background*

*Territorial Conflicts*-

Boundary and territorial disputes are disagreements between two or more independent countries over the division of land or water bodies. Boundary disputes can arise as a result of historical and/or cultural claims, or as a result of competition for resource exploitation.

*FDI*-

A foreign direct investment (FDI) is the purchase of a stake in a company by a company or investor based outside of the country. In general, the term refers to a business decision to acquire a significant stake in a foreign company or to buy it outright in order to expand its operations to a new region.

*International Trade Relations* -

The exchange of goods and services between countries is known as international trade. Global trade exposes consumers and countries to goods and services that are not available or are more expensive in their home countries.

### *1.1 Literature Reviews*

According to the view of Lee and Mitchell (2012), This examination investigates the relationship among FDI as well as highway debate, zeroing in on the accompanying remarkable hidden components: diminishing regional benefits, rising particular similarity, increasing likely expenses of contention, and improved information flagging. Barbieri et al (2005) shows that even as outward FDI levels are rising, new regional worries become less inclined to arise, however while datatype, as well as synchronous FDI, will in general stream no affect states' decision making to document ongoing issue affirmations.

Greater bilateral Foreign direct investment (FDI among disputants reduces the likelihood of intensification to high levels of crime over problems and raises the likelihood of peaceful resolution (Bearce & Bondanella, 2007). Expanding worldwide FDI levels reduces the likelihood of major militarised conflicts. As the placating impact of bilateral as well as makes it possible to

make FDI on militarised dispute does become greater in dyadic relationships with a historical past of weaponization over the issues involved, advantage cost is a major mechanism connecting FDI as well as states' managing conflict practices (Beck et al, 1998).

Rafat and Farahani (2019), Unfamiliar speculation (FDI) has become progressively pervasive in agricultural nations, especially since the change of focal preparation into exchange advancement. According to Bennett & Stam (2000), various countries see going to draw in FDI as an essential thought of their monetary vital methodology even though FDI is generally considered as a blend of speculation, future advances, promoting, and vital preparation. Subsequently, it is basic to grasp the reason why FDI inflows are more fragile than expected in numerous countries. Biglaiser & DeRouen Jr. (2007) investigated the associations between troop deployment and FDI inflow.

Hayakawa et al., (2013), on the other hand, the lower financial risk does not attract FDI inflows, especially to developing countries. Among the various components of political risk, in the sample of developing countries only, it is found that internal conflict, corruption, military in politics, and bureaucracy quality are inversely related to inward FDI flows.

There is a possibility to improve interstate cooperation and reduce dyadic militarised conflicts with increased FDIs (Gartzke et al, 2001; Souva, 2002; Polachek et al, 2007). Considering the massive rise in FDI across the world, these findings have their own importance. There are three major perspectives of theoretical arguments associated with FDIs in relation to interstate conflict. According to the first perspective, the FDI delivers more details to states related to the capabilities of their opponents and mitigates and resolves asymmetric private data in dyadic negotiations (Gartzke & Li, 2003). Next theory claims that FDI improves the costs of conflict and develops more peaceful practices in foreign policies (Souva & Prins, 2006; Souva, 2002). Final perspective considers FDI as a tool to extract wealth from other countries peacefully instead of extracting resources using military defeats (Rosecrance, 1999; Brooks, 1999).

The belief that conflicts generate “opportunity cost” for trade and investments in the future is another discrepancy in the literature related to FDI conflicts. There is also a lack of evidence that military conflict affects the ability of countries to attract FDI from foreign investors. According to some studies, there is no significant impact of military conflict on the flows of FDI (Lee, 2008; Li & Vashchilko, 2010), despite the fact that investors from the US are sensitive towards war (Biglaiser and DeRouen, 2007).

Foreign relations scholars have discussed the steps or process to conflicts from disagreements (lower level) to military battle (higher level). Vasquez (1993) proposed the "steps-to-war model" assuming that conflict comes from prolonged escalation of tension between different states. Some empirical studies also determined the dynamics of war to examine "FDI-conflict relationship".

Chen (2017) explains how the profitability of foreign investment is deeply affected by a host country engaged in international conflict and experience of a company with armed conflict. Chen (2017) uses sample of 693 UK-based companies in 212 nations and their foreign branches in 33,620 observations from 1999 to 2008. The findings concluded that there is a "horizontal S-shaped relationship" between company experiencing conflict and profitability of a branch, positive relation between extra-state conflict of host nation and profitability of the subsidiary, and engagement level in extra-state conflicts by host country negatively moderates the effect of "firm experience with conflict".

Garriga & Phillips (2014) figure out whether development help in attracting FDI in post-conflict nations with growing studies on factors of FDI and effects of aid by determining how development helps in environment with less information and how it is a sign that can bring investment. Companies seek information on host countries before investing there. There is low amount of reliable information available in post-conflict countries, partly because government have unexpected incentives to misapprehend details. Companies look for signals in such cases. Development aid is one of them as donors are likely to help trusted countries more to handle the funds well. The results conclude that the aid is supposed to attract FDI but it is situational on whether it can be known as "geo-strategically motivated". It is also found that this effect is supposed to decline as time passes after the conflict. It shows that signalling of the aid is particular to "low-information environments" and rules out causal and alternative mechanisms connecting FDI and aid.

Lu (2020) determines whether there is a conditional appeasing effect of FDI on territorial disputes between combative pairs upon their last experiences of military support. The author developed a "political economy model" and analysed newly coded "bilateral data" with "logistic regression analysis" and existing dataset by combining the data of rivalry and data of territorial disputes. It is observed that there is a strong pacifying effect of investment when bilateral flows of investment reach a specific level between confrontational pairs with previous military support. Even though there is a general pacifying effect in the previous military cooperation, there is a stronger pacifying effect in past cooperation than those which took place a few years ago. As per the

empirical study and theoretical model, the author tested political implications for "New Southbound Policy" by Tsai Ing-wen and approach of Taiwan to territorial dispute related to South China Sea.

Either political or economic factors have been explored on literature about factors of FDI. Some consensus is prevalent on economic factors about traits of host country affecting the profitability and encouraging FDI over there. Some of the most common economic factors of FDI are development, market size, openness to trade, and economic growth (Jensen, 2006; Büthe and Milner 2008). Researchers have covered the scope of institutions, political regime, foreign commitments, and veto players about political factors and decisions on FDI. There is a relation between FDI and law (Li, 2006, 2009), democracy (Li, 2006; Jensen 2003, 2006; Li & Resnick, 2003), durability of regime and political stability (Li & Resnick, 2003), bilateral treaties for investment (Neumayer & Spess, 2005; Desbordes and Vicard, 2009) and signing "preferential trade agreements (Manger, 2009; Büthe and Milner 2008).

The effects of availability of information on FDI is quite a less explored area. According to Hooper and Kim, capital inflows might be affected by higher opacity but more FDI is associated with opacity about regulations and accounting (Hooper and Kim, 2007). A vast body of research figures out if economic growth of emerging countries has some improvements with foreign aid but got mixed results. There is some positive impact found on studies based on individual countries but macro studies usually are not of much help (Easterly, 2001; Boone, 1996). Some studies also have found that aid leads to improved growth but other factors are conditional. According to Burnside and Dollar (2000), aid can help countries with sound economy grow. However, it is supposed to have fragile conditional relationships. The sturdiness of 14 conditional growth and aid models are tested by Roodman (2007) and found very sensitive results to sample size and model specification. However, there is still lack of clarity on the effects of aid.

The studies of "aid efficacy" have tested intended consequences of development aid. The unintended consequences of the aid are focused by a growing yet small body of research. In this domain of inquiry, the most important line determines the effects of aid on type of regime and associated traits (Knack, 2001, 2004; de Mesquita and Smith, 2010; Morrison, 2007, 2009). There are also links found in other studies between risk of "armed conflict" and aid (Nielsen et al, 2011) and rise in military spending (Collier & Hoeffler, 2007).

Hypothetically, foreign aid could be linked to higher FDI by several studies. There are three channels discussing negative effects on FDI like “Dutch disease” and “rent-seeking” effects and positive impact on FDI like finance, infrastructure, and vanguard effects (Kimura and Tod, 2010). However, there are a few studies which conducted empirical study on direct relation between FDI and aid and there is no major relationship between them. Karakaplan et al. (2005) and Harms and Lutz (2006) analysed the effect of aggregate aid and differentiated between non-infrastructure and infrastructure aid. According to Karakaplan et al. (2005) it is found that aid brings FDI only for development of financial market and good governance. All in all, information is a major element in making investment decision (Mody et al, 2003).

### *1.2 Research Gap*

The researcher has undertaken an extensive selection of research articles related to Territorial conflicts and FDI. There is very limited and indirect information about the research area. Here the Researcher has only focused on a single dimension of resolving Territorial conflicts i.e FDI. FDI has some potential that would help in establishing peace among the world and strengthen a healthier relationship among nations. The researcher states different models that can be implemented through FDI in reducing cross-border conflicts.

### *1.3 Research Question*

1. What are territorial conflicts and how does it affect the countries involved in the war?
2. What are FDI and how can they be peace dividends between nations involved in territorial conflicts?

### *1.4 Importance of the Study*

Wars are not easy for anyone, neither for developed nations nor for developing and underdeveloped nations. The boundary conflicts have only created hatred, negativity, and loss of lives. It has created economic, social, and ethical downturns. The war over boundaries can only be reduced or decreased only when there is positive relation among nations. Nations sharing borders need to have peace among them, FDI can help them reduce the unnecessary conflicts and disputes for borders or specific areas.

### *1.5 Research Objectives*

- To understand the necessity of resources for the countries involved in territorial conflicts.

- To study the correlation between FDI and Territorial conflicts.
- To understand how FDI can reduce territorial conflicts.

### *1.6 Scope and Limitation*

The researcher adhered to the ethical standards outlined in the principles that govern. The data gleaned or research papers used during research are only used to look for evidence to answer the research questions. The Secondary sources can be used by the researcher to gather information. All of the information was gathered from reliable sources. The information was taken from different scholarly articles, news articles were studied in detail for considering the. The researcher's knowledge was used to create the study results.

## 2. RESEARCH METHODOLOGY

The Methodology Section provides the tools and techniques used in the research paper to investigate the research findings or solutions to the research problems. The researcher has used a secondary method for understanding the correlation between FDI and Territorial conflicts. The secondary analysis gives an in-depth analysis of the ways through FDI helping to reduce the territorial conflicts. The foreign inflows and trade relations establish a strong relationship with the nations sharing borders (Mukul, 2011). The researcher has taken information using secondary methods from different sources like Scopus and UGC journals. The researcher has used the interpretivism research paradigm.

### *2.0 Research Method and Design*

The Researcher has used the Qualitative method in the study. The Qualitative method helps in providing a subjective context of the research topic. The normal level of FDI stock in a country with a regional debate is significantly lower than in a country without a debate. FDI has always increased the foreign investors into the nations, the international involvement brings peace among nations. The researcher uses the secondary data collection method and the necessary data for this study will be collected through research of all the relevant articles related to the research question. The researcher uses a descriptive design and exploratory research design to highlight the measure findings.

### *2.1 Research Approach*

The research approach is the blueprint of research methodology and design. The research approach includes a collection of assumptions that guide the research to meet the requirements

of the research and show a direction to the research (Kothari,2004). Here, based upon the requirements of research problems, the researcher has undertaken a qualitative and secondary analysis to discuss in detail the necessity of resources for the countries involved in territorial conflicts and establish the correlation between FDI and Territorial conflicts from different instances. It also focuses on understanding how FDI can reduce territorial conflicts.

## 3. ANALYSIS OF STUDY

States with unresolved border issues are more likely to get into a state of war, while states which have mutually accepted their international borders are less likely to get into conflict. Political strategies of constant crisis, arms buildup, aggressive foreign policies, and formation of alliances can drastically increase the risk of terrestrial conflicts (Senese & Vasquez, 2003, Vasquez, 1995). These patterns have been experienced in the real world broadly into geopolitical matters like controversy on cross-border rivers and maritime landscapes. Militarised disputes are caused most likely because of river, maritime, and territorial issues if stakes are higher to opposing countries (Hensel et al, 2008). The risk of militarised conflict also increases with power parity and earlier militarization for all geopolitical conflicts. It is possible to achieve a broader set of data to determine the effect of FDI on interstate cooperation and conflict by expanding research towards water borders from land borders.

The challenge of one state on another's rights over water or land reserves is another major issue. States can deploy either peaceful or militarised tools for their goals or simply maintain the status quo when an issue claim is in process. These are not mutually exclusive strategies as states usually go for militarised and diplomatic solutions to deal with interstate conflicts at the same time.

### *3.0. What are territorial conflicts and how does it affect the countries involved in the war?*

Boundary dispute or terrestrial conflict refers to a discrepancy over the control or ownership of land between multiple political bodies. Such kinds of disputes often involve custody of natural resources like fertile land resources, petroleum or mineral resources, rivers, etc., despite the fact that conflicts can also be based on religion, ethnicity, and culture. Unclear and vague language used in making a treaty which defines genuine boundaries often causes territorial disputes.

These disputes are one of the biggest reasons behind terrorism and war, as countries often attempt to maintain their dominion by invading the territory and non-state bodies usually attempt to influence politicians' action with terrorism. International law will never allow one state to use

their armed forces to annex another state's territory. According to the UN Charter, "All members of the UN should avoid the use or threat of forces against the integrity of territory or any state's independence in international relations, or in any way whatsoever, inconsistent with the UN".

Boundary is also not demarcated in some cases like Kashmir and Taiwan Strait. Here, the line of control (LOC) is defined by the parties involved as "*de facto*" international border. The term "territorial conflict" is applicable to the cases where two or more states have disputed a limited territory, in which each state claims the same region in its own maps, which would be adjacent or like around the understood borders of states like Abyei, which is located between South Sudan and Sudan. In such types of conflicts, the presence of opposing states is not challenged. For example, the relation between North Korea and South Korea or People's Republic of China and Republic of China.

Generally, occupied territory is an area which is different from the given area of dominated states which use military forces to occupy the controls. Sometimes, states maintain occupation for the long term to fight against a territorial claim. Sometimes, they may use strategic occupation by keeping the rivals from claiming control by making a buffer zone or through punishment or coercion.

There are different meanings of territorial conflicts in international relations, both in terms of dominion, fundamental rights, and importance of global peace. There are great relations between international law and territorial conflicts as these issues challenge the state territory. A defined territory is required by the authorities of international law as given in the treaty "Montevideo Convention on the Rights and Duties of States, 1933" signed in Uruguay (Lauterpacht, 2012). According to the Article 1 of this treaty, an individual of international law should be a defined territory, permanent population, have authority to enter into international relations, and have a defined territory (Grant, 1998). In addition, territorial ownership is important in international relations and law as dominion on the land shows what makes a state. Breach of territorial disputes or borders causes threat to the very authority of the state and right as "person of international law". These disputes are usually claimed at the "International Court of Justice" (Sumner, 2003). International law and territorial disputes cannot be separated which are based on state border law and their settlement is also subject to the Court and international law.

### *3.1. What are FDI and how can they be peace dividends between nations involved in territorial conflicts?*

“Foreign Direct Investment (FDI)” refers to an investment as “controlling ownership” in a country’s business by a business entity which belongs to another country. Hence, it is different from “foreign portfolio investment” in terms of direct control. The FDI can be made either by enhancing business operations in another country (organically) or by acquiring a company in that country (inorganically). FDI broadly consists of acquisitions and mergers, reinvesting profits that have been earned from foreign operations, deploying new plants, and intra-company loans. To be narrow, FDI includes merely developing new manufacturing units and holding interest of management, i.e. over 10% of voting stock, in a company working in an economy along with that of investors (The World Bank). FDI refers to the sum of short-term or long-term capital or equity capital as defined in balance of payments. Usually, FDI consists of participation in joint-venture, transfer of expertise and tech support, and participation in management.

When it comes to positive effects of FDI on border conflicts, one reason stems from the claims that the achievements of territorial conquest are expected to decline when states engage in trade, economic exchange and investment (Rosecrance, 1999; Brooks, 1999). Rise in international FDI flows can also minimise the risk of new border disputes as states can achieve more from economic, peaceful exchange of services and goods. More economically powerful conquering states are supposed to be the costly strategy because rebellious factions and appeasing nationalists have to bear high costs in the state which is recently conquered. It could also affect economic gains over the conqueror.

The benefits of conquest are affected by the geographic spreading of MNCs as only a fraction of financial assets can be captured by the conquering state related to economic production within the state. The geographic development and technological knowledge is also extended with interfirm alliances, making it even more difficult for conquest. The payoff of conquest is also reduced with the development of knowledge-oriented economies as knowledge is the most vital economic asset and makes it even harder to capture as economic innovation could be reduced due to centralised oversight (Brooks, 2005).

In case of unresolved or new border disputes, multinational companies will also uphold their contracts or avoid making new investments. For example, Bharat Petroleum stopped its contractual oil drilling process in the Caspian Sea in 2001 because of maritime dispute by Azerbaijan, which had ceased company operations as its survey vessel was threatened by an Iranian warship (Lee & Mitchell, 2012). Because of unresolved conflict about the maritime border between Bangladesh and Myanmar, Daewoo International also extended its contract in the Bay

of Bengal (Yonhap, 2009). These are some of the examples of border issues affecting FDI interactions. Multinational firms definitely wish to secure their interests first. With the rise in FDI across the world, external pressures are very high on governments engaged in highly threatening border disputes.

On the other hand, governments also have the power to threaten to withhold or withdraw FDI to bargain in terms of border disputes. In the beginning of 1990s, Japanese leaders were urged by Soviet Union president Mikhail Gorbachev to extend economic investment. However, the Japanese wanted the Soviet Union to return their four islands which are located in their northern borders seized in World War II by the Soviet Union. Until then, they didn't sign the treaties for investment (The Washington Post, 1991).

## 4. RESULTS AND DISCUSSION

There may be a rise in opportunity cost from both "monadic" and "dyadic" levels of FDI flows as investors may lose investment in rival states or usually from risk-averse behaviour of MNCs. Firms are also often invested in nations even before the rise in new border conflicts. More efforts can be seen from the businesses if FDI is not much mobile in comparison to "foreign portfolio investment" to force governments to resolve their issues quickly and peacefully, especially in more striking territorial conflicts which have been militarised earlier, such as the Indo-China border.

If investors are futuristic enough to refrain from conflict areas, their investment decisions could be affected only with sudden conflict. Along with the monotonic impact of FDI on the onset of militarised conflict, there might be an interactive impact of earlier conflicts and it is important to find out if businesses attempt to secure their interests or whether those events affect their behaviour. It is not possible to see any foreign investment between states having highly militarised matters if MNCs were ideally advanced. Aggressive investment levels should add more pressure on conflicting governments to resolve their matters and refrain from militarization in case when there is a high risk of severe military conflicts (Colaresi & Thompson, 2002).

FDI may not just increase the "opportunity costs of violence", it may also restrict the strategies of the government about foreign policy by making interstate relations more transparent. Gartzke (2006) studied territorial conflict and focused on "informational properties of globalization". He used the "bargaining model of war" suggested by Fearon (1995) as a baseline to deal with

international conflict, in which war is the by product of incomplete information about resolve/capabilities, indivisibilities of issues, or commitment problems. According to Gartzke (2006), countries have more transparency in policies which are exposed to mobile capital. They cannot bluff easily due to limited benefits of sovereigns to both compel foreign rivals and keep markets peaceful.

It is not easy for FDI-sponsored states and their leaders to bluff in global politics due to rival forces of interstate demands and market stability, making it more likely to have successful attempts of peaceful settlement. According to Gartzke, there are differential effects of globalization process on non-territorial and territorial disputes. It is worth noting that rise in FDI minimizes the risk of border disputes across the neighbours because captured territory cannot generate much profit. Meanwhile, globalization adds more wealth for a country. Gartzke (2006) analyses directed countries and found that development reduces the tendency to initiate disputes on territory.

Morrow (1999) justifies the influence of economic interdependence on the rise and beginning of crises. The researcher argues on trade relations that they can affect resolve for fighting by the state when trade flows take place ex ante because of the fear of losing trade in case war is declared. During the crisis, states are invested heavily on the economy of an opponent to bear higher costs on themselves and show their intent more credibly in crises. This argument can also be related to FDI. Let's take an example of Vietnam's moves against China about their past territorial conflicts like the Paracel, the "Gulf of Tonkin" and "Spratley Islands", and demarcation of land border stretched over 840 miles in 2009. Back then, there was a 40% decline in FDI overall for the Vietnamese government and they lured capital investment for aluminium refinement and bauxite mining to fix this problem.
They signed a contract with Chinalco, a multinational company based in China, while sought investment from a US-based company, Alcoa at the same time. The government's decision to work with China was the matter of criticism and controversies from several groups and people. The government also banned a local newspaper named "Du lich" to protect this investment from publishing about the territorial disputes between Vietnam and China, with an argument that FDI was too important to lose. It showed peaceful intentions of Vietnam over the disputed border with the presence of new investment.

There are different effects of FDI if its primary motive is to link with informational conflict management. It is because investment levels are subject to change over time. States may not have

enough details about capabilities of one another to fix over the issue with the rise of new border disputes. Hence, FDI should be a vital channel for information. The FDI's pacifying effect may decline over time as states have observed the resolve of one another. It is much similar to the claims that wars must end most likely with decisive victories as rivals are more informed of their odds of victory.

## 5. CONCLUSION

All in all, FDI may have various pacifying effects on border conflicts and countries involved in such issues with opportunity costs. It is sensible because it enables a wider range of diplomatic talks over serious issues. Only a few of these issues have caused even one militarised dispute. A lot of conflict and interdependence studies consider all political dyads as the cases to evaluate the effect of FDI on international territorial conflicts. In this article, we have discussed how FDI could help in decision making of foreign policies at various levels of diplomatic relations. Multinational giants may not be able to avoid investments completely in nations which have diplomatic border disputes with the government of their home countries. These companies may lobby their governments to ensure peaceful settlement of disputes in cases of Thailand-Cambodia, India-China, and Croatia-Slovenia. These moves will further improve trade relations and FDI between disputing countries.

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## CHAPTER 13

# INDIA'S GENDER BIASED APPROACH TOWARDS MARITAL RAPE

VINAYAKA RAINA, Dr. RAMESH KUMAR
PhD Research Scholar
Christ (Deemed to be University)
vinayaka.raina@res.christuniversity.in
Dr. RAMESH KUMAR (Co- Author)
Designation: Associate Professor, CHRIST (Deemed to be University)

**ABSTRACT**

"Marital Rape" the term itself shows the violence of marital rights and duties. It violates the right the dignity of a married woman. Even then, it is not criminalised as rape in India. Marital Rape is non-consensual sex in which the perpetrator is the victim's spouse.

Marriage is an institution which admits men and women to family life. It generates love and trust. , But it raises a question, "Is married women being considered an object or the husband's property". It also raises the question of the right of a married woman to save her body from her husband's lust. It is unexpected that a lady can ensure her entitlement to life and freedom; however, it is not her body inside her marriage. It is absolutely against the Women's Right to live with human dignity and the right to sexual privacy. This paper point outs whether "The right to have sex with her wife can be coupled with will or consent of wife". It is a well-known fact that India is a male-dominated society, but today we are talking about Women's Empowerment, where many rights have been provided to women. But would women be empowered in a real sense without criminalising marital rape?The methodology of this paper relies on secondary sources like government data and data collected by various organisations working in this field, case laws, and views expressed by multiple authors inresearch articles and journals. So in this paper, we are going to discuss:

1. Need forthe criminalisation of marital rape
2. I am findingwhether sex without the wife's consent should be equivalent to rape.
3. Prevalence of this problem in society.
4. Marital Rape and violation of Human Rights.

Key Words: Marital Rape, Gender Biasness, India, Violation, Human Rights, Non-Consensual[xcv]

**INTRODUCTION:**

**MARITAL RAPE: SEXUAL ABUSE OF WIVES**

Rape is a crime that deprives a woman of her dignity, which she will have to live with for the rest of her life. When one thinks of rape, the first person who comes to mind is a stranger, a malicious person. In the context of marriage, rape is rarely considered. Even women struggle to accept that a husband can rape his wife. After all, if a man exercises his conjugal rights, how can he be charged with rape? It implies that a woman has no right to her own body and that her will must be subservient to her husband's. As a result, marital rape is a common flaw in society; it is well hidden behind the sacrament of marriage. Marital rape, on the other hand, can be defined as intercourse or penetration obtained through force, threat, or when the wife is unable to consent. Due to marital exemption, despite the prevalence of marital rape, the problem has received relatively little attention from social scientists, practitioners, the criminal justice system, and society. In India, social practices and legal codes reinforce the denial of women's sexual agency and bodily integrity, which are central to their identity. To protect the family institution, the law does not consider marital rape a crime, thereby excluding the possibility of false, fabricated, and motivated complaints of rape by a wife against her husband and the practical procedural difficulties that might arise in such a case.[xcvi]

Marriage is a family institution that accepts both men and women. It evokes feelings of love and trust. It is a long-term relationship in which a man and a woman are socially permitted to have children, implying the right to sexual relations. The institution of marriage allows a male and a female to live together under both customary and statutory law. [xcvii]It is a bond formed by two souls who married after promising to be together for the rest of their lives. It is the physical, mental, and spiritual union of two souls. When a man marries a woman, he owes it to her dignity to treat her with respect.[xcviii] The question now is whether marriage gives the husband the right to have sex with his wife forcefully or whether marriage takes away a woman's right to refuse to have sex with her husband. It is a contentious issue in India at the moment. Marriage instils in the wife the confidence that her husband will protect her and respect her dignity. When he engages in unwanted/forced intercourse with his wife, this confidence is shattered, and the wife's trust is violated. What protects the husband from committing rape on his wife in such circumstances?

Until the twentieth century, American and English law followed the Covertures doctrine, which stated that a woman's legal rights and obligations were subsumed by her husband’s. A married woman does not have the right to her property or enter into contracts in her name as an unmarried woman does. Marriage was viewed as an institution in which a husband exercised control over

his wife's life, with control over her sexuality only being a subset of the greater control he exercised over all other aspects of her life. The construction of adultery between a wife and another man reflected a husband's control over his wife's body. In 1707, English Lord Chief Justice John Holt described the act of a man having sexual relations with another man's wife as "the highest invasion of property." Until the twentieth century, American and English law followed the Covertures doctrine, which stated that a woman's legal rights and obligations were subsumed by her husband's. A married woman does not have the right to own property or enter into contracts in her name as an unmarried woman does. Marriage was viewed as an institution in which a husband exercised control over his wife's life, with control over her sexuality only being a subset of the greater control he exercised over all other aspects of her life. The construction of adultery between a wife and another man reflected a husband's control over his wife's body. In 1707, English Lord Chief Justice John Holt described the act of a man having sexual relations with another man's wife as "the highest invasion of property." The wife is regarded as the husband's property, and as a result, many cultures conflated the crimes of rape and adultery because both were seen as a violation of the husband's rights. The majority of significant jurisdictions have now withdrawn the immunity above. The House of Lords in England and Wales declared in 1991 that the status of married women had changed beyond recognition since Hale's proposal.Most importantly, speaking for the Court, Lord Keith stated that "marriage is now regarded as a partnership of equals, rather than one in which the wife must be the husband's subservient chattel.[xcix]" Marital rape is classified as violence against women.[c]. Changes are also needed in Indian criminal law, such as the inclusion of marital rape in Section 375 of the Indian Penal Code. Husband and wife are separate legal entities in the current Indian legal system. Women in India contribute significantly at home and outside the home. Marital rape erodes her trust in her husband. Women must also break free from social constraints and fight for justice. They must refuse to conform to the standards imposed on them as the inferior sex.

The law has adequately addressed the crime of marital rape. Rape within marriage is not punishable if the woman is over fifteen years. Non-consensual

Sexual intercourse with a person's wife who is separated or otherwise living separately is an offence under the IPC in terms of the acts mentioned in section 375.[ci] It should also be noted that marital rape occurs within the confines of the home, which is why there are often no witnesses.

**RAPE:**

One of the most heinous crimes against women is rape. It is one of the world's most horrific crimes. It is a violation of a woman's constitutional right to life.[cii] Except for marital rape, rape is a crime under the Indian Penal Code. Section 375 of the Indian Panel Code defines rape as penile-

urethral, penile-oral, or penile-anal penetration (ii) object-vaginal, object-urethral, or object-anal insertion (iii) insertion of a part of the body other than the penis, in the vagina, urethra, or anus of a woman (iv) manipulation of any part of the body of a woman for causing.[ciii]

Nonetheless, the concept of coercive non-consensual sexual intercourse in an extended form between a man and a woman in specified circumstances remains central to the crime of rape. Its essence is the slight penetration of the penis, the insertion of any object or part of the body, or the manipulation of any part of a woman's body for penetration into a woman's vagina, urethra, or anus.

The following are the essential elements of the rape offence: (i)there must be sexual intercourse with a woman by a man, as defined in Section 375(a) to (d): (ii) such sexual intercourse must occur under any of the seven circumstances: (a) against her will, (ii) without her consent, (c) with consent obtained under fear of death or harm, (d) consent given under the mistaken belief that the man is her husband, (e) consent given According to this definition, consent or will play a significant role in determining sexual intercourse as rape. It is the most critical factor in determining the accused's liability in rape. Section 375 eliminates the possibility of marital rape when the wife is over fifteen. If, on the other hand, the girl is not the man's wife and is under the age of 18, the sexual intercourse, even with the girl's consent, amounts to rape. Unwanted intercourse with an unmarried lady or married lady, except by her husband, is rape under Section 375, but what about a married lady if her husband does the unwanted intercourse?

## CONCEPT OF MARITAL RAPE

The term "rape" is derived from the Latin term "rapio," which means "to seize." Rape is thus defined as the forcible seizure or ravishment of a woman without her consent, whether through force, fear, or deception. It entails coercive, non-consensual sexual contact with a woman. Rape is an act of violence against a woman, and it is an outrage in every way. It is the ultimate violation of a woman's self-esteem. The Supreme Court of India appropriately described it as "deathless shame" and "the gravest crime against human dignity." [civ]Marital rape, on the other hand, is forced sexual intercourse by one partner against the will of the other partner. It can also refer to any unwanted intercourse or penetration (vaginal, anal, or oral) obtained through force, the threat of force, or when the wife cannot consent.

## CLASSIFICATIONS OF RAPE:

Marital rapes are classified into three types:

1. Rapes committed with only enough force to coerce the wife into intercourse are force rapes.
2. Battering rapes - Women are raped and battered by their husbands, who beat, slap, push, and use other physical and sexual violence forms.
3. Obsessive rape, like torture and other preserved sexual acts, is a form of obsessive rape. They are even putting pressure on her to watch pornography or forcing her to act like a porn star.[cv]

**STATUS OF MARITAL RAPE IN OTHER COUNTRIES:**

According to the Oxford Dictionary, marital rape is sexual intercourse forced on a woman by her husband intentionally against her will. Even one state statute, California, defines spousal rape as an act of sexual intercourse with a person who is the perpetrator's spouse and will be held accountable under any of the following circumstances:

1. This is spousal rape, which is committed against a person's will by imposing force, violence, coercion, threat, or, in some cases, fear of immediate and unlawful bodily harm on the person or another.
2. A person is intoxicated, or the accused intentionally or knowingly uses any anaesthetic or controlled substance.
3. In a situation where a person is incapable of resisting or is unconscious at the time, such as when a person is unconscious, asleep, or unaware that an act has occurred.
4. Where the perpetrator threatens to retaliate against the victim or any other person in the future by kidnapping or inflicting severe bodily harm or pain
5. The act is committed under the influence of threats made against the victim's will by a public official using their authority to incarcerate, arrest, or deport the victim or another. The victim has a reasonable belief that the perpetrator is a public official.

So, in a nutshell, marital rape is any unwanted sexual activity performed by a spouse against the desire or will of another person. Here, sexual act refers to intercourse, anal or oral sex that is done forcibly and without the consent of another, and activities that the victim regards as degrading, humiliating, painful, and unwanted.

**NEED FO CRIMINALISATION OF MARITAL RAPE:**

Marital rape has a variety of physical and psychological consequences, including injuries to private organs, lacerations, soreness, bruising, torn muscles, fatigue, and vomiting, as well as broken bones, black eyes, bloody noses, and knife wounds that occur during sexual violence.

Miscarriages, stillbirths, bladder infections, infertility, and the potential transmission of sexually transmitted diseases such as HIV are all gynaecological consequences of marital rape. Women whose partners have been raped are more likely to suffer severe psychological consequences. Similarly, some psychological effects of spousal rape include anxiety, shock, intense fear, depression, and suicidal ideation. In contrast, long-term effects frequently include disordered eating, sleep problems, difficulties in establishing trusting relationships, and victims begin to develop negative feelings about themselves.

*INDIAN SCENARIO***:**

According to the United Nations Population Fund, more than two-thirds of married women in India between 15 and 49 have been beaten or forced to provide sex. According to the International Men and Gender Equality Survey, one in every five men has forced their wife or partner to have sex. According to a report published by the United Nations, 69 per cent of Indian women believe that occasional violence is justified, such as when a meal is not prepared on time or when sex is refused. According to additional statistical research, 9 to 15% of married women are raped by their husbands. Marital rape is a common but largely unreported crime. According to a study conducted by the Joint Women Programme, an NGO, one out of every seven married women has been raped by her husband. Such non-governmental organisations (NGOs) do not frequently report rape cases because the law does not support them.[cvi]

When we look at the Indian constitution, we find equality before the law for women, or we can say that all are equal before the law.[cvii]The Constitution also instructs states not to discriminate against any citizen based on religion, race, caste, sex, place of birth, or any combination of these factors. However, when it comes to marital rape, women in India are not treated equally.

Victims of marital rape do not receive equal legal treatment. Section 375 of the Code, when it comes to rape protection, the Indian Penal Code, 1860, discriminates against a wife.[cviii] The Indian Constitution guarantees the right to live in dignity. Don't you believe a wife has the right to live with dignity? But, in the author's opinion, marital rape violates a married woman's right to live with dignity, or we can emphasise section 375 of the IPC, which contravenes Article 21 of the Constitution about marital rape.[cix] Many states have enacted marital rape laws, repealed marital rape exceptions, or have rules that do not distinguish between marital rape and ordinary rape. How does one divide a rape based on the victim's marital status? What is the difference between the rape of an unmarried woman and a rape of a woman married to the man who rapes her? Albania, Algeria, Australia, Belgium, Canada, China, Denmark, France, Germany, Hong Kong, Ireland, Italy, Japan, Mauritania, New Zealand, Norway, the Philippines, Scotland, South Africa, Sweden, Taiwan, Tunisia, the United Kingdom, the United States, and, most recently, Indonesia are among the countries mentioned above.

In Turkey, marital rape was criminalised in 2005, Mauritius and Thailand followed suit in 2007. The criminalisation of marital rape in these Asian and global countries indicates that marital rape is now recognised as a violation of human rights. The year was 2006.[cx]

It is estimated that marital rape is a criminal offence in at least 100 countries, but India is not one of them. Even today, marital rape is common in India, concealed behind the iron curtain of marriage.

Without a doubt, the Hindu religion and marital life in India grant the right to have sex with a wife. Even though Hindu religion and literature emphasise purity, cleanliness, and good faith behaviour in marital life, it cannot be said that Hindu religion and traditions exempt the heinous act of raping to wife. In married life, sexual intercourse is an ordinary course of behaviour based on consent. No religion will ever accept it as a law because the goal of good faith is not to cause hatred or loss to anyone. [cxi]

- In its 172nd Report on 'Review of Rape Laws,' the Law Commission of India and the National Commission for Women have both recommended harsh punishment for rape. According to the report, sexual intercourse between a man and his wife who is not under sixteen is not considered sexual assault. The commission was also opposed to removing the exception to Section 375. [cxii]
- The Protection of Women from Domestic Violence Act of 2005 only established a civil remedy for marital rape rather than criminalising it.[cxiii]
- The Indian government established the Justice Verma Committee on Anti-Rape Law to strengthen anti-rape legislation after the rape of a twenty-three-year-old student in Delhi on December 23, 2012; a committee comprised of retired Justice J.S. Verma, retired Justice Leila Seth, and Solicitor General Gopal Subramanian was formed to investigate potential changes to criminal laws relating to sexual violence against women.[cxiv] Given the importance and urgency of the task, the committee agreed to complete it within 30 days, which it did. The Committee is aware of the recommendations made by the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) in February 2007 regarding India. The CEDAW Committee has recommended that the country "expand the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and eliminate the exception of marital rape from the definition of rape."
- According to the Verma Committee report, 18.8 per cent of women have been raped by their partners on one or more occasions. According to reports, marital rape has become a myth, with many people believing that it is not rape. [cxv]This recommendation of the Justice Verma Committee to delete the exception for marital rape was not included in the

Criminal Law Amendment Bill, 2013, which the Lok Sabha passed on March 19, 2013, and by the Rajya Sabha on March 21, 2013. The Bill received Presidential assent on April 2, 2013, and is slated to effect on February 3, 2013. In Section 375, the word rape has been replaced with sexual assault.[cxvi]

- The UN Special Reporter on Violence Against Women, Rashid Manjoo, stated that the Justice Verma committee's recommendation and subsequent legislation was a "golden moment for India." Still, the legislation did not include recommendations on marital rape, age of consent for sex, and other issues.
- The government is hesitant to criminalise marital rape because it would necessitate changing laws based on religious practices, such as the Hindu Marriage Act 1955, which states that a wife is obligated to have sex with her husband.
- According to the parliamentary committee examining the Criminal Law (Amendment) Bill, 2012, "For centuries, the family system in India has evolved. Family is capable of resolving (marital) issues, and there is also a provision in the law for cruelty to women. As a result, it was concluded that if marital rape is made illegal, the entire family system will be put under great strain, and the committee may end up doing even more injustice and breaking the Indian marriage system.
- According to the Research Institute for Compassionate Economics, 98 per cent of rapes against women are committed by their husbands. Independent Thought filed a writ petition in 2013 claiming that Section 375 is a flagrant violation of Articles 14, 15, and 21 of the Indian Constitution. The age of consent for any sexual relationship should be eighteen regardless of the girl child's marital status.
- Furthermore, the Criminal Law (Amendment) Act of 2013 examined the current situation and raised the age of consent for sexual intercourse by girls from 16 to 18 years. However, the age of consent for a married girl is still listed as 15 years.
- This begs whether marriage in India is, among other things, a contract for legal sex in which a man does not need to ask permission and is free to impose himself on the wife. "I once got an alarming case where the woman was so traumatised that the child born out of wedlock reminded her of the brutality of her bedroom," Anuja Shah, an online senior family therapist at e-Psy-Clinic, explains. She continues, "When a man marries, he believes that any type of sex he has with his wife is customary. He believes that even if he coerces his wife into having sex, it is not rape. And in most of these cases, I've noticed that there is some form of torture or physical abuse in the marriage. Marital rape means that the husband is insensitive to his wife. According to the data, 8.5% of the surveyed women (one in every twelve) have experienced sexual violence. Almost 93% of these

women reported being sexually abused by their current or former husbands, while only 1% said being sexually abused by a stranger.

If marital rape is legalised, women whose husbands sexually assault have little hope of justice. The law's exception must be repealed as soon as possible, as the Justice Verma Committee recommended in 2013. According to the committee, the "relationship between the accused and the complainant is irrelevant to the inquiry into whether the complainant consented to the sexual activity." In India, the burden of proof of consent has shifted to the accused. These provisions are significant for women facing sexual violence within marriage because married women are more likely to face social repercussions for reporting violence. Furthermore, Section 498A's "definition of cruelty by husbands and in-laws" specifies only mental and physical abuse. Sexual abuse would be included in an amendment.

**Human Rights Violations and Marital Rape:**

As stated in the Indian constitution under Article 21, which discusses the right to life, the right to life is also granted to women. According to a recent Gujarat High Court decision, a husband who forced himself on his wife received a clean chit. The High Court decision legalises marital rape and violates a woman's right to her own body and mind. According to one WHO studies, approximately 12% of sexually abused women are abused by their husbands during pregnancy. On the other hand, a marriage does not imply that women must become enslaved. As a result, marriage does not deprive women of their human rights. As long as a person is a human being, they have the right to exercise those inalienable and natural human rights. To say that a husband can rape his wife after marriage is to deny independent existence, the right to live with dignity, and the right to self-determination. Any act that results in the non-existence of women hurts women's self-esteem and infringes on women's right to independent decision-making in the modern world; instead, it is a stone-age thought. Forcing a woman to use a body organ against her will is a serious violation of her right to live with dignity, her right to self-determination, and an abuse of her human rights. The Constitution guarantees the right to privacy. As a result, it is impossible to say that marital rape is permissible in light of those international human rights instruments.

**IN INDIAN LAW, LACUNAE**

- Section 375 of the IPC violates Article 21 of the Constitution and broadens the Right to Live with Dignity scope.[cxvii]

- Article 14 of the constitution guarantees a fundamental right that the state cannot deny. Still, the exception under Section 375 of the Indian Penal Code, 1860, discriminates against a wife regarding rape.
- According to various statements made by our judiciary that having sex with his wife is a married right of the husband, this implies that having sex with anyone, at any time, anywhere, and under any circumstances is a marital right.
- Another enigma in the IPC is how non-consensual intercourse with a wife aged 12-15 years can result in a light punishment.[cxviii]

**CONCLUSION:**

Rape is a heinous crime committed against a woman, so it makes no difference whether the women are married or unmarried. Rape is rape, whether a husband or a stranger saves it. It is such a pity that the law assumes that in a marriage, the wife has consented to provide all types of matrimonial obligations or services to her husband, including sexual intercourse, which she cannot later deny. In cases where men assault their wives, India must learn about gender equality rather than enduring the abuse in silence. There is a need to understand that marital rape is no longer a taboo subject that should be discussed behind closed doors.

Certain vows about trusting each other's dignity are exchanged during religious weddings. As a result, criminal law cannot turn a deaf ear to societal injustice and inhumanity. The lawmakers must recognise that if the sanctity of the constitution is to be preserved, the dignity and honour of women must be vindicated; otherwise, the concept of the right to equality enshrined in our form will remain a dead letter if women in our country do not have any control over their bodies and do not have the option of exercising their own choices regarding sexual relationships in marriage.

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**CHAPTER 14**

# Russia-Ukraine War: A Study into Relationship between Nations, International Law and Violations

Megha Middha

Research Scholar, Department of Law, Mohanlal Sukhadia University, Udaipur

meghamiddha123@gmail.com

Pooja Singh

Assistant Professor, School of Law, Mody University of Science and Technology,

Lakshmangarh

christmas.pooja@gmail.com

***Abstract***

The countries around the world strive for peaceful relationships with each other. Many International Conventions and national statutes prescribe for international peace and friendly relations. International Law is an important source governing the relationships of one state with the other. If one state does not abide by the International Law, then there are various sanctions encapsulated; and through this, the state which is at fault has to suffer, thereafter. The aspect of international peace around the globe is important to be highlighted as every now and then, there have been disputes among countries over various issues and they have been indulged in some or the other kind of attacks towards each other. Whether it is India Pakistan dispute, Taliban-Afghanistan disputes, Israel-Palestine, Indo-China or the most latest one i.e. Russia-Ukraine, all have been fighting with each other over the boundary disputes. The present article focusing on Russia-Ukraine war, shall discuss in detail the violations of International Law that occur during the wars and the sanctions which are imposed upon the country violating the International norms. The article shall try to analyze if the actions by Russia against Ukraine have been justified; the kind of sanctions which have been imposed upon Russia by various countries shall be discussed at length. The article shall also try to identify the role of India in Russian-Ukraine conflict. The paper shall be based upon secondary data. Various International Conventions and articles shall be looked into and analyzed to study the international relations and the wars.

**Keywords:** International Law, War, Russia, Ukraine, Sanctions, UN

## I. INTRODUCTION

Peace is something every nation seeks for. But at the same time, for some nation states, it is not just the peace which it looks for but rather countries today want to be the most powerful nation states in the world. Having this aim of being powerful is not wrong but in the garb of being powerful, the measures that it takes to become powerful, that is of paramount importance. Article 51 of Indian Constitution promotes international peace and security by maintaining friendly relations with the other countries. It also provides that nation should abide by the principles of international law. United Nations was also established after the World War II to maintain peace all over the world. But unfortunately, despite of the efforts to attain peace, there are countries that try to violate the international norms and indulge in war-like situations. There are many countries across the globe that is facing boundary disputes with other nation states. But the Russian-Ukraine dispute which this paper is highlighting upon has taken a drastic turn, thereby resulting into war and in turn raising the suspicions are we heading towards World War III?

The research article is based upon Secondary data and descriptive study has been done to reach to the findings. The news articles and scholarly articles have been looked into to study the Russian invasion into Ukraine. The study analyses the following points-

1. Reasons of wars and what steps are being taken by international institutions and organizations to stop this war.
2. The study tends to analyze the stand of India in this war.
3. Also, the role played by United Nations is dealt with in the article.
4. Finally, the article tends to analyze the loopholes existing at international level that makes countries to violate the International norms and law.

## II. INTERNATIONAL RELATIONS: MEANING

According to Aristotle, man is a social animal by nature; and due to this he can't live in isolation. He has to depend upon other beings for existence. In the same manner, states are also not self sufficient and therefore, depend upon other states for various resources. This dependency of one State upon other involves a kind of relationship that exists between the two states and that is referred to as 'international relations'. International relations can be considered as a branch of Political Science which deals with the relations among the foreign states, the foreign policies of

nations and the institutions through which they interact. International Relations cover a wide array of subject matters like peace and security around the globe, international trade relations, various organizations at international level, etc. Many different writers and scholars have defined the tern international relations but a good working definition of IR has been provided by Harold and Margaret Spouse, which states that, "those aspects of interactions and relations of independent political communities in which some element of opposition, resistance or conflict of purpose or interest is present."

There have been two views, i.e. one traditional view which discusses the concept of international politics and the current view dealing with international relations. The traditional view basically involves and considers that the nation states are the main actors in the politics whose politics and official relations are focused upon. The definition of Morgenthau deals with the problems related to power and peace. According to him, "international relations is a struggle for, and use of power among nations." Burton, on the other hand, explains and defines International relations as a kind of communication among the states which are peaceful and wherein, the states try to avoid any kind of conflict that may arise. The traditional view of international politics is now replaced by the current view of international relations, as it covers so many other aspects which were not covered under the old concept. The current concept of International relations covers the role of International institutions, peace and power relationships etc. (Gahatraj) Also, a huge political shift was observed after the Second World War; wherein the world politics was divided into two parts i.e. NATO that was led by USA and another was Warsaw Pact which was led by USSR. When the Soviet Union collapsed in 1990, there was single polarity in the world. But now there are many countries which are slowly and gradually emerging and growing economically, thereby taking the shift towards multi polar nature. (Biswas)

International relations can be considered to be a kind of interdependency of one state over the other for various reasons. It was after World War –I that the International relations emerged as a separate academic discipline. The decree on the peace of the Soviet Union is an important document regarding the concept of International Relations. (Decree on Peace). Similar another important document dealing with international peace and relations is the "Fourteen Points Speech" given by President Woodrow Wilson in 1918. (Wilson, 1918)

The present article shall discuss the tensions which are prevailing between Russia and Ukraine and the legal violations that have been made in this war and the various sanctions that have been imposed. The importance of international peace shall be discussed in the further sections.

## III. INTERNATIONAL RELATIONS THEORY

There are various theories that are linked with International Relations concept. The traditional theories associated with the concept include liberalism and realism. Liberalism is also known as 'utopian' theory in IR. The proponents of this theory believe that peace and harmony between the nation-states is not something which is achievable; rather it is desirable among the states. According to Immanuel Kant, the states that share common liberal values don't generally go for war. The liberal states only desire for peace. In parlance to same, League of Nations was formed when President Woodrow Willow delivered his famous "Fourteen Points Speech". The main objective behind the establishment of League of Nations was to attain peace at global level. It was only after the League of Nations collapsed and Second World War took place that the ideas of liberals were replaced by the Realists. Realists tend to see the reasons and historical background of the conflict. They used to see that if two nations are at peace then what is that in the history that led them to have conflict again. According to Thomas Hobbes, who propounded the 'social contract' theory, stated that a contract exists between the sovereign and the subjects and the subjects are bound by the rules of sovereign but not such concept exists when it comes to international level. Thus, in this scenario, the nations tend to involve in conflict like situation, thus, leading to wars. Unlike liberals who considered peace to be desirable, realists believe war as inevitable.

Another theory which is considered to be taking a middle path of both liberals and realists is Constructivism theory, which is the thinking of English schools. According to this theory, though the system at international level may be anarchic, but the fact cannot be denied that the system is guided by rules and norms. After this, is the critical approach which includes the thoughts of Marxism, Post colonialism etc? According to Marxist theory, there are certain strata of people who have been divided and segregated in the international scenario and are often ignored. Post colonialism highlights the inequality that exists between various nations. Feminism is also one such theory which is a part of inequality in international relations. (Glinchey, 2017)

Post Second World War and after the collapse of League of Nations, United Nations came into picture. It functions as a mediator between the member states when issues and conflicts arise between them. It not only maintains peace but also help in upholding the human rights and in the development of nations. United Nations plays a major role in influencing the head of the State and also, helps in preventing violence.

## IV. INTERNATIONAL RELATIONS AND WAR

While each state is maintaining different relations with the other State. Some are at peace and have maintained friendly relations with one another while there are many who are ready to wage war against the other and then there are some who have already initiated the war against the other. A Prussian General and Military theorist Carl von Clausewitz in his philosophical work 'On War' (1832) stated that war is not any act of policy by any State rather it is a political instrument which is used by a State. (Clausewitz and 'New War' Theories). According to Clausewitz, the wars have a political purpose to them. This theory of Clausewitz is very much relevant to the wars that happen between the countries like Afghanistan, Syria, Russia and Ukraine. The present paper shall focus on the Russia-Ukraine War and the laws incidental to it.

Article 1 of the U.N. Charter states that there should a mechanism for settlement of disputes which exist at the international level. (Article 1, United Nations Charter). The purpose behind the same is to maintain peace around the world. The Charter provides basis for the States to maintain amicable relations with each other. Article 33 of the Charter provides that the conflicts should be prevented and a peaceful settlement ought to be brought among nations. In cases of armed conflict among nations, it is the primary responsibility of the United Nations to protect the civilians. (Rule of Law and Peace and Security).

## V. THE 'WHY' OF RUSSIA-UKRAINE WAR-

Over the years, many nations, including Russia, Austro-Hungarian Empires, Poland, Lithuania, etc. have exerted jurisdiction over Ukrainian territories. It was in 1917 that Ukraine, through the formation of Ukrainian People's Republic got independence. After some time, Russia asserting control over Ukraine made it a part of Soviet Union which continued till World War II till the time Germany launched attack. (Sengal, 2022). Ukraine was considered to be a breadbasket for Europe as it was one of the most powerful nations of USSR. (Goshwami, 2022)

After the disintegration of Soviet Union, Ukraine and Russia maintained good ties. In 1994, a treaty was signed by Ukraine to become a non-nuclear weapon state and consequently, the nuclear weapons were destroyed by the Russians and removed from Ukraine. (Non-Proliferation Treaty ). In return to this action of Ukraine, countries like Russia, U.K. and U.S. agreed to consider the political independence and territorial integrity of Ukraine and this was done by signing a memorandum known as Budapest Memorandum on Security Assurances. (22ht). Russia was also

a member to Charter for European Security wherein it agreed that the participating states are free to choose their security arrangements. Though after some time, revolts started which is said to be the result of 2004 elections of President, wherein the opposition member was poisoned. It was suspected that there was involvement of Russia. Slowly and gradually many protests began and Russians military forces began to view these protests as undermining the security of Russia.

In 2010, Yankovych became the President of Ukraine and there were huge protests against him in 2013, because the President chose to have closer ties with Russia and decided not to sign the EU-Ukarine Association Agreement. Then, Yankovych in 2014, fled from the country as impeachment vote was passed against him. Then, later he was found in Russia where in a press conference he declared himself to still be the acting President of Ukraine and at the same time, Russia was beginning an overt military campaign in Crimea. It was in February 2014 that Russia started annexing Crimea. It first targeted the Parliament of Crimea, captured it and raised the Russian Flag. After this, Russia launched cyber attacks against Ukraine wherein the mobile phones of the Ukrainian officials were accessed to. On 15th April, Ukraine had to declare and state that Crimea has become a territory being temporarily occupied by Russia. In the same manner, the Russian invasion into Crimea got gradually expanded. There has also been a dispute between Russia and Ukraine over Kerch Strait in 2014. This Strait provided a kind of link between in the eastern ports of Ukraine, i.e. Azov Sea to Black Sea and Russia occupied a *de facto* control over this part as well, restricting the movement of Ukrainian vessels. The dispute in this matter became serious. There has been continuous conflict going between the two countries. In 2019, when Volodymyr Zelensky took over as the President of Ukraine, he promised to end the tensions and the war that has been taking in Ukraine region, Donbas. Again in 2021, it was being anticipated that Russia is going to wage war against Ukraine but it continuously denied the same. Before the period when Russia actually invaded Ukraine, there were accusations by the officials of Russia that there was repression and suppression of Russian speaking people in Ukraine. Even in February 2022, Russian President Vladimir Putin questioned upon the legitimate statehood of Ukraine and stated the denial of any statehood status to Ukraine. He did not stop here and falsely accused Ukraine of being dominated by Neo-Nazis, thereby trying to raise anti-Semitic conspiracy theory. Anti-Semitism is a kind of racism wherein the Jews are discriminated. Russia also does not want Ukraine to become a part of NATO. On February 2022, Putin declared Donetsk and Luhansk to be recognized a people's republic. It was finally on February 24, 2022 that Russia invaded into Ukraine and Ukraine ordered Martial Law in the country.

Russia's annexation of Crimea is also considered to be breach of Budapest Memorandum and the security assurance that was promised to Ukraine over the Non-Proliferation Treaty. (Budjeryn).

The statements of Putin regarding the invasion into Ukraine do not find any strong base as according to Putin, he wants to demilitarize and de-Nazify Ukraine but President Zelensky states that he is a Jew. There are so many grounds which Russia states for invading Ukraine but all seems to be vague. (Kirby, 2022).

## VI. VIOLATION OF LAWS AND RUSSIA-UKRAINE WAR

Article 2 (4) of UN Charter has been violated in the Russia-Ukraine War. The provision requires that the member states of UN shall not use force against the territorial integrity and political independence of any state. (Article 2 (4) United Nations Charter). Though Russia claims, that its actions are justified under Article 51 of the Charter, which states that any member state of UN if has any armed attack on it, it will have the right of self defense. But, Ukraine had no intention or has not threatened to attack Russia and if Russia proves that Ukraine has intended to attack Donetsk and Luhansk, still its act under Article 51 of the Charter would not be justified as both Donetsk and Luhansk are not members of UN. (BellingerIII, 2022). Putin accused Ukraine of committing genocide upon Russians in Donetsk and Luhansk regions. But even the Genocide Convention, defines Genocide as a specific activity which tends to destroy a whole ethnic or religious group, (The Geneva Convention Office on genocide Prevention and the Responsibility to Protect) and there are no evidences and proofs regarding the same that Ukraine was trying to do any of the prescribed act. In addition to this, the act of Russia declaring the above two as independent regions was against the norms of international law which govern sovereignty and territorial integrity. Also, the intervention by Russia in case of Genocide must be first approved by UN Security Council; only then such act of intervention by it can be considered lawful and in consonance with the International Law. (Ulfstein, 2022). Russia has in 2008 rejected the view of Kosovo being independent from Siberia, on the other hand 97 other UN members accepted Kosovo as independent state. It also declared two regions of Georgia as independent states in 2008, i.e. South Ossetia and Abkhazia. (BellingerIII, 2022). Putin while stating the Ukraine's statehood as false and not genuine; rather fiction; has violated Article 2(1) of the UN Charter. Russia can also not justify its actions on the test of 'necessity' and proportionality. The concept that Russia tried to invoke of 'anticipatory self defense' is not recognizable in International Law. (Jaswal, 2022). Russia has not itself restricted to the armed bases but has also made civilians as its target, thereby causing humanitarian law violations. Geneva Convention IV specifically deals with the protection of civilians (Geneva Convention Relative to the Protection of the Civilian Persons in the time of War) and Article 51 (5) (b) of the Additional Protocol I prohibit all such

attacks that have a direct and indirect impact on the civilians. (Protocol Additionalto the Geneva Convention of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977). Both the parties are also signatories to Universal declaration of Human Rights, International Covenant to Civil and Political Rights, European Convention on Human Rights, etc. and therefore, violation of the fundamental rights of human beings have taken place in the Russian invasion into Ukraine. (Jaswal, 2022).

The question may also turn up if International Criminal Court (ICC) can hear the matter for the aggression of Russia in Ukraine. Prima facie, the answer is no. Because of the statutory limitations, the matter cannot be heard by the Court as only the countries signing the Rome Statute shall have the jurisdiction of the Court and Russia is not a member to this Statue but Ukraine agreed to the Court's jurisdiction and even asked that the crimes which are mentioned in Rome Statue, if committed from 2014 onwards in Ukraine, the Court will have the jurisdiction to look into the same. (Franzen, 2022). But still the matter is controversial if ICC will have the jurisdiction for the aggression used by Russia over Ukraine.

## VII. SANCTIONS UPON RUSSIA

Sanctions are kind of penalties which are imposed by one nation state over the other in case of violation of international norms. Russia has also been imposed with sanctions by many states. Many countries have condemned this invasion of Russia into Ukraine. During the annexation of Crimea also, various sanctions were imposed upon Russia. This time, more countries have participated in imposing sanctions. Singapore on February 28, 2022 became the first South east nation countries to impose sanction upon Russia. It imposed banking sanction. EU also imposed sanctions over the Russian politicians. The access to the EU capital market was also cut off by the sanctions upon Russia. The foreign exchange reserves of Russia held in EU have also been blocked. (EU Sanctions against Russia following the invasion of Ukraine, European Commission). Council of Europe has also recently suspended the participation of Russia in its Committee of Ministers. (BellingerIII, 2022). US has also imposed sanctions over Russia and stated that no investment shall be made it in Russia. Sanctions have also been imposed upon the government officials of Russia and their families which include the family of President Putin and Foreign Minister Sergei Lavrov's relatives. In addition to this, UK has also committed to stop all its imports by the end of 2022 from Russia, whether it is the coal or oil import. Sanctions have been imposed upon the largest bank of Russia, i.e. Sberbank. (What sanctions are being imposed on Russia over Ukraine invasion?)

The sanctions do not end here; Russian flights have been banned from the airspace of some countries, including US, UK, EU and Canada. Private jets from Russia have also been banned by UK. The export of luxury goods from EU and UK to Russia has also been banned. Sanctions have also been imposed upon the oligarchs.

Imposing the sanctions is not an easy task. The economies of countries around the globe are being hit hard by the sanctions imposed. The world has yet not emerged from the economic crisis suffered during COVID and the Russian invasion and sanctions have only worsened the situation. World Bank has turned up in the support of Ukraine, thereby financing the people of Ukraine in myriad ways. (Russian Invasion to Shrink Ukraine Economy by 45 percent this Year, The World Bank, Press Release No. 2022/ECA/79).

## VIII. Role of India in Russia-Ukraine War

Ukraine has been seeking for help from various nations to stop Russia from continuing the war. President Zelensky requested Indian Prime minister as well to have interactions with Russian President Putin and try to solve the issue and bring peace to Ukraine. India has been avoiding in taking sides in this matter. India also abstained from the resolution that took place by the UN Security Council. Russia has been providing India with the defense purchases and India has also been consuming Russian oil. (Mazumdaru). India saw its priority in first evacuating the large number of Indian students trapped in Ukraine. Former Indian Diplomat Mr. Triguniyat as stated that India has adopted a balanced approach. According to Mr. Triguniyat, India has not turned blind eye to the plight of Ukraine people and has rather talked about the territorial integrity in the UN Security Council. (Pandey, 2022). India has ties and good relations with both the nations as India also gets gas turbine engines from Ukraine. India's response can also be justified as its primary responsibility is also the security and protection of its citizens, as Putin is also a friend to China. Russia is China's neighbor and any statement by India against Russia can prove fatal for the Indians, as there are already tensions prevalent between India and China over border issues. (Kamal, 2022).

## IX. Role of UN in the War

United Nations is an international body with various member countries. UN Security Council is one of the powerful organs of the United Nations. The Council is made up of 15 representative

states and out of 15, five are permanent members having the power of veto. In February 2022, President Putin announced a special military operation in Ukraine. The Security Council asked Russia to withdraw its troops from Ukraine but it defied the decision of the Council and vetoed the resolution. Due to this very reason, United Nations had to face a lot of criticism from the states around the world. The question then is what should be done in such circumstances. When Security Council is not able to reach to a conclusion, the matter can be referred to General Assembly. But the problem with General Assembly is that it does not have a legal sanction as that of the Security Council. When the matter is referred by the Security Council to the General Assembly, the veto does not apply. The Human Rights Council is the other body of the United Nations which has played a role in Ukraine war. It has investigated the human rights violations that have been taking place in Ukraine. Ukraine is also trying to seek the help of International Court of Justice, another organ of UN. There have been instances when UN Security Council has succeeded in maintaining peace during such tension-like situations. (Inglis, 2022).

## X. CONCLUSION

Russian invasion of Ukraine has destabilized the peace across the globe. The invasions have also impacted the civilians of Ukraine and the economy of the world. Every country is condemning the actions of Russia. The invasion seems to be unlawful and in violation of International Law. It was correctly remarked by Holland that International law is the vanishing point of jurisprudence, since it is easily violated by the nation states and there is no authority to enforce it. There exists UN Security Council but that also seems to be helpless in this Russian invasion to Ukraine as Russia is the permanent member of UN. The saddening point is that even after so many years the situation has not improved with respect to International Law. Though amendments are done in the national laws from time to time but nothing is done with respect to International norms. Learning from the experiences of Russia-Ukraine war, it is high time, that some changes are required at the international level so that in a situation like today, where Russia has veto power and no action can be taken against it by the Security Council, should not arise in near future. If this continues, then the time is not far that all powerful countries shall be attacking the weaker ones and start annexing the territories. General Assembly should come up with some alternative where this veto power should be done away with; only then the wars by nations which are in violation of International law can be stopped. Henceforth, what is required is modifications at the international scenario so as to able to achieve the objective of United Nations i.e. peace and security. United Nations was established for this very purpose only after the Second World War

ended. Therefore, in parlance to this important objective, steps are required to be taken and International Law should emerge as a strong law and not remain as a vanishing point of jurisprudence.

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**CHAPTER 15**

# Climate Change and Human Health: Risks and Impacts

Navna Singh, Research Scholar, School of Law, Mody University of Science and Technology, Lakshmangarh.

e-mail: navnasingh@gmail.com, Ph. No.- 9530196706.

Sangeeta Jakhar, Research Scholar, School of Law, Mody University of Science and Technology, Lakshmangarh.

e-mail: sangeeta.jakhar44@gmail.com, Ph.No.- 7339967149.

## ABSTRACT

Fresh air, food, water, shelter are important aspects for the healthy living of the human beings but unfortunately the changing patterns in climatic conditions has deteriorated the quality of healthy atmosphere. Climate and weather have a huge impact on human health. Environment is affected by the changes in climatic patterns and weather extremes.

Climate change, together with other natural and human-made pollutants, threatens human health and well-being in numerous ways. It can affect people's health and well-being in many ways like pollution, toxins, and allergens in the environment which are causing an increase in respiratory and heart health issues, increased rate of food and water based water diseases, and mental health issues. Illness from increasingly frequent extreme weather events, such as heat waves, storms are common these days. Along with climate change, there is change in the range of disease-carrying insects, such as mosquitoes, ticks, and fleas that transmit Virus, dengue fever, malaria etc. to humans. This paper highlights the main causes and impacts of climate change and how it risks human health. It also focuses on the responsibilities of individuals towards curing the climate and needs to estimate the emerging threats to health.

**Key Words:** Climate Change; Environment; Human Health.

# 1. Introduction

Climate can be defined as the average weather conditions in an area over an extended time interval usually in decades. Climate contains info about average rainfall, sunshine and average temperature in different seasons.

Climate is the pattern of variation in temperature, humidity, atmospheric pressure, wind, precipitation, atmospheric particle count and other meteorological variables in a given region over long periods. A region's climate is generated by the climate system, which has five components: atmosphere, hydrosphere, cryosphere, lithosphere and biosphere (Sondhi, 2020).

## 1.1 Climate Change

The United Nations Framework Convention on climate change (UNFCCC) defines Climate Change as “a change of climate which is attributed directly or indirectly to human activities that alter the composition of the global atmosphere and which are in addition to natural climate variability observed over comparable time periods (Kuh, 2017).”

Change in climate can be defined as any systematic shift in long term statistics of an area in precipitation, temperature or wind. It reflects changes in the variability or average state of the atmosphere over time scales.

Earlier the long term shifts in climate were natural due to various factors like earth's rotation, variations in sun energy, changes in earth's absorption power and volcanic activities. But now they are mainly due to human activities. In fact scientists believe that human activities are responsible for more than 90% of climate change.

## 1.2 Causes of Climate Change

Radical environmental changes can be seen due to global warming and greenhouse effects of harmful gasses. The uncontrolled burning of fossil fuels due rapid changes in lifestyle and industrial revolution in the last hundred and fifty years has impacted the environment to such a level that many worry if it is even possible to reverse the effects. The ever increasing demand of energy and transport whether its cargo or human has led to a globe full of heat trapping gasses. These gases are the reason for all the changes in our environment and we humans are the main reason for these gases. The heat waves reflected from the Earth are trapped by these gasses resulting in more heat in our atmosphere and thus causing Global Warming. In fact Global warming and climate change are synonyms for today's date.

There are a number of causes of global warming, typically the causes which lead to more greenhouse gases in the environment. These gases include carbon dioxide, methane, water vapor, nitrous oxide and some synthetic gases which contain fluorine. The biggest contributor is the burning of fossil fuels like coal, petroleum and natural gas. Most of the power generation is done by using fossil fuels and this adds a lot to global emissions. Another big fossil fuel consumer is the ever increasing vehicles and transport. Manufacturing of goods and industry are other big contributors to global emissions. Along with carbon dioxide these industries also release various other harmful and pollutant gases. Industry itself needs large amounts of power which is produced in house mainly using fossil fuels. Cement industry alone contributes around two percent of total carbon dioxide emissions (Jones and Sullivan, 2020).

Rapid Deforestation for more agricultural land, expansion of cities etc. is becoming a barrier in natural recycling of greenhouse gasses. Agriculture activities also lead to more global emissions as oxides of nitrogen used in fertilizers are 300 times more potent than carbon dioxide in trapping heat waves. Also food production is increasingly dependent on farm machinery mainly using heavy oils. Even food packaging and distribution also contributes a lot to global emissions. Animal rearing produces methane which is 30 times more powerful greenhouse gas than carbon dioxide. Mining industry is also one of the biggest contributors of global emissions.

There are also many natural causes of climate change. Volcanic eruptions are one of the main natural carbon dioxide contributors to the environment. Along with CO2, volcanic eruptions add a ton of ash and pollutants in the air resulting in changes in environment (Gilfillan, 2017), which is resulting in climate change. Solar variation or the sunspots are other major natural causes formed due to storms on the outside layer of the sun driven by its magnetism emitting a lot more light and heat waves which drastically affects the temperature on earth (Centre for Disease Control & Prevention(CDC),U.S.). Other factors affecting climate change are earth's eccentricity and axial tilt, Ocean currents etc. Natural forest fires are also increasing due to low precipitation which is in addition to global emissions.

## 1.3 Effects of Climate Change

Effects of climate change are already being seen, heat waves and rise in temperature are regular news stories. In fact 2020 has been the hottest year on record. Heat waves and high humidity are frequent affairs now which are a great threat to human health. While heat waves with low

humidity lead to more forest fires. Temperatures will continue to rise with more hot days in the year and a few very cold days. The mortality rate from heat waves is far higher than other natural calamities.

Precipitation levels have been affected greatly by global warming as wet seasons see more average rainfall then before and dry seasons are getting more dry. This affects the general vegetation and forest cover of an area. There are more storms, landslides and floods every year costing billions of dollars. Tropical cyclones are increasing not only in number but also in their intensity bringing in more devastation every time. Droughts are also increasing as higher temperatures lead to more evaporation, thus areas with less rainfall are scarcer of water more than ever before.

Global sea level has risen by about 5-8 inches since recordkeeping started around 1880's and is projected to rise about 8 inches more by 2100 (United States Environmental Protection Agency, 2017). This poses a serious threat to the cities near the ocean as they are prone to more floods during the high tides. Also global emissions lead to more acidification of seawater as they absorb more carbon dioxide from the air.

Melting of icecaps is one of the general headlines in our news. Scientists believe if emissions continue we may have an ice free Arctic Ocean near the mid-century and many species will disappear forever (Jayawardhan, 2017).

## 1.4 Effects on Health

The condition of our planet affects our health in one way or another. Health risks caused by climate change are increasing every day according to the new UN report. There is a need to draw attention to ways in which the health of the planet affects human health and well-being. The people in developing countries are most likely to be affected but people of developed nations are not safe either. The whole world will feel the impacts sooner or later. The health risks involved are as follows-

**1.4.1 Thermal Impacts-** Global warming will lead to more severe heat waves and prolonged summers which will cause more deaths and heat related illness. Urban areas are more affected then the rural counterparts. Extreme heat can cause heart attack, dehydration and other cardiovascular and respiratory diseases.

**1.4.2 Air Quality-** Air quality is largely affected due to emissions and results in many diseases.

Asthma being the most well-known of among the diseases caused by polluted air. Shift in climates can cause asthma attacks more likely and even other respiratory disorders.

Increase in ground level ozone is one of the biggest concerns. As warm stagnant air leads to formation of more ground level ozone, a pollutant and component of smog, more people are led to premature deaths and illness. Ozone causes acute inflammation in lungs, damages lung tissues thus reducing lung function and increasing asthma attacks. Particulate matter greater than 2.5 ppm in air is very harmful for lungs and is mostly the result of burning fossil fuels. Exposure to this polluted air for long can cause various cardiovascular diseases including lung cancer (Marabito, 2022). Smog mainly in winter seasons is a very serious health hazard. Increasing Wildfires also leads to smoke clouds which travel to long distances thus polluting air. Pollen allergies are very common affecting a large number of people and the seasons are prolonged due to climate changes (Sharma, 2012).

**1.4.3. Extreme weather** - Extreme events like flooding, droughts and storms are on the rise. They have devastating effects during and even after the calamity. Roads and bridges get damaged bringing halt to essential services. Food, water scarcity in the areas hit is often seen. Contaminated water in drought hit areas is the only source of water sometimes. Mental trauma and gastrointestinal illness increase due to such factors.

**1.4.4. Vector borne diseases-** Mosquitoes, ticks and flies are some of the vectors which carry a host of bacteria, viruses and protozoa from animals to humans. Mosquitoes in flood affected areas carry viruses like malaria and dengue, they thrive on waste waters. Ticks that carry lyme disease get activated early due to rising temperatures and also have their range extended towards north with each passing year.

**1.4.5. Water borne diseases-** Increasing temperature can alter the bacteria vibrio vulnificus to grow at different times in a year and at different places. Research shows a direct link between increasing temperature and diarrhoea. Runoff and storms with excessive rainfall will lead to contamination of water bodies and increase in salinity of the sea which cause increasing exposure and risk of water-borne illness (United Nations, 2017, Climate Change Impacts).

**1.4.6. Food safety-** Food safety and distribution is highly affected by changing weather conditions. Salmonella infection and other bacteria thrive in warm environments thus causing gastrointestinal distress and in some cases death. Also, a warm environment leads to growth of

many pathogens. Fungus and weed growth is greatly affected by climate. Sea surface water contains more mercury in a warm environment which gets passed to humans through seafood.

**1.4.7. Mental health -** Any change in surroundings directly impacts the behaviour, health and thoughts of Human being. Severe impacts of climate change can lead to forced migration of people, leading to a complete change in their lifestyle. The trauma of natural calamities affects mental health greatly (WHO Report, 2018).

## 2. Environmental Laws in India

The milestone for India in the journey of environment protection is the *UN Conference on the Human Environment* (Stockholm, 1972). Under the influence of this declaration, the *National Council for Environmental Policy and Planning* within the Department of Science and Technology was set up in 1972. This Council later evolved into a full-fledged *Ministry of Environment and Forests (MoEF)* which today is the apex administrative body in the country for regulating and ensuring environmental protection. After the Stockholm Conference, in 1976, constitutional sanction was given to environmental concerns through the 42nd Amendment Act, 1976, which incorporated them into the Directive Principles of State Policy and Fundamental Rights and Duties.

Though India already has several substantive laws for prevention and/or regulation of any activity that may cause climate change, including:

- Setting up of the National Council for Environmental Policy and Planning was set up in 1972 which was later evolved into the Ministry of Environment and Forests (MoEF) in 1985.
- Policy Statement for Abatement of Pollution and the National Conservation Strategy and Policy Statement on Environment and Development brought out by the MoEF in 1992
- EAP (Environmental Action Programme) was formulated in 1993 with the objective of improving environmental services and integrating environmental considerations into development programmes.
- National Environment Policy, 2006
- Water (Prevention and Control of Pollution) Act, 1974
- Water (Prevention and Control of Pollution) Cess Act, 1977
- Air (Prevention and Control of Pollution) Act, 1981

- Atomic Energy Act of 1982
- Motor Vehicles Act,1988
- The Wildlife (Protection) Act, 1972
- The Forest (Conservation) Act, 1980
- Environment (Protection) Act, 1986 (EPA)
- The National Environment Appellate Authority Act, 1997
- Public Liability Insurance Act (PLIA), 1991
- National Environment Tribunal Act, 1995
- Environment Impact Assessment (EIA) Notifications,

Besides the afforested legislations, rules and policies, there are several other plans and incentives by the governments for energy conservation and to mitigate impact of climate change.

## 3. Role of Judiciary

Indian environmental law has seen considerable development in the last decades. Most of the principles under which environmental law works in India today were gifted by judicial interpretations. The orders and directions of the Supreme Court cover a wide range of areas whether it is air, water, solid waste or hazardous waste.
Some of the judgments wherein various principles relating to environment law were judicially recognised are worth mentioning:

- In *M.C. Mehta v. UOI, WP (C) 13029/1985*, the Hon'ble Supreme Court in its order dated 24-10-2018, decided that no motor vehicle conforming to the emission standard BS-IV shall be sold or registered in the entire country with effect from 01.04.2020, and the same shall be substituted by BS-VI compliant vehicles. Certain orders were also passed therein with respect to imposing a ban on diesel vehicles to curb the air pollution.
- In *M.C. Mehta v. UOI, AIR 1987 SC 1086 (Oleum Gas Leak case)*, the Supreme Court formulated an indigenous jurisprudence of Absolute Liability in compensating the victims of pollution caused by hazardous and inherently dangerous industries.
- In *M.C. Mehta v. Union of India, AIR 1988 SCR (2) 538*, wherein the issue of pollution of the Ganga river by the hazardous industries located on its banks was highlighted, the Hon'ble Supreme Court ordered the closure of a number of polluting tanneries near Kanpur.

- The Hon'ble Supreme Court in the case of *TN Godavarman Thirumulpad v. Union of India and Ors. (1997) 2 SCC 267, W.P.(C) No. 202 of 1995* dealing with the issue of livelihood of forest dwellers in the Nilgiri region of Tamil Nadu being affected by the destruction of forests, passed a series of directions.
- *M.C. Mehta v. Kamal Nath, (1996) 1 SCC 38* is a case where there was an attempt to divert the flow of a river for augmenting facilities in a motel. The Supreme Court interfered by recognizing the Public Trust Doctrine and held that the State and its instrumentalities as trustees have a duty to protect and preserve natural resources such as rivers, lakes, forests, open spaces and other common property resources.
- In *Vellore Citizens Welfare Forum v. UOI, AIR 1996 SC 2718*, the Supreme Court adopted the Precautionary Principle to check pollution of underground water caused by the leather industries in Tamil Nadu. The Hon'ble Court also opined that the precautionary principle and the Polluter Pays Principle are part of the environmental law of the country.
- In *Indian Council for Enviro-Legal Action v. UOI, AIR 1996 SC 1446*, the Supreme Court reiterated and applied the principle to restore the environment of a village whose ecology had been destroyed by the sludge left out by the trial run of the industries permitted to produce the 'H' acid.
- The Principle of Sustainable Development was also recognized by the Supreme Court of India in the *M.C. Mehta v. Union of India (Taj Trapezium case), AIR 1997 SC 734*.

## 4. What initiatives can be taken to regulate global warming?

Every country now-a-days is making policies to curb emissions or is part of the agreements of the United Nations to make certain laws for global warming. Mere enactment of laws is not enough, their implementation is essential. As an individual, it's our duty to know our responsibilities and to make efforts towards curbing emissions. There are many small steps which can be taken by every individual for our safe future. Some of such steps for protection of our health are as given below:

**Step Up-** It is a crucial time to demand stricter measures and laws for protection of environment and degradation of climate from our governments and also to make contributory efforts in implementations of such laws. We need to raise our voice towards all projects which are unhealthy for our nature and carried out for the sake of development irrespective of its dangerous consequences. Development should not be at the cost of the environment.

**Public Transport-** Use of public transport for traveling saves a lot of fuel and emissions. So the use of public transport should be promoted. Government should provide adequate and clean transport facilities to encourage people to shift to public transport from their own vehicles.

**Active Transport**- Active transport using bicycles or walking should be encouraged. Not only is it good for the environment, it's good for human health as it reduces risk of obesity and other diseases.

**Use of Clean Energy-** Clean energy should be promoted. Solar energy use is on the rise. Now-a-days, large solar farms are coming up in order to meet the demand of energy and it's time for individuals to jump on the bandwagon by installing solar cells on home rooftops. It will cut down a lot of fossil fuel emissions, especially from 'coal', which is used in power plants.

**Using EV's**- Electric vehicles are in trend as every well-known brand is coming up with their own Electric vehicles. Although their actual impact is debatable as energy used to charge still comes mainly from fossil fuel power generators but we still use a lot less energy on mobilization. Also using clean energy to charge it, saves the environment enormously.

**Rich Diet-** Eating a diet rich in plant-based foods, including fruits, vegetables, nuts, seeds and whole grains, and with fewer animal-based foods is good for your health and the environment.

As part of a well-balanced, regular diet and a healthy, active lifestyle, eating the recommended amount of fruit and vegetables for men and women every day can help you reduce obesity and maintain a healthy weight, lower your cholesterol and lower your blood pressure.

Reducing your consumption of high kilojoule processed foods will help to reduce excess energy consumption and reduce the environmental impacts associated with these foods. Processed foods are generally high in saturated fat, added sugars or salt, take more energy to produce and are usually packaged, which contributes to landfill waste.

**Life in Natural ways** - Cooling and heating your home naturally will help you remain comfortable all year round, and save on energy (WHO Report, 2018).

## 5. Conclusion

We all understand that climate change is a complex bio-physical phenomenon with profound implications for human civilizations and life on the planet. It is now well accepted that human beings have interfered with basic natural cycles, such as energy and water cycles, which have kept our planet in different conditions. Carbon dioxide levels are now at their highest level. At present, we can say that human health is in danger but in the future our existence, lives are at stake.

It is high time to consider the danger of a situation and to take small or big actions in accordance with our roles in our society. We can act in the full range of roles that we occupy – as workers, students, consumers, investors, educators, entrepreneurs and as citizens. And we have acted in all of our areas like – our homes, schools, workplaces and in public life. We can all work to get out the message that climate change is real, it is happening and we need to take action now to address it. Along with our duties towards society, we have to be more careful towards our health. We have to follow a healthy eating lifestyle with physical exercise to improve our immunity.

We can say- 'Think and act now, else no Tomorrow'.

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**CHAPTER 16**

# Code of Conduct for EdTech Industry: A sine qua non?

Navpreet Kaur, Research Scholar, Lovely Professional University
E-mail: navpreet@lpu.co.in
Dr. Krishan Gopal, Associate Professor, Lovely Professional University
E-mail: krishan.gopal@lpu.co.in

**Abstract**

The year 2021 represented a paradigm change in favor of EdTech. The disruptions and lockdowns caused by the pandemic drove both parents and educational institutions to embrace technology, making EdTech the most funded sector in the country. While there have been arguments about the benefits and pitfalls of online and digital education, there is no denying that this medium has benefited students during the lockdown. How effective it has been and how it has affected students, parents and teachers are a couple of pertinent questions, answers to which shall be researched in time to come. However, amidst all these developments, transparency has become a significant concern. EdTech companies were under pressure after accusations surfaced that they were enrolling children, from low-income families, in expensive courses by duping their parents into consenting to hefty loan terms. Such practices of luring the customer forced the government to intervene in December 2021. Thus, EdTech companies have begun implementing a transparent system to create accountability and eradicate such malpractices. The present study aims to explore the mechanism of developing the code of conduct, the extent of regulation by the government, and whether having these two will hamper the growth of the EdTech industry.
**Keywords:** *Education, Education Technology, Education Reform, EdTech Companies, Online Education, Digital Education*

## 1. INTRODUCTION

Technology has become a commonplace feature of modern life. There is a vast penetration of technology in the lives of people lives, societal norms, cultural values, and political and economic processes in many ways. Obtaining information through the internet, grasping news, using multimedia, the functioning of the stock market, and the effectiveness of the Global Positioning

System (GPS) are some daily life illustrations. Not only this, the way technology has diffused into education over the past few years is worthy of our attention.

Information Technology (IT) and education are the world's largest sectors, fuelled by the knowledge economy (Koh & Lim, 2008). Technology usage in education is not a new concept. Earlier, it was in the form of simple printing, and today it comes in the shape of virtual reality. The usage of educational technology can be divided into two categories: technology of education and technology in education. The technology of education includes the entire system of education that is intangible. The goal of educational technology is to make teaching and to learn more effective (Ellington *et al*., 1993). The latter term comprises instructional material, software, and hardware used to communicate information to students, according to Ellington *et al*. (1993). The technology in education concept sees information technology as a panacea that can enhance student learning by integrating technology in education.

With over 260 million students registered in more than 1.5 million schools and 39,000 institutions fulfilling the needs of 27.5 million undergraduate and 4 million postgraduate students, India has a manifold education system (IBEF report, November 2021). This presents an excellent opportunity for the education sector. A series of a breakthrough in new-age pedagogies have significantly changed India's educational landscape. The employment of technology in education is one of the turning points on this path. The explosion of information technology has changed the world's shape and affected all facets of human life. The same is true for the educational sector, where cutting-edge technologies have aided traditional student-teacher interaction and learning methods. As a result of the pandemic, education has undergone significant changes with the advent of online learning, which involves instruction delivered remotely and via digital platforms.

Online education has seen exponential growth over the past decade. As a result of the internet's ubiquity and the convenience of online courses, it has become a fundamental element of education. (Li and Irby, 2008; Luyt, 2013; Lyons, 2004). Furthermore, economic challenges confronting many education institutions and student demands move these institutions' focus further toward using online education (Limperos *et al*., 2015). It's not surprising that online education has gotten so much recognition because of its benefits for teachers, students, and institutions (Konetes, 2011).

A variety of EdTech (a term that combines "education" and "technology") enterprises have sprung up around the country. The Indian EdTech industry was valued at US$ 750 million in 2020 and

is predicted to grow at a Compound Annual Growth Rate (CAGR) of 39.77 % to US$ 4 billion by 2025 (IBEF report, November 2021). The year 2021 represented a paradigm change in favor of EdTech. While the COVID-19 outbreak impacted many enterprises, the online education sector is one of those that is fully operational. Because of the pandemic's disruptions and lockdowns, both parents and academic institutions have embraced technology-enabled learning options making EdTech the most funded sector in the country, with Byju's taking the lead with 57% of the total cash raised, followed by Unacademy (10.5%) and Vedantu (9.5%) (IBEF, 2021). Since 2020, four EdTech startups in India have become unicorns (Unacademy, UpGrad, Eruditus, and Vedantu), while one has become a decacorn (Byju's).

While there have been debates about the benefits and challenges of online and digital education, there is no denying that this medium has helped the students to continue their education during various lockdowns imposed in the country. How effective it has been and how it has affected students, parents and teachers are a couple of pertinent questions, the answers to which shall be researched in times to come, but, of late, there have been demands for regulating online and digital modes of education. Many ethical guidelines and professional codes have been developed to ameliorate technology's potential threats and risks in all aspects. However, there are still significant debates about their practical effects on education and enterprises and how such arrangements and regulations can safeguard business interests (Greene, Hoffman, and Stark, 2019). One of the recent developments in this area is the government advisory on EdTech firms. The government issued a warning to parents, advising them to be cautious while dealing with organizations that offer online courses for children. As these courses were not free contrary to the advertisement shown, and in a few cases, buyers had signed up for these companies' loans inadvertently and were subsequently trapped (Nanda, 2022). Such practices of luring the customer by deceiving advertisements and false claims had left the government of India with no choice but to intervene last year in December 2021. Is it putting EdTech companies in the dock? Has it become a sine qua non to have a code of conduct for EdTech companies?

This review paper begins by exploring e-learning, online education, educational technology, challenges associated with a precise focus on the deceptive practices adopted by the companies in this sector to lure consumers, and eventually the interventions made by the government to regulate the EdTech industry. The authors have found just a countable number of blogs and articles related to the topic under study. The present research may bring to light a more in-depth look at the situation of the EdTech industry and the malpractices adopted by them.

## 2. REVIEW OF LITERATURE

The literature review is thematic and has been divided into themes related to the proposed topic.

### 2.1 Online Learning

Students can learn in different settings, including one-on-one, distance learning, and online learning. Multimedia recordings, computer-aided instructions, synchronous and asynchronous communications, web and visual displays, modeling and gaming, peer interaction, asynchronous learning networks (ALN), ZigBee, and portable devices are some of the technologies used in online learning (Hiltz and Turoff, 2005). Online education is referred to as "distance education", "e-learning", "online learning", "blended learning", "computer-based learning", "web-based learning", "virtual learning", "tele-education", "cyberlearning", "Internet-based learning", "distributed learning", and other terms in the research literature. These phrases were regarded as sufficiently synonymous in this investigation and used interchangeably throughout. With a focus on the United States, Dziuban *et al*. (2016) has categorized the evolution of online education in four phases: the 1990s (internet-driven distance education), 2000-2007 (increased use of Learning Management Systems (LMS)), 2008-2012 (progression of Massive Open Online Courses-(MOOCs)), and beyond, with online higher education enrolments outpacing traditional higher education enrolments. In a study by Harasim (2000), it was revealed that the first fully online course was provided in 1981.

Electronic mail, e-business, automation, and today e-education have all been part of the e-evolution or e-revolution. E-education, often known as online education, is altering our approach to teaching and learning. At times, e-learning is often mixed with online learning, but there is a difference between the two. E-learning is the process of gaining access to web-based technology resources that one can use in or out of the classroom (Maheshwari & Thomas, 2017; Nichols, 2003). The terms like e-learning, online learning, internet-based learning, computer-mediated learning, hybrid learning, mobile learning, and the like refer to the ability to learn from almost anywhere, at any time, at any pace, and with any resources using a computer connected to a network (Cojocariu *et al*., 2014). Online learning is defined as learning that takes place entirely online, with students learning beyond the classroom (Oblinger *et al*., 2005). Many factors, including technological characteristics, a comprehensible online platform, classroom activities,

and evaluations, can influence the effectiveness of online learning (Wijekumar *et al*., 2006; Shuey, 2002).

### 2.2 Desideratum of e-learning

Within the last few years, the paradigm of conventional education has changed considerably. Online classes have been around since the nineteenth century. It has become increasingly popular in the United States over the last twenty years. Many institutions believe that this sort of input will be critical for the future of education (Allen & Seaman, 2014). With the development of the internet and new technologies, being present in the class is no longer the sole method for learning. Nowadays, one can get excellent education anytime and anywhere as long the person has internet connectivity. According to the study conducted by Kanwar (2020), when the pandemic hit, the education system was visibly unprepared, and it had to find quick answers. The chosen method was e-learning. Online learning has a lot to offer to all students, whether one is in elementary school or graduate school. Many digital tech businesses then, including Google Classroom, Zoom, Microsoft Teams, and Blackboard, have played a vital role in the transformation (Adeoye *et al.,* 2020). According to a report released by the United Nations (UNO) in August 2020, the COVID-19 has created an immense upheaval in the education system in history, affecting roughly 1.6 billion children in over 190 nations. At that time, e-learning had taken the place of the old way (face-to-face education). Now, present-day post-pandemic, the institutes are running into the hybrid mode of education according to a study by Mathivanan *et a*l. (2021).

### 2.3 The boom of Indian EdTech startups

In the year 2007, two IIT grads embarked on a mission to revolutionize the world of education with the help of technology. Ralhan and Kamath, with crucial offerings such as TeachNext, LearnNext, MathsLab, and Next ERP, were able to reach over 10,000 schools across the country in less than a decade, transforming the lives of over 1,000,000 children with a mission to become the leader in technology-based education solution provider (Yadav *et al.,* 2018). During 2014–2015, India saw a significant increase in EdTech startups. The sector has received more than $100 million in investment (Bansal, 2016). Few trends indicate that a greater emphasis on technology-driven education will be the next big thing and will ultimately acquire traction (IBEF, 2017). A study by Yadav et al. (2018) found that Byju's could raise USD 75 million from Sequoia Capital and Sofina, a Belgian investment group, to boost content distribution, expand the product pipeline, launch new markets, and grow the talent pool. NIIT (a training and skills development

company) has collaborated with edX, a US-based company, to offer online courses from major worldwide universities such as MIT and Berkeley to about half a million people.

While the pandemic has affected many businesses, the online education industry is hardly affected. From a traditional to a virtual classroom, much progress has been made in the Indian EdTech business to solve the challenges of teachers and students (Mathivanan *et al.*, 2021). Various online learning platforms serve millions of individuals, including Udemy, Coursera, Lynda, Skillshare, and Udacity. Using objectivist and teacher-centric didactics, local, regional and national institutions have been forced to move to online and hybrid courses using digital technology. This has enabled student-centric pedagogy, earlier being offered by only a few hundred global mega-universities. These conditions highlight the need for scenario planning for academic institutions (Rieley, 2020). During the emergence of the epidemic, ed-tech companies have grown at an exponential rate. Byju has begun to distribute free content in contagion and has gained 7.5 million new users to their website. Other companies that have seen development three times include Unacademy, Vedantu, and Toppr. This expansion is unsurprising. After all, India's student population exceeds 1.5 billion, and they have no other option in this condition (Tripathy and Devarapalli, 2021).

### 2.4 Challenges associated with Online Education

Every coin has two sides, and the EdTech sector is not an exception. Besides the benefits associated with online education, there are some challenges too. Digital education does not include watching videos of lectures through the internet. It's about finding the right platforms, technology, tools, interactivity, curation, and content, among other things (Pitroda, 2020). Lack of resources, like unavailability of computers/laptops or tablets, and no access to the internet at many places in the remote areas where students and staff reside, was a significant concern in most studies (Oyedotun, 2020). Some students find it challenging to engage in digital learning because they do not have reliable internet access or technology; this disparity persists across nations and between income levels within countries. Because of the technological challenges of teaching online, Coyner and McCann (2004) observed that current classroom resources may or may not be compatible with the electronic components, and media like video clips may be inaccessible to students.

Online education was not very popular in our country. Most of the teachers fell short of the necessary skills to teach and administer exams online. Teachers were forced to teach and

complete assessments from their houses due to the lockdown. To teach or conduct evaluations online, they also had to overcome obstacles such as inadequate technical facilities in their home, like a laptop, internet, and microphones. Online educators have lacked technological support and resources for providing relevant materials as per the study by Mathivanan *et al*. (2021). Many institutes continue to use an open-source platform for online instruction, raising concerns about teaching and assessment quality and confidentiality. Learning and teaching provision has become increasingly disaggregated as online education has grown, and education institutes are collaborating with several organizations to reach new learners.

Another concern is how minorities and students from low-income strata are capable of obtaining contemporary technologies. (Singh & Pan, 2004), as well as how to accommodate challenged students who require specific accommodations. The students who do not have access to all forms of internet technology cannot be ignored. These students are not from well-off families and come from less technologically advanced backgrounds with less financial resources; as a result, they may be disadvantaged when classes are held online. Due to digital devices and internet data costs, connections may lose out (Dhawan S, 2020). However, multiple consumers have provided a sample of a typical sales pitch for an EdTech firm on consumer complaint forums and social media. If the sale is made in person, the salesman will disregard the child's intelligence and pressure the family to purchase an EdTech subscription to secure the child's future. Because of the state of government schools, most salespeople show concern about the child's education (Rakheja, 2021)

## 3. RESEARCH METHODOLOGY

The research methodology for the current study has been explained below:

### 3.1 Research Design

The research design for the current study was descriptive in nature. Methodology for this study was to first look at previous studies and research on knowing the transparency in the conduct of EdTech companies, followed by exploring the role of government in regulating the same.

### 3.2 Problem Identification

Throughout human history, several diseases have struck, wreaking havoc on human life, education, and global economic advancement (Editors, 2020). The coronavirus (COVID-19) is a

pandemic disease that affects education systems in countries of various socioeconomic statuses (Wajdi *et al*., 2020). Many students prefer the online classroom because it allows them to work around their hectic schedules. Students must become lifelong learners in today's environment, with the proliferation of information and knowledge, and e-learning plays a vital role in assisting individuals in accessing learner-centered and self-directed learning. E-learning is here to stay, no doubt!! But how effective it has been and how it has affected students, parents and teachers are a couple of pertinent questions. The answers to these questions shall be researched in time to come; however, amidst all these developments, transparency has become a significant concern for administrators, parents, students, and teachers all across the world (Lossec & Millar, 2021). EdTech companies were under pressure after allegations surfaced that they were enrolling children in expensive courses by deceiving their parents into assenting to large loan terms. Such practices of luring the customer by deceiving advertisements and fraudulent claims had left the government of India with no choice but to intervene last year in December 2021. Hence, the present study aims to explore the mechanism of developing the code of conduct, the extent of regulation by the government, and whether having these two will hamper the growth of the EdTech industry.

**3.3 Data Collection**

Numerous studies have raised various concerns. However, these issues have not been grouped under any category to provide organized insights into the problems of online instructors (Mayes *et al*., 2011). The advisory by the government went on to say that the success stories touted by these EdTech companies could be a ruse to gain users. Further, during a winter session of Parliament, Congress MP Karti Chidambaram discussed what he described EdTech businesses as 'predatory sales techniques'. This backlash against educational technology corporations isn't new. In reality, dissatisfied parents have taken EdTech companies like Byju's to consumer courts on multiple occasions, alleging that the company's sales agents cheated them. After a customer claimed that she hadn't received the agreed amount of course fees from Byju's, a consumer court in Pune ordered the company to pay Rs 50,000. In an article published by Rakheja (2021), Byju's had also allegedly sanctioned a Rs 1.1 lakh loan in her name without her consent, according to the customer. Many such incidents have put the EdTech companies under intense scrutiny.

Literature based on information and communication technology, online education, e-learning, EdTech, educational technology, and subject disciplines was assessed for the current study, but little information was available. Still, the authors have attempted to bring the facts to the surface for the parents and the learners. Data collection aimed to study empirical research on the EdTech

industry published in peer-reviewed publications, including quantitative, qualitative, mixed methods, and literature reviews. The keywords that were used included, "online education and challenges", "online teaching and issues", "online learning", "education technology", "Covid-19 and education", 'transparency in EdTech", "Code of Conduct for EdTech", "reforms in online education", "government regulation in EdTech industry"'. Google Scholar, Educational Resources Information Center (ERIC), JSTOR, SAGE Online, Teaching, and Learning Journals, Conference proceedings, and EBSCO HOST were among the databases used for literature research.

## 4. DATA ANALYSIS

Robust infrastructure must be enough to deliver uninterrupted services. The Ministry of Human Resource Development (MHRD) proposed a draft National Education Policy (NEP) – 2020 to increase teaching and learning using online methods. The strategy also stresses the importance of promoting education through sophisticated technological tools like AI, big data, VR, 3D printing, and robots, as well as developing technical infrastructure and supporting new teaching and learning mechanisms (Williamson & Eynon, 2020; MHRD, 2020c). Online education is becoming a mainstream global phenomenon, and many institutions are experimenting with novel formats. The developments in the field of online education bring numerous opportunities and also problems for all stakeholders.

Much of the early discussion in education journals, newsletters, and blogs on EdTech focused on new initiatives by educational enterprises, the promises of EdTech, and the beneficial effects on student learning and accomplishment. The primary problems stem from a lack of transparency in using aggregated educational data (Perrotta *et al*., 2020). The decision to self-regulate was prompted by rising concern voiced in the Parliament that a few EdTech companies were trying to engage in various business wrongdoing to gain customers. For instance, one of Byju's representatives spoke with a customer and assured him that his son (in 6th grade) would get weekly contact with subject matter specialists and thorough counseling on any doubts or inquiries. No contact was made after that by Byju's. Upon being contacted by the customer a week later, he informed that the representative had left Byjus and gave him another unresponsive contact. He was duped! (Harish, 2019). In reality, dissatisfied parents have taken ed-tech companies like Byju's to consumer courts on multiple occasions, alleging that the company's sales agents cheated them (Rakheja, 2021). In one of the articles written by Barman, (2022), in The

Indian Express, it was mentioned that the Indian EdTech sector, according to experts, is anticipated for regulatory intervention by the government. They propose a monthly subscription model similar to Netflix, with no minimum lock-in term, which would twist ed-tech industry arms to create high-quality products to retain users.

The central government is working on a policy to control the country's EdTech players to reduce monopoly and prohibit some EdTech platforms from exploiting students through grandiose promises or unfair practices. A group of top companies in India's fast-growing EdTech industry recently took a move toward defining a set of standards to run their businesses. Under the able leadership of the industry association Internet and Mobile Association of India (IMAI), the EdTech companies have formed the India EdTech Consortium. India EdTech Consortium has created a code of conduct for its member companies. The code attempts to address the government's perturbations (Barman, 2022). To mention a few, unless the advertiser corroborates with evidence, the advertisement cannot declare or cause the public to assume that an institution, course, or programme is official, recognized, authorized, accredited, approved, registered, affiliated, endorsed, or has a legally defined situation (Singh, J. 2019). Also, when acquiring educational equipment filled with material or programmes designed to deliver online learning, stakeholders should request tax invoice statements (Talukdar, 2021). In one of the articles published by Talukdar (2021), the Education Ministry also advises that before subscribing to an ed-tech company's service, parents should conduct a thorough background investigation and verify the content quality. Parents must keep track of any spam calls or forced signups for any education packages to submit a complaint. There should be adequate verification; parents and children must not accept the 'success stories' offered by ed-tech companies since they could be a trap to attract additional viewers (Ministry of Education, 2021). The companies have been advised to follow the Advertising Standards Council of India's self-regulation code. Policies regarding restitution and abrogation should be explicitly posted on the user portal in a way that can't be overlooked. The rule of conduct states that "loans and other funding FAQs should be explicitly specified on the site" as per Barman (2022). The majority of the sections refer to red flags that have been raised recently. Byju's, Harappa, Careers360, Great Learning, Unacademy, Vedantu, Upgrad, TimesEdutech & Events Ltd., Simplilearn, Toppr, and WhiteHat Jr are among the companies who claim to have followed the credo "what is told is what is sold" (Barman, 2022).

The consortium employs a two-tiered strategy. Any consumer can register a complaint with the internet tech consortium, a primary pillar against any of the practices outlined in the code of conduct. Following receipt of a complaint, the concerned company will be contacted for a

response. A set number of days will be given to the corporation to reply to the complaint. When the tech consortium receives a complaint answer, it will decide if it is appropriate after consulting with the suer. In its absence, an impartial grievance board will investigate the situation. Following that, the board will make a recommendation for the next step. There will be retired government officials and people from academia as well. Officials from the consumer goods industry will be among the members (Barman and Chopra, 2022).

We need to increase the ability of policymakers and practitioners to implement effective e-learning. Governments may create policies and regulatory frameworks that encourage blended learning, making the education system more adaptable and resilient to future problems. Strengthening the capacity of staff and students should be the foremost goal for institutions. Blended learning appears to perform best in developing nations, according to research. A combination of e-learning and face-to-face instruction is known as blended learning. Depending on the resources available, institutions can decide on the percentage of each component.

## 5. CONCLUSION

Online learning pulls a wide range of students with diverse academic needs that traditional education is inadequate for addressing. The demand for online courses has been fuelled by delivering quality education to all students, regardless of location or time (Chaney, 2001). Students learning through online education must be cautious and selective while enrolling them in such courses; as the maxim goes, 'Caveat Emptor'. It is a known fact that government regulations and intervention scuttles and hamper fast-track growth in most cases, and in some cases, these regulations have potentially killed the industry. While EdTech has grown at full tilt, it is still in its infancy stage, and stringent government regulations can play spoilsport in its growth. Therefore, regulation in EdTech should happen only after careful thought and research by involving experts and various stakeholders. It should also be there to protect the general public and customers while aiding further growth of the EdTech industry.

## 6. FUTURE RESEARCH

According to Li Kang, Ai English Executive Director, "Online Learning is the future. If there were no virus, that realization would have taken another few years to accelerate the process".
The review has helped identify the gap by describing and identifying the main patterns of issues in the literature for online learning and EdTech companies. Numerous researches have taken place, and some are still ongoing. We must identify the best way of using educational technology

that is affordable and available to all students across the country. The current study has included only the secondary data available in various databases. A similar study can be reproduced in the future based on the primary data, and the findings can be extended to large samples from other nations. There is a significant gap when it comes to the regulatory framework and developing a code of ethics for EdTech. Possibly future studies may focus more on in-depth analysis of these grey areas and bring to surface guidelines for the conduct of these EdTech firms.

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**CHAPTER 17**

# Gender Differences in the Dimensions of Academic Emotion Regulation Among Undergraduate Students using Multivariate Analysis of Variance

Akanksha
Dr.Rajib Chakraborty
M.Ed. Research Scholar, School of Education, Lovely Professional University, Punjab 1
*akankshasng206@gmail.com*
Assistant Professor, School of Education, Lovely Professional University, Punjab
*rajib.22752@gmail.com*

## Abstract

The Sustainable Development Goals 16, aims at "promoting peaceful, inclusive societies to build a sustainable society with successful inclusive institutions", which can only be achieved when culture and society changes for the betterment. For achieving these goals it's important to understand significance of emotional regulation as there is prominent role of society and culture on systematically shaping emotion regulation. The present study investigated the differences in the mean value of the dimensions of academic emotion regulation (AER) with respect to gender in university undergraduate students based on the mentioning in the literature that AER is gender sensitive (Buric et al. ,2016). The sample size consisted of 214 undergraduates (102 female, 112 male) from different universities of Jalandhar, Punjab, India. The students were selected using simple random sampling technique. Multivariate analysis of variance

statistical technique was applied using SPSS statistics version 23 software. The Academic emotion regulation construct is made up of eight dimensions namely “Respiration, venting, Suppression, Reappraisal, Developing Competencies, Social Support, Redirecting Attention and Situation Selection.” The findings revealed that Indian undergraduate’s male and female students do differ with respect to selection of their strategy to regulate academic emotion regulation. Since, the MANOVA, wilks’ lambda was found to be 898.254 with p value 0.000 which is less than the level of significance a= o.o5. Post hoc Bonferroni test revealed the male and female undergraduate students differed particularly in the dimensions venting, social support and suppression as far as the applied strategy to regulate their emotions related to studies was concerned. Education implications of the findings in the Indian context for stakeholders like parents and university teachers for ensuring gender equality at home and in class are discussed.

**Keywords**. Gender equality, Sustainable Development Goal 16, Academic emotion regulation, Multivariate analysis of variance, Culture and Society, Indian undergraduates.

## 1. INTRODUCTION

Educational settings provide variegated emotions to the students. There is a complex relationship between the “motivational, cognitive and emotional aspects of learning.” Since, emotions are interrelated with different aspects of learning, it is important to study the academic context of emotional regulation (Buric, 2016). Emotion regulation has become a popular topic in the decade across various disciplines in the disciplines and sub disciplines of psychology and education.

When transitioning from one stage to another be it academic setting or life, adolescents experience emotional and motivational disbalance. Especially when there is a change of environment from school to college. These motivational and emotional factors affect their personal and academic development (Usán Supervía, 2021). This also establishes a connection between self-efficacy of the students and emotional regulation. Self-regulation is essential in students to cope up with different challenges (Usán Supervía, 2021). To keep up with changes around them and to match with the changes in the academic environment, there is a need to study the role of emotions and how to regulate those emotions that are difficult to

comprehend for students. The need to fill the gap between the transitions, calls forth the need to study academic emotional regulation.

Quality education and inclusive society are significant challenges faced by Indian education system (Harshitha, 2022). The main objective is to establish the role of emotion regulation in emotional wellbeing of individuals, there are many studies that relate emotion regulation strategies to the different demographic variables like race, gender, ethnicity and culture (Betancourt & Lopez, 1993). It serves as a way for channeling emotion responses of individuals in particular culture (Saarni, 1984). Not only gender but the cultural norms also shape how emotions are regulated. Male and female differ in specific strategies due to the biological and social differences (Kring & Gordon, 1998). Since, culture holds different cultural norms, belief systems and values that govern the thoughts, perception of self in both the genders (Cheung & Park, 2010). Being in particular culture both encourages and discourages certain emotions regulation. AM, Azghandi (2022), found direct and significant relationship between the social support, stress and emotion regulation of individuals.

The present paper aims to establish the significance of dimensions of Academic Emotion Regulation (AER) on gender for an inclusive society for which there is need of accountable institution which can be built by understanding the significance of emotion in all aspects. For this, Academic Emotional Regulation Questionnaire (AERQ), constructed by Buric, 2016, which was later "validated in Indian context by Chakraborty and Chechi (2020) using network psychometrics." The tool consists of 37 items initially, after validation in Indian context 36 item out of 37 were retained, measuring eight dimensions namely "situation avoidance, competency development, redirecting of attention, reappraisal, suppression, respiration, venting and seeking social support." Further, Buric (2016), found positive relations and in coincidence with the theoretical expectations of the relations of gender, perceptions of control over academic performance, learning related emotions and academic achievement. of emotional regulation strategies in context for university students. Adding to this, female students regulate their emotions to a greater extent compared to their male counterparts regardless of the emotional regulation strategies they are using. But here when compared to their male counterparts, female experience higher level of unpleasant emotions, which are positively related to reappraisal, venting, respiration and suppression (Pekrun et al., 2004).

## 2. METHODOLOGY

To find gender difference in academic emotion regulation, descriptive research design was employed. After seeking permission through proper channels, AERQ questionnaire was used for survey method to gather data from educational institutions.

### 2.1. Population of the study

The population of the present study consisted of first- and second-year students in the universities of Jalandhar, Punjab.

### 2.2. Sample of the study

For the present study, first- and second-year students pursuing the courses of "B.A, B.Sc. and BCom were selected as samples (N=214, 112 male and 102 female)."

### 2.3. Sampling technique

Using the method of simple random sampling, to ensure the randomization of the samples and generalization of the findings, google forms were used to collected data for the present study.

### 2.4. Tool used in the study

"The tool of Academic "Emotion Regulation Questionnaire (AERQ)", validated in Indian context was used for the present study. The tool uses the five-point Likert scale, where responses refer from 1 = strongly disagree and 5 = strongly agree".

**Table 1.** Description of the tool AERQ

| S. No | Dimensions | No. of items as validated in India | Description |
|---|---|---|---|
| 1 | "Situation Selection" | 4 | *"Circumventing academic situations that can trigger unpleasant emotions"* |
| 2 | "Developing competencies" | 5 | *"Behaviours and actions students implement to develop capabilities and competences which will prevent or lessen unpleasant emotional experiences"* |
| 3 | "Redirecting Attention" | 6 | *"Attempts to refocus one's attention in order to avoid or to block the emotional experience"* |

| | | | |
|---|---|---|---|
| 4 | "Reappraisal" | 5 | *"students' attempts to undermine the relevance of a situation that evokes unpleasant emotions"* |
| 5 | "Suppression" | 5 | *"students' attempts to suppress subjective and behavioural manifestations of unpleasant emotions in academic situations in order to hide them from others"* |
| 6 | "Respiration" | 3 | *"students' attempts to reduce subjective feelings of tension accompanied by unpleasant emotions through deep breathing"* |
| 7 | "Venting" | 5 | *"students' behavioural manifestations and expressions of unpleasant emotions as a way of releasing the negative energy"* |
| 8 | "Social Support" | 3 | *"Sharing unpleasant emotions and seeking comfort from close members of the student's social milieu"* |

## 3. RESULT

After gathering data using google form through survey method, the data was shifted to an excel sheet and then the data analysis was done using SPSS Statistics Software 23.

### 3.1 MANOVA: Multivariate analysis of variance

MANOVA (Multivariate analysis of variance) is a statistical tool commonly used in the fields of education and psychology, it is very similar to ANOVA with many dependent variables. "ANOVA is test for difference in means of two or more groups, whereas MANOVA determines the difference in two or more vector of means" (A French, 2008).

When at least one independent variable is manipulated, MANOVA is useful here. By measuring many dependent variables in single experiment, it has a hand over ANOVA. By measuring several variables in single experiment, it helps discover which variable is truly important and protects against type 1 error.

In MANOVA (Multivariate Analysis of Variance), the F value of (Wilks' $\lambda$) is observed instead of univariate F value, on the basis of comparison of error in variance or covariance matrix and its effects (A French, 2008). When more than one response variable is being measured, "MANOVA is used more

appropriate to use as in this statistical technique all dependent variable is included in single analysis" (CJ Huberty, 2006).

**3.2 Data Analysis**

**3.2.1** ***Multivariate Tests***

| Effect | | Value | F | Hypothesis df | Error df | Sig. | Partial Eta Squared |
|---|---|---|---|---|---|---|---|
| Intercept | Pillai's Trace | .972 | 898.254[b] | 8.000 | 205.000 | .000 | .972 |
| | Wilks' Lambda | .028 | 898.254[b] | 8.000 | 205.000 | .000 | .972 |
| | Hotelling's Trace | 35.054 | 898.254[b] | 8.000 | 205.000 | .000 | .972 |
| | Roy's Largest Root | 35.054 | 898.254[b] | 8.000 | 205.000 | .000 | .972 |
| Gender | Pillai's Trace | .133 | 3.941[b] | 8.000 | 205.000 | .000 | .133 |
| | Wilks' Lambda | .867 | 3.941[b] | 8.000 | 205.000 | .000 | .133 |
| | Hotelling's Trace | .154 | 3.941[b] | 8.000 | 205.000 | .000 | .133 |
| | Roy's Largest Root | .154 | 3.941[b] | 8.000 | 205.000 | .000 | .133 |

a. Design: Intercept + Gender

b. Exact statistic

Interpretation:

The multivariate analysis of variance conducted to study the difference of the dimensions of academic emotion regulation with respect to gender led to obtaining of significant results with the Wilks' lambda equal to 0.867 for an f value 3.94 and p value equal to 0.000. The partial eta score is 0.133 which is an estimate of the effect size, which is low. Hence, the null hypothesis is rejected and it employs that linear combination of all the dependent variables or dimensions of academic emotion regulation do not get equally affected by gender. Depending upon the weights estimated by manova the different dimensions have varying extent of differences in their estimates with respect to the two levels of the independent variable gender. It also implies each of these dimensions of academic emotion regulation get uniquely affected by male and female university student's gender.

### 3.2.2 Pairwise Comparisons

| Dependent Variable | (I) Gender | (J) Gender | Mean Difference (I-J) | Std. Error | Sig.[b] | 95% Confidence Interval for Difference[b] | |
|---|---|---|---|---|---|---|---|
| | | | | | | Lower Bound | Upper Bound |
| SS | 0 | 1 | -.098 | .110 | .370 | -.315 | .118 |
| | 1 | 0 | .098 | .110 | .370 | -.118 | .315 |
| DC | 0 | 1 | .160 | .101 | .116 | -.040 | .360 |
| | 1 | 0 | -.160 | .101 | .116 | -.360 | .040 |
| RA | 0 | 1 | -.106 | .113 | .353 | -.329 | .118 |
| | 1 | 0 | .106 | .113 | .353 | -.118 | .329 |
| Reapp | 0 | 1 | .027 | .115 | .812 | -.199 | .254 |
| | 1 | 0 | -.027 | .115 | .812 | -.254 | .199 |
| Sup | 0 | 1 | .294* | .107 | .006 | .084 | .505 |
| | 1 | 0 | -.294* | .107 | .006 | -.505 | -.084 |
| Res | 0 | 1 | .192 | .112 | .089 | -.029 | .413 |
| | 1 | 0 | -.192 | .112 | .089 | -.413 | .029 |
| Venting | 0 | 1 | -.272* | .103 | .009 | -.474 | -.069 |
| | 1 | 0 | .272* | .103 | .009 | .069 | .474 |
| SoSup | 0 | 1 | .300* | .115 | .010 | .074 | .527 |
| | 1 | 0 | -.300* | .115 | .010 | -.527 | -.074 |

Based on estimated marginal means

*. The mean difference is significant at the .05 level.

b. Adjustment for multiple comparisons: Bonferroni.

Interpretation:

The post hoc pairwise comparison revealed that the dimensions suppression, venting and social support are significantly influenced by gender. The dimension social support has maximum extent of mean difference of .300 between boys and girls, whereas the dimension venting has the least mean difference of 0.272 between boys and girls.

## 4. DISCUSSION

Studies about emotions and emotion regulation, has gained attention of educational researchers in the past decade. Emotion regulation is established as an important ability for the development and adjustment of individuals in the society and has possible relations to the academic performance too. But there is a lack of specific tool that focuses on certain strategies to regulate those emotion in different academic situations. AERQ as a scale has shown significant psychometric properties with relation to the gender and university students in abroad (in Croatia, Buric et al., 2016) and in India (Chakraborty and Chechi, 2020). The use of present study to unearth the differences in the emotional strategies employed to regulate academic feelings by male and female students in universities revealed that both the group members differ in the employment of academic emotion regulation strategies.

The dimensions venting, social support and suppression were found to be applied differently by male and female undergraduate students. Male students were found to be taking the help of venting strategy to deal with their unpleasant academic emotions, while female students suppressed their unpleasant academic emotions and sort social support respectively. These findings should be in the cognizance of the faculty community undertaking instructions at the university level. Awareness of these findings can help the administrators in developing policies which can improve the socio-emotion climate of the institutions. Parents can better upbring their young wards with respect to their studies with the know-how of these results.

### 4.1 Recommendations for further studies

i. Further studies can be conducted on measuring the difference in the employment of academic emotion regulation strategies of undergraduate students in different cultures.
ii. Also, role of class level on strategies to regulate emotion can be studied.

iii. The role of locale (rural and urban) in the regulation of academic emotion and their strategies can be explored further, and their effect on building a effective and inclusive institution.

### 4.2 Limitations

i. The present study was restricted with the students of sciences, commerce and arts of Jalandhar city of Indian state of Punjab.
ii. The sample size is relatively small and gives and leaves the option to replicate this study with a larger sample size.

## 5. CONCLUSION

Children who are well aware of their emotions and know how to take accountability of those emotions in achievement of their goals, grow up as adults who build peaceful, just and inclusive societies. Educational settings are the best place where one can understand the significance of emotion and construct a population which is very conscious and build a accountable institution. The role of gender on academic emotion regulation is established yet again in the present study compelling the stakeholders to make a decisive decision on this very real academic emotion. It is hoped that the present study would further pave way for Indian researchers in exploring the different facets of the mentioned variable in different cultural context.

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**CHAPTER 18**

# Digital Transformation for Social Inclusion: Role of Social Media, Promoting Digital Payment System in West Bengal

**Madhusree Jana**

madhusree.jana@gmail.com

**Kushal Kumar R.**

Kushal.kumar28@gmail.com

Lovely Professional University, Punjab

**Abstract**

The sole purpose of the media is to share information on current affairs, news and entertainment. In this era of digitization, sharing, promoting and usage of Digital Payment System in the open marketplace is essential for the audience. The main objective of promoting the digital payment system is to create awareness among the people especially in rural areas and ensure they are conscious of the advantages of digital payment services and understand the importance of converting the country into a cashless economy. In the last decade of contemporary era, social and economical engagement has been evolved through Information and Communication Technology (ICT). The serving administration, NPCI happens to coordinate with RBI and public representatives to spread awareness of e-payment services by organizing different programs through television, radio, newspaper, camps, digital-marathons and rallies along with social media related online campaigns and advertisements. People are alarmed about security concerns related to online payments such as fraudulent misuse of payment networks and data theft. The research aimed to understand the role of social media to promote the Digital Payment System initiated by the government for secure and seamless transactions. A survey through questionnaire was conducted in Kolkata to know how the media delivers information to promote awareness regarding the e-payment system and help the government with successful implementation by making social inclusion.

**Keywords**: digital payment, promotion, social media, social inclusion, government's initiative, West Bengal

## 1. Introduction

Life in India has changed significantly over the last decade, particularly in the rural areas, as a result of the implementation of new payment technologies. The establishment of UPI-based apps mostly through mobile media, the impact of social and cultural interaction started shifting into a new public setting. The use of smart phones has changed significantly in West Bengal as an outcome of advances in information and communication technology (ICT). Social media has added multiple stars in promoting and advertising digital payment across the state through various means, namely by digital advertisements and campaigns among both rural and urban Bengal. Initiatives by both Central and the State Govt. has added value to the cause of promoting digital payment through several social media campaigns which has helped in educating the mass about the importance and ease of using Digital Payment System.

The promotion of the digital payments ecosystem is an important part under Digital India program, which aims to digitize the financial sector and economy, resulting in increased 'efficiency, transparency, and quality'. According to Ministry of Electronics and Information Technology (MeitY), the growth of using digital payment services is increasing by 5554cr (FY 2020-2021) from 2071cr (FY 2017-2018). Till 20$^{th}$ March, 2022 (FY 2021-2022), the number of online transaction has been increased by 8193cr.[1]

For secure and seamless money transaction, Reserve Bank of India issued Master Direction Guideline on 2017 to regulate the operation of mobile wallets by reflecting the sensitivity of information involved into digital transactions as well as consequences of the users. To prevent fraud and money laundering, the governing administration, National Payments Corporation of India (NPCI) strengthened laws through UPI Procedural Guidelines, through which every organizations can get involved with different banks.[2]

## 2. Review of literature

Users can pay for goods and services using their mobile devices through mobile wallet (Bodhani, 2011).[3]Consumer-to-consumer, consumer-to-business, consumer-to-online, and consumer-to-machine transactions are all made easier with a mobile wallet (Shin, 2009).[4] A mobile wallet combines multiple payment methods into a single application (Ma and Yi, 2012).[5] According to evidence, widespread use of mobile wallets could lead to cashless societies in the future (Bodhani, 2011).[3] Cost, convenience, context, ease of use, expressiveness, mobility, network externalities, privacy, risk, security, social influence, speed of transaction, system quality, trust, and usefulness are some of the factors that influence user adoption of mobile wallets ( Dehlberg *et al.*, 2008).[6] Money transfer through mobile wallets has impacted on personal, social, and cultural

relationships (Fang *et al*, 2017).[7] Globally, social media is became a boom for sharing information (Xiang and Gratzel, 2010),[8] sharing opinion (Valenzuela, 2013)[9] and relations with the public (Eyrich *et al*., 2008).[10] In the last decade, every business leaders are already using social media for marketing in this span of digital economy (Thakeray *et al*., 2008),[11] building brand image (Kim and Ko, 2012),[12] promoting product and services (Neiger *et al*., 2012)[13] and customer involvement (Baird and Parasnis, 2011).[14] Active user participation is critical to an online community's success and survival (Grover and Kar, 2020).[15] The continuous exchange of information within an online community encourages user participation and builds user trust (Choraria, 2012).[16] As a matter of fact, the authors of the study suggest that a firm's online presence can be improved by paying enough attention to customer reviews (Mangold and Faulds, 2009)[17] and if possible, encouraging users to promote the firm on social networking sites(Dahlberg *et al.*, 2006).[18]

## 3. Objectives

- To study the role social media advertisements to promote Digital payment system and e-wallets in West Bengal
- To know how much social media influencing the audience to adopt e-payment system in West Bengal
- To identify government’s initiative to promote digital payment system for social inclusion

## 4. Methodology

An interview schedule has been designed with the objectives in mind for data collection, in order to determine awareness regarding e-payment after getting information through social media advertisements. The survey was carried out with the aid of a questionnaire. A total of 425 people from Kolkata area in West Bengal were chosen to participate in the survey. Cross tabulation and chi-square were used to analyze the data. To identify the initiatives has been taken by the government to promote digital payment system; secondary data has been collected through websites, news articles and research papers.

### 5.1.Findings and analysis

#### 5.1.1. Getting information through Facebook advertisements

| | | | Facebook Ads | | Total |
|---|---|---|---|---|---|
| | | | No | Yes | |
| Residence | Rural | Count | 2 | 2 | 4 |

| | | | | | |
|---|---|---|---|---|---|
| | | % within Q Residence | 50.0% | 50.0% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Facebook Ads | 4.8% | 0.5% | 0.9% |
| | Sub-Urban | Count | 1 | 4 | 5 |
| | | % within Q Residence | 20.0% | 80.0% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Facebook Ads | 2.4% | 1.0% | 1.2% |
| | Urban | Count | 39 | 377 | 416 |
| | | % within Q Residence | 9.4% | 90.6% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Facebook Ads | 92.9% | 98.4% | 97.9% |
| Total | | Count | 42 | 383 | 425 |
| | | % within Q Residence | 9.9% | 90.1% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Facebook Ads | 100% | 100% | 100% |

Table 5.1.1. Data regarding residence and Facebook advertisements

The given table shows about getting information about digital payment services and e-wallets through social media that is Facebook advertisements. Among 425 respondents from Kolkata, 383 respondents viewed advertisements in Facebook and 42 respondents didn't get any information regarding Digital Payment services. From the calculation it is shown that, 50% audience of rural area, 80% audience from sub-urban area and 90.6% beneficiaries came across advertisements regarding online payment services in Facebook.

**Chi-Square Test**

| | Value | df | Asymp. Sig. (2-sided) |
|---|---|---|---|
| **Pearson Chi-Square** | **7.924[a]** | **2** | **.019** |

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is .40.

Table critical value 2 df – 5.99 @ 0.5 level of significance

Ho – There is no relatable connection between the residential area and the Facebook from where the respondents got information regarding digital payment system and e-wallets
Ha - There is a relatable connection between residential area and the Facebook from where the respondents got information regarding digital payment system and e-wallets

The question is related to Facebook advertisements regarding Digital Payment services and e-wallets from where the audiences got information. The analyzed data has revealed that the calculated value of 7.924 is higher than the table critical value of 5.99 @ 0.05 level of significance for 2 df. Thus, the null hypothesis of there is no relatable connection between the residential area and the Facebook from where the respondents got information regarding digital payment system and e-wallets is rejected. This indicates that the place where the respondents reside, an independent variable is associated with the respondent knowledge about the information of online payment services through social media.

### 5.1.2. **Getting information through Instagram advertisements**

| | | | Instagram Ads | | Total |
|---|---|---|---|---|---|
| | | | No | Yes | |
| Residence | Rural | Count | 4 | 0 | 4 |
| | | % within Q Residence | 100.0% | 0.0% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Instagram Ads | 2.1% | 0.0% | 0.9% |
| | Sub-Urban | Count | 3 | 2 | 5 |
| | | % within Q Residence | 60.0% | 40.0% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Instagram Ads | 1.6% | 0.9% | 1.2% |
| | Urban | Count | 184 | 232 | 416 |
| | | % within Q Residence | 44.2% | 55.8% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Instagram Ads | 96.3% | 99.1% | 97.9% |
| Total | | Count | 191 | 234 | 425 |
| | | % within Q Residence | 44.9% | 55.1% | 100.0% |

| | | | | |
|---|---|---|---|---|
| | % within Q Getting information regarding Digital payment system and e-wallets through Instagram Ads | 100% | 100% | 100% |

Table 5.1.2. Data regarding residence and Instagram advertisements

The given table shows about getting information about digital payment services and e-wallets through social media that is Instagram advertisements. Among 425 respondents from Kolkata, 234 respondents viewed advertisements in Instagram and 191 respondents didn't get any information regarding Digital Payment services. From the calculation it shows that, 40% audience from sub-urban area and 55.8% beneficiaries came across advertisements regarding online payment services in Instagram.

**Chi-Square Test**

| | Value | df | Asymp. Sig. (2-sided) |
|---|---|---|---|
| Pearson Chi-Square | 5.444[a] | 2 | .066 |

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is 1.80.

Table critical value 2 df – 5.99 @ 0.5 level of significance

Ho – There is no relatable connection between the residential area and the Instagram from where the respondents got the information regarding digital payment system and e-wallets

Ha - There is a relatable connection between the residential area and the Instagram from where the respondents got information regarding digital payment system and e-wallets

The question is related to Instagram advertisements regarding Digital Payment services and e-wallets from where the audiences got information. The analyzed data has revealed that the calculated value of 5.444 is lower in compare to the table critical value of 5.99 @ 0.05 level of significance for 2 df. Thus, the alternative hypothesis of there is a relatable connection between the place and the Instagram from where the respondents got information regarding digital payment system and e-wallets is failed to reject null hypothesis. This indicates that place a dependent variable is not influenced with the respondent knowledge about the information of online payment services through Instagram.

### 5.1.3. Getting information through Twitter advertisements

| | | | Twitter Ads | | Total |
|---|---|---|---|---|---|
| | | | No | Yes | |
| Residence | Rural | Count | 3 | 1 | 4 |

| | | | | | |
|---|---|---|---|---|---|
| | | % within Q Residence | 75.0% | 25.0% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Twitter Ads | 0.9% | 1.0% | 0.9% |
| | Sub-Urban | Count | 3 | 2 | 5 |
| | | % within Q Residence | 60.0% | 40.0% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Twitter Ads | 0.9% | 2.0% | 1.2% |
| | Urban | Count | 321 | 95 | 416 |
| | | % within Q Residence | 77.2% | 22.8% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Twitter Ads | 98.2% | 96.9% | 97.9% |
| Total | | Count | 327 | 98 | 425 |
| | | % within Q Residence | 76.9% | 23.1% | 100.0% |
| | | % within Q Getting information regarding Digital payment system and e-wallets through Twitter Ads | 100% | 100% | 100% |

Table 5.1.3. Data regarding residence and Twitter advertisements

The given table shows about getting information about digital payment services and e-wallets through social media that is Twitter advertisements. Among 425 respondents from Kolkata, 98 respondents viewed advertisements in Twitter and 327 respondents didn't get any information regarding Digital Payment services. From the calculation it shows that, 25% audience from rural area, 40% beneficiaries from sub-urban area and 22.8% beneficiaries came across advertisements regarding online payment services in Twitter.

**Chi-Square Tests**

| | Value | df | Asymp. Sig. (2-sided) |
|---|---|---|---|
| Pearson Chi-Square | .829[a] | 2 | .661 |

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is .92.

Table critical value 2 df – 5.99 @ 0.5 level of significance

Ho - There is no relatable connection between the residential area and the Twitter from where the respondents got information regarding digital payment system and e-wallets

Ha - There is a relatable connection between the residential area and the Twitter from where the respondents got information regarding digital payment system and e-wallets

The question is related to Twitter advertisements regarding Digital Payment services and e-wallets from where the audiences got information. The analyzed data has revealed that the calculated value of .829 is lower in compare to the table critical value of 5.99 @ 0.05 level of significance for 2 df. Thus, the alternative hypothesis of there is a relatable connection between the place and the Twitter from where the respondents got information regarding digital payment system and e-wallets is failed to reject null hypothesis. This indicates that place a dependent variable is not influenced with the respondent knowledge about the information of online payment services through Twitter.

### 5.1.3. Getting information through YouTube advertisements

| | | | Q Where did you get information about Digital payment system and e-wallets? (Social Media) [YouTube Ads] | | Total |
|---|---|---|---|---|---|
| | | | No | Yes | |
| Q Residence | Rural | Count | 0 | 4 | 4 |
| | | % within Q Residence | 0.0% | 100.0% | 100.0% |
| | | % within Q Where did you get information about Digital payment system and e-wallets? (Social Media) [YouTube Ads] | 0.0% | 1.1% | 0.9% |
| | Sub-Urban | Count | 2 | 3 | 5 |
| | | % within Q Residence | 40.0% | 60.0% | 100.0% |
| | | % within Q Where did you get information about Digital payment system and e-wallets? (Social Media) [YouTube Ads] | 4.2% | 0.8% | 1.2% |
| | Urban | Count | 46 | 370 | 416 |
| | | % within Q Residence | 11.1% | 88.9% | 100.0% |
| | | % within Q Where did you get information about Digital payment system and e-wallets? (Social Media) [YouTube Ads] | 95.8% | 98.1% | 97.9% |

| | | | | |
|---|---|---|---|---|
| Total | Count | 48 | 377 | 425 |
| | % within Q3 Residence | 11.3% | 88.7% | 100.0% |
| | % within Q9_A_4 Where did you get information about Digital payment system and e-wallets? (Social Media) [YouTube Ads] | 100.0% | 100.0% | 100.0% |

Table 5.1.4. Data regarding residence and YouTube advertisements

The given table shows about getting information about digital payment services and e-wallets through social media that is YouTube advertisements. Among 425 respondents from Kolkata, 377 respondents viewed advertisements in YouTube and 48 respondents didn't get any information regarding Digital Payment services. From the calculation it shows that, 100% audience from rural area, 60% beneficiaries from sub-urban area and 88.9% beneficiaries came across advertisements regarding online payment services in YouTube.

**Chi-Square Tests**

| | Value | df | Asymp. Sig. (2-sided) |
|---|---|---|---|
| Pearson Chi-Square | 4.645[a] | 2 | .098 |

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is .45.

Table critical value 2 df – 5.99 @ 0.5 level of significance

Ho – There is no relatable connection between the place and the YouTube advertisements from where the respondents got information regarding digital payment system and e-wallets

Ha - There is a relatable connection between the place and the YouTube advertisements from where the respondents got information regarding digital payment system and e-wallets

The question is related to YouTube advertisements regarding Digital Payment services and e-wallets from where the audiences got information. The analyzed data has revealed that the calculated value of 4.645 is lower in compare to the table critical value of 5.99 @ 0.05 level of significance for 2 df. Thus, the alternative hypothesis of there is a relatable connection between the place and the You tube from where the respondents got information regarding digital payment system and e-wallets is failed to reject null hypothesis. This indicates that place a dependent variable is not influenced with the respondent knowledge about the information of online payment services through YouTube.

### 5.2.Government's initiative to promote Digital Payment System

MeitY has been adopted various steps to promote digital payment services for social inclusion and spreading awareness.[1]

I. MeitY has launched an incentive scheme to promote RuPay Debit cards and low-value BHIM-UPI transactions in the country. This scheme assists banks in developing a strong digital payment ecosystem, promoting RuPay Debit card and BHIM-UPI digital transactions across all sectors.
II. A number of other incentives and cash back schemes has been launched in order to change customer/merchant behavior and accelerate the adoption of digital payments.
III. Advisories has been issued to central ministries and states/UTs to improve payment acceptance infrastructure, allowing citizens to pay using a variety of methods such as Internet banking, mobile banking, and mobile applications.
IV. To promote digital literacy in rural India, "Pradhan Mantri Gramin Digital Saksharta Abhiyan (PMGDISHA)" scheme has been launched.
V. All banks and payment service providers have been advised to conduct awareness campaigns to promote secure payment practices and raise information security awareness.
VI. To promote digital payments, MeitY also ran newspaper, digital theatre, FM radio, and hoarding campaigns.
VII. To encourage citizens to adopt digital payments, a variety of promotion and awareness campaigns have been launched, utilizing both traditional and emerging media such as social media platforms.
VIII. The government and the Reserve Bank of India have taken a number of steps to ensure the safety and security of digital payments.

## 6. Conclusion

Information and communication technologies (ICT) keep spreading at breakneck speed around the world. One of the most important periods of transformation in India's history is digitization. The Digital India program aims to connect rural areas to high-speed 3G/4G networks and powerful internet connectivity via mobile devices, as well as improve digital literacy among them.

With collaboration of other mobile wallet players, NPCI launched a campaign of “UPI Chalega” by promoting UPI as simple, secure and easy payment method. According to institution, the main objective of the campaign is to guide users toward proper UPI usage and to help them develop a habit of using mobile wallets in their daily lives. The campaign also emphasizes the importance of security when transacting on UPI-enabled applications.[19] Though there is sufficient ICT infrastructure in Kolkata, and state government as well as private organizations trying to promote

digital payment systems through different media, the impact of social media is more influenced to the audience as social networking sites emerged effectively in every aspect of human life.

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**CHAPTER 19**

# IMPACT OF BLACK MONEY ON THE INDIAN ECONOMY AND WAYS TO BRING IT BACK FROM TAX HAVENS

ASHISH PATHAK,

RESEARCH SCHOLAR, UNIVERSITY OF LUCKNOW

ashishpathak025@gmail.com

**ABSTRACT**

The generation of Black Money is problematic for developing nations as well as developed ones. It not only creates difficulties for honest taxpayers, bu also destabilizes the a nation's economycountryney can be defined as untaxed income that is evadeddefaulters evader personal gains rin financial loss to the government of the nation.nation's governmencountryrs a perusal of International Conventions and Treaties that can play an important role in bringing unessential illegal money back from the tax havens. The author has tried to bring forward the reasons of creation of black money in a country like India and the ways in which its circulation can be stopped. The Research Question focuses on the sufficiency of laws to combat this menace and is a connecting link between '*what is being done'* and '*what has to be done'* in present circumstances of Indian Taxation system including a look at the functioning of various bodies of the government and their role in maintaining transparent flow of money in the Indian economy. The Research Methodology adopted is Doctrinal in nature including the principles of applied research and Literature Review focuses on articles and books written by eminent authors expert in the field of economics and taxation.

**Keywords**: Black Money, Developing, Economy, Tax havens, Doctrinal.

## 1. INTRODUCTION

*Black money is so much a part of our white economy, a tumor in the center of the brain- try to remove it and you kill the patient.*

- Rohinton Mistry

India got independence in 1947 and framed its Constitution in 1950. The founding fathers of the Indian Constitution were vigilant enough to include the principles of equality, liberty and fraternity in the text. They gave the power to the citizens indirectly, by making them eligible to

elect their representatives through the process of election[cxix]. Their zeal to make India a powerful nation having roots of transparency, honesty and perseverance prompted them to include provisions of taxing system through Article 265 of the Indian Constitution[cxx]. They wanted India to have the best infrastructure, less dependency on foreign nations, and a robust mechanism for development and all this was possible by creating a transparent and efficient taxing system where people will pay tax as per their income and thus help in the overall development of the nation. There have been many statutory laws made by the Parliament of India from time to time, the most important onebeing Income Tax Act of 1961 and CGST Act of 2017 which describe the mode of taxation and the limits thereon[cxxi]. There are many other laws and authorities related to tax and its collection in India like Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, Wealth Tax Act, 1957, Expenditure Tax Act, 1987, Central Board of Direct Taxes, Central Board of Excise and Customs etc. There have been many highlighting cases where people have been accused of stealing and evading the money that was supposed to be given to the government in form of tax[cxxii]. The question that arises here is how have they been able to do this? Is it the loopholes in the taxing system or the tricky mind of people, or something else? For answering this question, let's try to understand the basics of taxing system in India by figuring out the difference between tax avoidance and tax evasion. Tax Avoidance, is taking benefit of the loopholes present in the taxing system of a nation and is usually done by a person to lower down or minimize the tax. It is not illegal and includes legal activities in accordance with tax rules and regulations. Tax evasion, on the other hand, is illegal as it involves the difference between the amount of income that should have been legally reported to the tax authorities and the real income so reported and it is possible when the concerned taxpayer fails to give the amount in form of tax that was supposed to be given by him. There are many people in India who do not report the authentic source of their income to the Tax authorities and succeed in escaping the liabilities. The money collected in form of taxes is used by the government for making roads, highways, and expressways, laying down railway tracks, opening schools, colleges, hospitals, etc. Infrastructural development takes a severe hit when the money that was supposed to be utilized for development projects, is stashed in tax havens[cxxiii] like Swiss Banks, etc. In a developing country like India, it is very important to make best use of the present infrastructure and ensure proper implementation of schemes related to economy of the nation. Therefore, it is equally important to have a transparent, strict and rigid model of taxing system laying down responsibilities of the taxpayers in a clear and defined manner so that they cannot hide any money or the source of money from the income tax authorities. As per the report published by the Standing Committee on Finance of the Government of India, the government of India has taken various steps like signing Tax Treaty framework with 146 nations, joining the

Multilateral Competent Authority Agreement for automatic exchange of information, Double Taxation Avoidance Agreement etc.[cxxiv] As per the report published in Down to Earth magazine, the International Monetary Fund estimates the global revenue loss to government due to the failure to give whole requisite amount as tax, at between $200 billion and $600 billion[cxxv].This is a loss to both developed and developing countries. However, the developed nation can stand even after facing the cases of tax evasion up to some extent, but the country which is still developing suffers a lot as the money stashed in tax havens could have been used for the welfare of citizens and developing internal infrastructure.

## 2. REASONS OF BLACK MONEY GENERATION

There are many reasons of the generation of black money in an economy and most of them are related to visible loopholes in the taxing system and the lust of a person to earn more and more for living a better standard of life. However, it doesn't mean that these are the only reasons for this problem as ill –conceived policies; corruption, high taxes, etc. are also there.

### 2.1 Weak political will and fragile policies of government

In order to stop the efflux of money from a nation to the tax havens, it is necessary to have a strong, transparent and potent taxing system and political will on part of the government to take action against the people who have been accused of stashing their untaxed money in foreign banks like the Swiss bank and when a nation lacks all these things or any of them, it becomes easier for a person to go ahead with his *malafide* intention of hiding the source of income and thereby sending it to other nations. In addition to this, the lacklustre approach of a nation's government in nabbing the persons accused of tax theft plays a big role in creating a perception in the mind of the accused that the people sitting in the government are not going to take any stringent action against him and he should proceed further with his volition. Needless to emphasize the fact that these are not good signs for any developing nation.

### 2.2 Corruption and its den

Corruption on any scale is dangerous not only for a society but the nation at large. It has been seen that many government officials are hand in glove with the accused person and help him in sending his untaxed income out of India[cxxvi]. The person planning to stash his money in foreign banks normally promises to give some share to the officials who find no reason for denying help to him. This den of corruption starting from the government officials makes it easy for the accused to proceed further and ultimately causes big loss to the government's exchequer and the economy of a nation. Nations like New Zealand, Denmark, Finland, Norway, Luxembourg, etc. have almost zero tolerance policy on corruption, therefore there have been almost nil cases of tax evasion reported from these countries and the report of Corruption Perceptions Index published

annually by Transparency International reflects this[cxxvii]. Developing Countries like India need to take example from these nations and start building up a foundation paving out ways for stopping internal corruption. This may include asking the government officials from time to time, mention their authentic and transparent source of income accompanied by an affidavit and the cross checking of all those documents strictly by the government and its reliable officials.

### 2.3 Base Erosion and Profit Shifting

As said earlier, Tax Avoidance is making use of the loopholes of taxing system of a nation. Sometimes, many establishments pay less tax by taking benefit of the exemptions that have been given in the taxing laws of a nation. The companies doing their business in different parts of the world or in different nations generally shift their turnover or the annual profits to those nations where they have to pay fewer amounts in form of tax due to less rates of tax. Ultimately, what it does is the loss of income or revenue to the nations that were charging higher taxes[cxxviii]. This is Base Erosion and Profit Shifting. Base Erosion, as the name suggests, erosion of the tax of a nation that was charging higher taxes and was legally entitled to do so.

*2.3.1 Double Taxation Avoidance Agreement*

The government of a nation enters in taxing agreements with other nations to enforce and regulate the system of taxing. Section 90 of the Indian Income Tax Act, 1961 empowers the Central Government to enter into an agreement with the government of any country outside India for granting relief in respect of Income which has been doubly taxed or in respect of income tax chargeable to promote mutual economic relations, for avoidance of double taxation or evasion or avoidance of tax[cxxix]. Double Taxation Avoidance Agreement (DTAA) is one of the purposes for which a government may enter in an agreement with the other nation. It is a tax treaty signed between two or more countries having the objective of avoiding tax payers to pay the tax on same income twice[cxxx]. For e.g. a person who is a resident[cxxxi] of India has gone to the United States for earning purposes. He is doing some work for which he is being offered remuneration by the company on which the US will charge income tax. The question that arises here is that what would be the scenario if India also decides to charge income tax from the person on the same income as he is a resident of India? To save him from paying the tax, twice on the same income in two different countries, India and US enter in an agreement called as the DTAA according to which, the person will not be asked to pay tax in India on the income that has been earned by him in United States as he has already paid tax on that income there or he will be given rebates while paying tax in that income in India. The objective of DTAA is to make it easy for a country to attract investments by providing relief on dual taxation but sometimes, people misuse it for their personal benefits. Round Tripping and Treaty Shopping are the methods which people adopt for

this. In Round Tripping, the role of shell companies is there. Shell Companies are the companies that exist only on papers and have no active business dealings. They are illegal in India and are mostly made for the purpose of evading taxes. There may be bank accounts attached to these companies. So, when a person in India sends his money to a DTAA partner country for setting up a shell company and reinvests the same back in India in form of Foreign Direct Investment (FDI), the profit out of such investment cannot be taxed in India as there is a treaty between India and the other country[cxxxii]. This ultimately causes loss to the revenue of the Government of India. On the other hand, the accused person involved in the process succeeds in evading the tax that was supposed to be given by him to the Government of India. Treaty shopping is when a foreign company comes to do business in a country for e.g. India and invests in the nation through a tax haven country.

### 2.4 Money Laundering

It is a process through which black money is converted into white money. Through this process, people separate the untaxed income or the money earned by them through illegal means from the source, and mix them with the white money and finally invest it. This is an indirect method of accumulating money for personal use by cheating the government. By taking advantage of the taxing loopholes, and taking corrupt officials with them, the accused person succeeds in taking away the money that was supposed to be paid by him in form of taxes.

## 3. IMPACT ON ECONOMY

The generation of black money in a nation is very much problematic for its economy. It not only disturbs the taxing system of the nation, but also hinders the overall growth of the economy. Due to the stashing of black money in foreign banks, the government's exchequer takes a severe hit as the money that should have been deposited in it, is sent outside. More importantly, the agendas and planning of the government is also disturbed.

### 3.1 Failure of the implementation of government policies

In every nation, the government brings effective policies for ensuring welfare of the citizens. Needless to emphasize the fact that for the implementation of these policies, the Central government as well as the State governments in India needs funds and these funds will be obtained in form of taxes. But, due to the rise in black money, the steps taken by the government for helping the citizens fail at every level. The economy faces shortage of resources as much of the money that should have been utilized in the upliftment of the citizens and economy, is stashed away far in tax havens. The level of output in the economy is directly affected by tax evasion. The money sent to tax havens cannot or output in the home country. A nation's policy becomes

open to the dictates of international capital if huge amount of money is sent out to tax havens. All these things ultimately lead to the slower development of the nation and its economy. As per an article published in THE HINDU newspaper, India could have been an $8 – trillion economy, the second largest in the world and its Per Capita Income could have been seven times larger, if it did not have the black money[cxxxiii].

### 3.2 Inflation

Increase in the prices of essential commodities and services can be covered in drawbacks of black money. The costs are higher which raise the rate of inflation. Due to limited resources, people start compromising and one of the examples is a child taking tuition due to poor and ineffective teaching in school ultimately increasing the cost of the family[cxxxiv]. The Central Bank of a nation, Reserve Bank of India in India's case, fails to control the supply of money in the economy which gives birth to inflation. The influx of unaccounted black money creates a rift between rich and the poor due to inflation.

### 3.3 Parallel Economy

Parallel economy means functioning of an unsanctioned sector in the economy whose objectives run parallel and in contradiction with the objectives of official or sanctioned or legitimate sector in the same economy[cxxxv]. The effect of generation of black money is so large that it sometimes creates parallel economy in the country. The use of black money in doing illegal activities like this, giving rise to parallel economy, degrades the value of the currency been used in the nation. The economy of the nation takes a severe hit which results in unemployment, price rise, hoarding, etc. The influx of money through parallel economy creates disturbance in the transparent system of tax collection and forces the government to take steps for the citizens that may not be suitable for them like increasing arbitrary tax rates, etc.

### 3.4 Affecting the credibility of a nation

It won't be wrong to say that the generation of black money in a nation and its stashing in tax havens affects its reputation in the world. Other countries are reluctant to engage themselves in business with a nation where economy is not growing as per the standards. International bodies like International Monetary Fund (IMF) and World Bank are hesitant in giving loans to these nations. Economy is the backbone of every nation and that is why it becomes essential for it to keep a check on the taxing system and citizens' activities internally so that the image of the country is not tarnished at the global level because in an era of globalization, almost all the

countries are interdependent on each other for their needs and the generation of black money will play spoiler in their mutual relations.

### 3.5 **Increase in government's deficit**

The money in form of tax that was supposed to be given to the government legally, when sent in to the tax havens, deducts the share of the government and ultimately pressurizes it to come up with strict and sometimes, costly policies for the citizens. For e.g. if 100 rupees were supposed to be given to the government in form of tax but the person has given only 40 rupees, this deficit of 60 rupees has to be balanced. In return, the government may increase taxes and borrowings and the latter leads to debt. In case of failure to balance the deficit, the government is left with no option but to decrease spending which ultimately affects the overall development.

## 4. A NEED TO BRING IT BACK OR STOP IT FROM GOING OUT

The government of India in the month of December, 2021 couldn't give any exact figure of the amount of money that is stashed in foreign banks. However, it said that more than Rs. 8644 crore has been brought to tax and penalty of more than 1294 crores has been levied on the defaulters[cxxxvi]. Even in absence of any exact figure it can be estimated that a huge sum of money belonging to Indians is stashed in tax havens, especially the Swiss bank, as the Swiss National Bank released its data telling that the funds held by Indians in Swiss banks has risen to Rs. 20,700 crore in the year 2020[cxxxvii]. Knowing the fact that India has already lost a lot of money that should have been deposited in the government's exchequer, it becomes important to stop the generation of black money in the nation's economy and chalking out ways to bring back the sum that has been illegally deposited in tax havens. The government of India has taken some crucial steps like making statutory laws for e.g. Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, Fugitive Economic Offenders Act, 2018, The Central Goods and Services Tax Act, 2017, Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002, Lokpal and Lokayukta Act, 2013, etc. By using the provisions of the above mentioned laws, the Indian government, up to some extent, has succeeded in keeping a check on the influx and efflux of black money. However, some more important steps should be taken for better coordination between tax haven nations and India so that more transparency is ensured. Let us try to find out what all things can be done for this purpose.

### 4.1 Reforms in the taxing system

India has a well-advanced taxing system which allows the appropriate authorities to collect taxes from the citizens. However, if the government plans to reduce the tax rates up to some reasonable

extent which is convenient for the taxpayer as well as the government, it will help in making people pay taxes transparently as they won't find it difficult or hard to submit their source of income. However, it doesn't mean that the government should relinquish its claims or be ready to get less money in form of taxes. A person earning more than Rs. 10 lakh per annum has to pay 30 percent tax which if wisely reduced to 25 percent can help everyone.

### 4.2 Digitalization of records and documents

In order to create a transparent record system, it is advised that the government should make a digital record for all kinds of dealings, contracts, agreements, etc. and ask the parties to do the transaction digitally and not in cash. It is difficult to maintain exact record of cash transactions and mostly black money is used in form of cash, especially in real estate sector. Digitalization helps in creating a clear picture of the transaction which helps in knowing about the source of earning money that has been spent or invested for a particular purpose and therefore more use of plastic money is recommended.

### 4.3 Strengthening the working of bodies dealing with black money

In India, the institutions dealing with black money are Central Board of Direct Taxes (CBDT), Enforcement Directorate (ED), Central Board of Excise and Customs (CBEC), Central Economic Intelligence Bureau (CEIB), Central Bureau of Investigation (CBI) etc. The working of these bodies is clearly defined. The Income Tax department is primarily responsible for keeping a check on black money as it is responsible for collecting tax in a fair manner. It, on the basis of information so received, looks into the matters of tax evasion and gives notice to the individuals who refrain from giving taxes in a proper manner or give only some amount of money in form of tax. It is important to devise methods to ensure that the officers of IT department don't play in the hands of corrupt people who have an intention to evade tax. For this, frequent scrutiny and surveillance should be ensured on part of the government and its officers.

### 4.4 Working with nations together to combat black money

India has played an important role in combating the menace of black money by aligning with different nations. It has asked the Swiss bank to share the details of tax defaulters or people having their black money stashed in the bank. The government of India should ask the Swiss bank to review its investment policy and the rules related to disclosure of details of a tax evader. India has Double Tax Avoidance Agreements with more than 80 nations today which is a welcoming step.

### 4.5 Right to Information

Funding to political parties in India should be brought under the scanner. The ambit of Right to Information should be increased and the details of donations given to the parties must be put on the website of Election Commission in a transparent manner. The Income Tax department should be made capable and independent to inquire into the details of funding to political parties and their expenses in rallies, roadshows, etc. The grants or donations given to political parties should not be in form of cash and be made mandatory to be in digital form. This glassy approach will help in stopping the conversion of black money in to white.

## CONCLUSION AND SUGGESTIONS

All of us shall stand on the same footing even after 74 years of getting independence thinking that India has not developed up to the extent its founding fathers have dreamt. Framers of the Indian Constitution had thought of taking the nation to new heights where every citizen will have his home and adequate means of livelihood. Their zeal to incorporate the principles of equality and freedom in the Constitution paved the way for citizens to develop themselves in the field of education, health, etc. But some of the selfish people have shattered their dreams by taking some harmful steps that should not have been taken. There are many nations in the world who have stringent laws for their citizens who are accused of corruption or evading taxes. Some important steps that can be taken to stop the generation of black money can be listed below.

1) In India, the organizational structure of tax authorities is well developed, but lacks in proper implementation of laws that regulate income tax. It is easy to bribe an individual who acts as per the whims and fancies of the person so bribing. This lust for money or undue desire to get more should be finished.

2) Proper implementation of government schemes and statutory laws should be ensured for dealing with the defaulters effectively. Harsh and strict punishment should be given to every person who is accused of tax evasion and it should be set as an example for others.

3) Tax haven nations have already agreed to share the names of the tax defaulters with India once the proof is given by India. It becomes the duty of the Income Tax department of the Indian Government to find out the names of these tax evaders with authentic proof and submit the details to the nation where their black money is stashed.

4) India should take the Action 13 Country by Country reporting of the OECD seriously and try to find out the ways to stop the generation of black money.

5) It is beneficial for India if the nation’s government by keeping in mind the adequate resources it has, compares the condition of the nation with any other developed nation. It will help in taking all those steps that are supposed to be taken for taking the country forward with defined agendas.

For e.g. sending a team to study the economies of least corrupt nations and who are developed as well like Denmark, New Zealand, Singapore, Finland, etc. can help in chalking out the ways helping the Indian government to formulate steps and policies for stopping the generation of black money.

6) The technicalities of taxing system should be made to understand to the citizens and if needed, should be modified in a manner which is beneficial for the nation at large. Multiple audit trails on income across the production chain should be ensured.

India would have been in the list of developed nations today, if this money that is stashed in foreign banks was utilized for the welfare of citizens by constructing more highways, roads, dams, airports, creating services within India, laying down railway tracks, making defense schemes and weapons including aircrafts, etc. within the territory of India. Even today, there are many people in India who are forced to live below poverty line and the rich has become richer, and poor has become poorer. This division is only because of the financial status and that is due to the cupidity of some people who have snatched the rights of all the citizens by taking their money to other nations. It is high time when India should stand tall and take action against individuals or citizens who have deposited their illegal income in foreign banks and come out with potent policies related to agreements with foreign nations for giving the details of tax defaulters or tax evaders in a proper manner. The sooner it is done, the better it is.

We should not forget the words of John Adams-

*Our obligations to our country never cease but with our lives.*

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Ashish Pathak

**CHAPTER 20**

# PAST, PRESENT AND FUTURE OF ECOCIDE: A BIBLIOMETRIC ANALYSIS

AJAY CHANDEL

MITTAL SCHOOL OF BUSINESS, LOVELY PROFESSIONAL UNIVERSITY

EMAIL: AJAY.CHANDEL@LPU.CO.IN

JASNEET KAUR

MITTAL SCHOOL OF BUSINESS, LOVELY PROFESSIONAL UNIVERSITY

EMAIL: JASNEET.16413@LPU.CO.IN

## ABSTRACT

Every day, new evidence of significant environmental degradation occurs around the world, affecting the lives of millions of people, according to research studies. Ecocide is a term used to describe environmental deterioration that includes both naturally occurring mechanisms of environmental or ecosystem degradation and ecological damage caused by anthropogenic actions. While there is no shortage of papers on ecocide research, there is a distinct lack of bibliometric analysis of works dedicated to understanding and investigating the domain. While the majority of literature in the field of environmental degradation focuses on the negative consequences of ecocide, few studies use bibliometric analysis to examine the history, present, and future of existing material. By examining research publications published between 1990 and 2022, this study employs a bibliometric approach to derive significant information on advancements in this field. The paper attempts to classify extant Ecocide literature using bibliometric criteria such as year, area, author, institution, and source. A bibliometric study of keyword co-occurrence was also undertaken to better understand the major themes that underpin the Ecocide literature. The article also examines legal frameworks and suggests future research subjects in the field of ecocide.

**Keywords**: Ecocide, Environmental degradation, VOSviewer, Biblioshiny, Bibliometric analysis, Genocide Introduction

International law researcher Richard Falk, 1973 confirmed that humans had begun to recognize the magnitude of the harm caused by anthropogenic activities. The use of dangerous weapons in armed conflicts, as well as the repercussions of resource extracting corporations such as mineral and fossil fuel extraction, farming, and logging, were noted to be progressively destroying the environment and, with it, humankind's well-being (Falk, 1973). Forty-Nine years later, this work is a bibliometric investigation of if this predicament has changed for good or worsened in fact.

Every single day, research reports testify to new evidence of substantial environmental degradation occurring around the world, impacting the lives of millions of people. The disastrous environmental and societal impact of the industry extracting palm oil is one of the most recent environmental concerns. A huge area of tropical forests has been cleared to establish industrial palm oil plantation farms causing contamination of air, water, and soil, soil degradation, the ruination of indigenous plant and animal species habitats, and promoting social squabbles amongst local communities whose living standards are being simply disregarded (Meijaard, Brooks, Carlson, Slade, Garcia-Ulloa, Gaveau & Sheil, 2020; Muhammad, Sharaai, Ismail, Harun, & Yien, 2019). Worryingly, this is just one of the numerous examples. Environmental destruction is occurring at a rate faster than initially assumed (UNEP, 2016). The use of massively destructive armaments during times of war, as well as considering and using the earth as a consumer good to drive economic expansion in both conflict and non-conflict settings, has resulted in an increase in the violations of human rights and also environmental degradation. Due to their chronicity and severity, the disastrous effects of these actions have earned their name- Ecocide. Ecocide is easily interpreted as pervasive and protracted damage and degradation of the natural environment and ecosystems. Committed again and again over generations, Ecocide is a root reason for the current environmental and ecological crisis.

'Killing our home' (i.e., 'killing our environment') is a classic way of defining ecocide. However, ecocide not only degrades the environment but also seriously violates human rights. Human rights and environmental conservation are inextricably linked; a safe and healthy environment is crucial for individuals and social groups to exercise their most essential

underlying human rights. In general, incidents of massive ecological destruction hurt human well-being, as well as the well-being of all other living and non-living ecosystem elements, which is harmful to humanity's survival.

Ecocide is a term that refers to "a variety of human or natural actions and processes that all have one thing in common: they harm and decimate the ecosystems around the world to the detriment of flora and fauna" (Fried 1972). Ecocide, as a notion, pertains to both naturally existing mechanisms of environmental or ecosystem degradation and ecological destruction due to anthropogenic activities (White and Heckenberg, 2014). As per a legal definition coined by Stop Ecocide International (2021), “Ecocide means unlawful or wanton acts committed with the knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.” (Minkova, 2021). It is especially important to understand the components of this definition as discussed below in Table I:

**Table I- Components of Ecocide Definition**

| Sr. No | Component | Explanation |
|---|---|---|
| 1 | Wanton | "Wanton" implies careless indifference towards the degradation that is visibly excessive in context to the expected socio-economic benefits; |
| 2 | Severe | "Severe" denotes environmental degradation with excessively negative changes, disturbances, or damage to any component of the natural environment, as well |
| 3 | Widespread | "Widespread" refers to the destruction that stretches beyond a specific geographic area, traverses states, or affects an ecosphere, organisms, or a |
| 4 | Long-term | "Long-term" damage is defined as the devastation that is irreversible or cannot be rectified within a reasonable period through nature's recovery |
| 5 | Environment | "Environment" refers to biodiversity, frozen parts of the earth, solid, outer part of the Earth, water that is on the surface of the planet, underground, and in |

(Source: Stop Ecocide International, 2021)

However, there is no dearth of studies on ecocide research, and a lacuna of bibliometric analysis of studies dedicated to understanding and investigating the domain is quite evident. While the majority of literature in the area of ecocide revolves around the detrimental impacts of ecocide, there is a dearth of studies exploring the extant literature using bibliometric analysis. This study thus takes up a bibliometric approach to extract valuable information on what developments in the area have been studied so far from research publications published between 1990 to 2022.

The purpose of this study is to conduct a literature review to answer the following research questions:

**RQ 1**: Categorization of existing literature on Ecocide founded on bibliometric parameters such as year, region, author, institution, and source

**RQ 2**: A bibliometric analysis of keyword co-occurrence to understand the mainstream themes underpinning the Ecocide literature

**RQ 3**: A review of legal frameworks in the area of ecocide

**RQ 4**: A review of future areas of research in the domain of ecocide

## 2.0. METHODOLOGY

To respond to the research questions raised above, a bibliometric assessment of research papers published between 1990 and 2022 was conducted. This entailed retrieving relevant articles from the Scopus database. Scopus was chosen as a source of bibliometric data because it is one of the largest cataloged abstract and citing sources databases, with worldwide coverage of scientific publications, conference papers, and texts that use a very rigorous content evaluation, selection, and re-evaluation by an unbiased content selection and advisory committee to ensure only the highest quality papers are properly documented. Furthermore, Scopus' stringent quality control methodologies are constantly evaluating and improving all data items. Scopus offers extensive authorship and institutional profiles derived from powerful categorizing algorithms and expert curation, ensuring the highest precision and recall. Because of its dependability, Scopus has been used as a high-quality bibliometric data source for large-scale assessment in research evaluations, research ecosystem studies, scientific policy assessments, and university rankings. The Scopus search term "Ecocide" was used to find and select relevant articles. Figure-I depicts the publications in the field of Ecocide from 1990 to 2020.

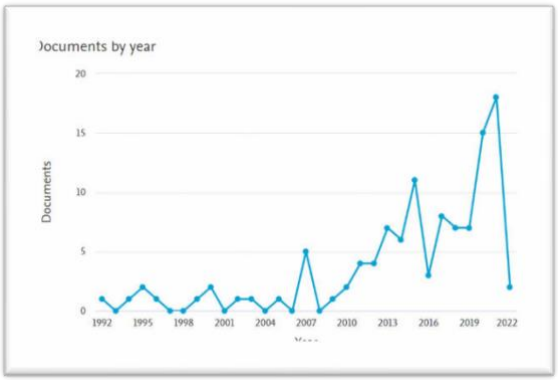


**Figure I:** Year-wise publications on Ecocide

Based on the abstract, title, and relevant keywords, 249 publications were extracted. Because the study focused on ecocide, only studies that could help achieve the stated research objectives were chosen. In this regard, the PRISMA framework was used to select relevant studies (Moher et al.,

2015). The PRISMA framework has four stages: identifying and recording studies using database searches, screening the recorded studies, proofreading and determining study eligibility, and final study selection. A schema of the PRISMA methodology followed for article selection is presented below in Figure-II:

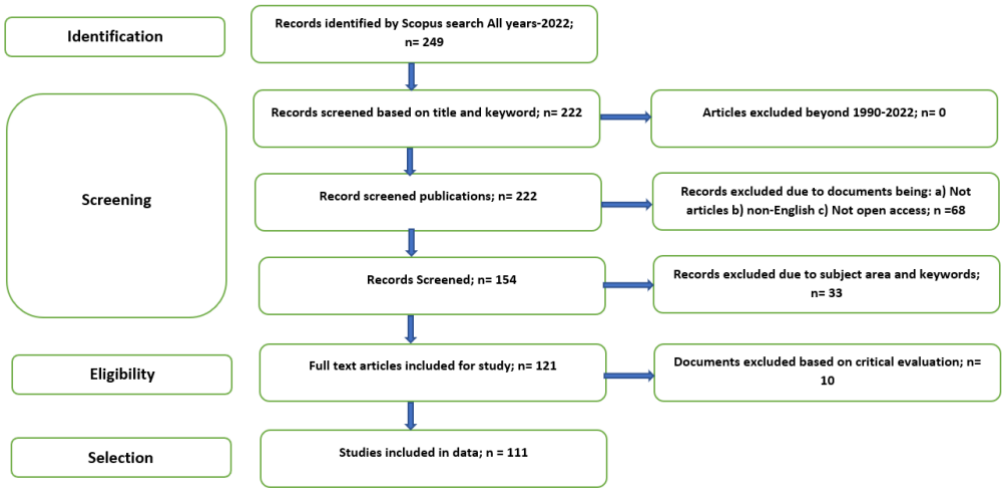


**Figure-II:** PRISMA Schema

The activity resulted in the final selection of 111 articles, which were then analyzed to achieve the research's stated objectives. The 111 publications' author keywords, citations, and bibliographical data were exported to the VOSviewer program. The bibliometric maps in this study were created using VOSviewer, a tool. VOSviewer is a piece of software that allows you to create, visualize, and analyze bibliometric networks. Authors, journals, organizations, and individual publications comprise the networks in VOSviewer. With VOSviewer, these networks can be viewed at speeds and scales that are impossible to achieve with manual methods or other software. VOSviewer's text mining features enable it to generate network mappings of co-occurring keywords based on abstracts and body text of research publications.

## 3.0. ANALYSIS AND DISCUSSION OF RESULTS

**3.1. RQ1:** Categorization of existing literature on Ecocide founded on bibliometric parameters such as year, region, author, institution, and source.

### COUNTRIES AND ACADEMIC INSTITUTIONS

**Table-II:** Most Productive Nations/Countries

| Country | No of publications | Citations |
|---|---|---|
| United States | 30 | 189 |
| United Kingdom | 21 | 226 |
| Australia | 14 | 55 |
| Norway | 7 | 18 |

| | | |
|---|---|---|
| Netherlands | 3 | 34 |

As visible from Table II, approximately 27 percent of publications aiming at deciphering the various aspects of Ecocide were published in the United States. Approximately 18% of the publications were contributed by the United Kingdom. Australia, Norway, and the Netherlands contributed approximately 12%, 6%, and 2% of the total publications in the domain of Ecocide. Therefore, the United States, United Kingdom, Australia, Norway, and the Netherlands were some of the most productive nations publishing the research work in the area of Ecocide.

Surprisingly, there were few to no publications contributed from countries usually cited as the most severe victims of Ecocide. However, the Niger delta has been disfigured by oil extraction for the past fifty years, there was not a single publication from Nigeria. For decades, oil corporations have been operating here with little ecological oversight, and the delta, which is notoriously plagued by dispute and extreme poverty, has been consistently pushed towards environmental catastrophe. Inhabitants struggle to survive on land and water contaminated by decades of oil spillage, and agriculture failure due to acid rain caused by gas plumes (The Guardian, 2010). Linfen in China is commonly cited as the most polluted city on earth. The city is situated in the center of a 12-mile industrial zone of iron casting foundries, pyrometallurgical plants, and cement plants which are fuelled by the 50 million tonnes of coal extracted annually, unrestricted due to rapid development (The Guardian, 2010). Ironically, the database did not mention a single publication from China. The database was found to be devoid of publications from countries that are some of the biggest victims of Ecocide.

**Table-III:** Most Productive Academic Institutions

| Affiliate Institution | No of publications |
|---|---|
| University of London | 7 |
| University of Oslo | 7 |
| University of Tasmania | 7 |
| Medawar Institute of Medical and Environmental Research | 4 |
| University of Essex | 4 |

As evident from Table III, the University of London (Approximately 6% of total publications), University of Oslo (Approximately 6% of total publications), and University of Tasmania (Approximately 6% of total publications) were found to be the most productive academic and research institutions contributing the greatest number of publications towards the domain. This was followed by the Medawar Institute of Medical and Environmental Research and the University of Essex with the academic institutions contributing four publications each (Approximately 3% of the total publications) towards Ecocide.

### 3.1.1. FOREMOST RESEARCHERS IN THE DOMAIN OF ECOCIDE

The results of the bibliometric analysis showed the five most authoritative writers with publications on various aspects of Ecocide. These most prolific writers were identified to be from 3 nations namely the United Kingdom, Australia, and Norway (based upon several publications and citations). There was a total of 15 unique publications (4 publications shared between authors as co-author) by these writers. These top five writers' 15 unique publications were cited 307 times. Table-IV lists the writers, Publication title, affiliation, citations, and H-index of the author.

**Table-IV:** Foremost researchers in the domain of Ecocide

| Author | Publication Title | Affiliation | Citations | | H-Index |
|---|---|---|---|---|---|
| White R. | Critical Criminology and the Struggle Against Climate Change Ecocide | University of Tasmania, Australia | 22 | 40 | 53 |
| | Climate change, ecocide and crimes of the powerful | | 9 | | |
| | Criminological Perspectives on Climate Change, Violence and Ecocide | | 5 | | |
| | The ecocide-genocide nexus: A green criminology perspective | | 1 | | |
| | Imagining the unthinkable: Climate change, ecocide and children | | 1 | | |
| | Carbon economics and transnational resistance to ecocide | | 1 | | |
| | Ecocide | | 1 | | |
| Short D. | Protecting the planet: A proposal for a law of ecocide | School of Advanced Study, University of London, London, United Kingdom | 80 | 150 | 23 |
| | Marx, Lemkin and the genocide-ecocide nexus | | 37 | | |
| | Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments | | 32 | | |
| | Developmentalism and the Genocide–Ecocide Nexus | | 1 | | |
| South N. | Protecting the planet: A proposal for a law of ecocide | University of Essex, United Kingdom | 80 | 117 | 47 |
| | Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments | | 32 | | |
| | Genocide and ecocide in four Colombian Indigenous Communities: The Erosion of a way of life and memory | | 3 | | |
| | Eco-Crimes and Ecocide at Sea: Toward a New Blue Criminology | | 2 | | |
| Crook M. | Marx, Lemkin and the genocide-ecocide nexus | Department of Social Sciences, University of Roehampton, London, United | 37 | 70 | 2 |
| | Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments | | 32 | | |
| | Developmentalism and the Genocide–Ecocide Nexus | | 1 | | |
| Dunlap A. | The 'solution' is now the 'problem:' wind energy, colonisation and the 'genocide-ecocide nexus' in the Isthmus of Tehuantepec, Oaxaca | Centre for Development and the Environment, University of Oslo, | 33 | 39 | 17 |
| | The Politics of Ecocide, Genocide and Megaprojects: Interrogating Natural Resource Extraction, Identity and the Normalization of Erasure | | 6 | | |

Rob White, in his research on Ecocide, focuses on reviewing recent criminological writings on climate change and its implications for violence. His work examines climate change-related criminal activities through a criminological lens. His work accomplishes this by investigating the association between global warming and social interactions, climate change, and social stressors, and reimagining potent crimes as ecocide because they damage the environment. Related issues such as contrarianism and natural resource securitization, both of which safeguard and preserve particular segmental interests rather than the interest of the public, are also addressed in his mainstream work.

Damien Short's work revolves around explaining how Ecocide is another form of Genocide. His

essays discuss various instances of how crimes that damage the climate, as well as human and other living species, as well as distinctive styles of reactions that have asked for more efficient and suitable frameworks of justice and law than those presently in place.

Nigel South in his work envisages that international law can resolve some egregious illustrations of colonialism's wrongdoings and damages through the conceptually and legally defining genocide, but the closely related concept of ecocide, which pertains to ecological sustainability, has not yet been officially accepted within the system of law. His idea argues that the notion of ecocide represents a robust tool in the perspective of this special issue mirroring the implementation of environmental criminology. To demonstrate this, his work investigates the links between genocide, capitalism, and colonialism, as well as the effects on indigenous communities and local and global ecological systems.

Martin Crook's work aims to contribute to an evolving "ecological turn" in genocide research by putting the material "extra-human environment" at the heart of the biological and social integrity of communities like indigenous people and territorially reliant place-based communities.

Alexander Dunlap believes that continuous and systematic processes of resource exploration and exploitation are at the heart of techno-capitalist advancement marketed as "modernity," "progress," or "development." His mainstream work examines wind energy progress in Mexico, coal exploration in Germany, and copper extraction in Peru to help bolster the post-liberal or institutional approach to genocide research. These ethnically and geographically diverse case studies lay the groundwork for conversations about the complexities of conflicting fault lines in the context of extractive development. The key premise of his work is that both "green" and traditional natural resource extraction contribute significantly to the degradation of human and biological diversity, thereby contributing to broad trends of social and ecological ruination, extinction, and the possibility of human and nonhuman annihilation.

### 3.1.2. FOREMOST JOURNALS AND PUBLISHERS

Table V presents the top 4 journals and publishers that contributed to the majority of publications in ecocide literature. As can be seen clearly, the International Journal of Human Rights published 6 documents with 219 citations followed by Critical Criminology, Journal of Genocide Research and Environmental Ethics with 2, 5, and 2 documents with 73, 37, and 2 citations respectively. Table V also shows the pertinent details of publishers associated with the selected journals.

**Table V-** Most productive Journals

| Journals | No of publications | Publisher | H-Index | Total Citations |
|---|---|---|---|---|
| International Journal of Human Rights | 6 | Routledge | 21 | 219 |
| Critical Criminology | 2 | Springer Netherlands | 26 | 73 |

| | | | | |
|---|---|---|---|---|
| Journal of Genocide research | 5 | Carfax Publishing Ltd. | 26 | 37 |
| Environmental Ethics | 2 | Environmental Philosophy Inc. | 29 | 2 |

### 3.2 RQ2: A BIBLIOMETRIC ANALYSIS OF KEYWORD CO-OCCURRENCE TO UNDERSTAND THE MAINSTREAM THEMES UNDERPINNING THE ECOCIDE LITERATURE

Based on the concept that keywords provide a sound rationale-based explanation for the content of papers, keyword analysis is an excellent analytical technique for exploring particular themes in marketing or any literature, and it has recently gained prominence (Wang & Chai, 2018). Bibliometrics employs four analysis methods: co-word association, co-word cluster, co-word

frequency, and burst word monitoring. Keyword co-occurrence assessment was also used in this study since it was judged as an effective way of addressing research trends in the ecocide domain by examining current papers.

Significantly, a co-word assessment is performed by examining keywords that occur together. The strength of the link between two keywords is expressed in terms of value that shows their association (Goyal & Kumar, 2021; Saha et al., 2020). Link strength reflects the number of times two specific keywords happened to occur in the same publication. The entire number of times any two keywords have been used in a search is represented by the number of these links. In this study, the author keywords co-occurrence evaluation included 143 keywords. However, many of these keywords were used only once. 93 of the 143 keywords were used only once. To achieve the best outcomes, it was decided to rename the keywords as per the broad theme. After this approach, the number of keywords was reduced to 50. The modified 50 keywords were then loaded into VOSviewer, which used 2 as the minimum frequency of occurrence to map the collected literature. The keywords, their frequency of occurrence, and link strength are mentioned below in Table VI. Network visualization of the same is presented in Figure III.

**Table VI:** Keyword Co-occurrence Analysis

| Keyword | Frequency |
|---|---|
| Genocide | 35 |
| Climate change | 14 |
| Crime | 8 |
| Environmental degradation | 5 |
| International Law | 5 |

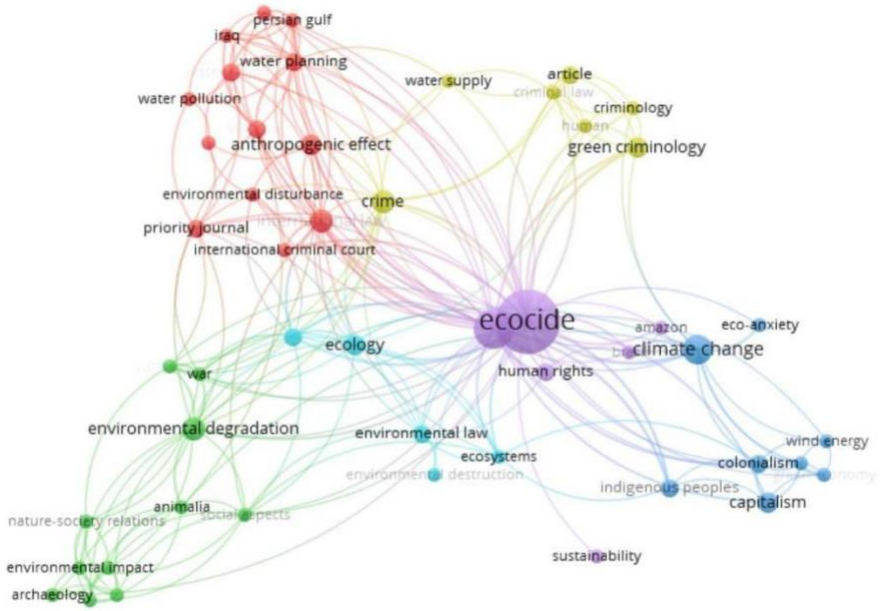


**Figure-III:** Network visualization of Keyword Co-occurrence

As discussed before and evident from the keyword co-occurrence analysis, Ecocide has come up as a propitious and ever-growing field with enormous and broad implications globally. The next section, based on the keyword co-occurrence analysis, deliberates upon major keywords most frequently discussed in the ecocide-centric literature. A brief discussion on the most commonly repeated keywords in ecocide literature is being used has been produced below:

### 3.2.1 ECOCIDE AS GENOCIDE

One of the most commonly recurring words in the Ecocide literature was found to be perceiving Ecocide and a Genocide. Ecocide, or the damaging of ecosystems, can be referred to as a method of mass slaughter commonly known as Genocide if, for instance, ecological degradation leads to living conditions that profoundly endanger the cultural or physical survival of a social community. Given the impending threat of catastrophic climate degradation, the resulting rapid mass extinction, loss of habitat, ecosystem collapse, and reliance of the human race on the biosphere, ecocide (both "organic" and "human-made") will be a key cause of genocide (Dunlap, 2021). The long history of colonialism includes ongoing inequities and rejection of indigenous communities' rights. In connection to nonhuman organisms and aspects of the natural environment, concurrent procedures of exploitation and unfairness can be recognized (Crook, Short, and South, 2018). International law can resolve some egregious instances of colonialism's offenses and damages through the conceptual and legal definition of genocide, but the closely related concept of ecocide, which pertains to humanity and nature, has yet to be

lawfully acknowledged within the legal system of international law (Lindgren, 2018).

### 3.2.2 ECOCIDE AND CLIMATE CHANGE

Yet another commonly recurring keyword in the literature suggested the gravity of the concern raised by various researchers towards climate change due to ecocide. The current geological epoch is known as the Anthropocene because anthropogenic activities (anthropoid) are affecting the Earth's original environment in unprecedented ways (White, 2015). The most visible example is the transformation of the atmosphere caused by the emissions of gases from using fossil fuels, such as carbon dioxide, methane, and CFCs. Researchers argue that this is a side effect of capitalism's ever-increasing customer needs, coupled with almost utter disrespect for the protracted destruction, global warming, and sea-level rise, induced by these greenhouse gases (White, Kramer, 2015). Patrick Hossay (2006), an environmental thinker and activist contend that the human species is perpetrating ecocide through the effects of modern industrialized society on the global ecosystem.

### 3.2.3 ECOCIDE AS AN INTERNATIONAL CRIME

In recent times, criminologists are increasingly focusing on the dangers of global warming, as well as the political and economic systems and daily activities of industrial capitalism that nurture and solidify the circumstances for extreme weather events (Lynch and Stretesky 2010). It was conceived in 1970 by Professor Arthur W. Galston to identify the impact of the United States' use of Agent Orange in Vietnam. At the time, Galston posited a global consensus to prohibit ecocide. It was later taken into account as an unlawful act in early editions of the Rome Statute of the International Criminal Court (ICC), along with the criminal offenses put on trial at the Nuremberg trials (war crimes, genocide, and crimes against humanity), but was finally exempted (Galston, 2001). The first world convention on ecological concerns, known as the UN Stockholm Conference, was held in 1972 to address concerns about environmental destruction (UN, 1972). Expert reports such as the International Energy Agency's "Net Zero by 2050" (IEA, 2021) serve as a warning that the clock is running faster towards the Paris Agreement's objectives, as does the IPCC's "Special Report on Global Warming of 1.5°C" (IPCC, 2021). The world leaders will emphasize the legally enforceable principles and rules for considering ecocide as a crime at the ICC at the UN Conference on Sustainable Development to be held in Stockholm in June 2022 (Ministry of Environment Affairs, Sweden, 2022).

### 3.2.4 ECOCIDE AND ENVIRONMENTAL DEGRADATION

No other faded away human civilization has elicited as much consternation, skepticism, and speculation as to the Pacific Island of Rapa Nui (Easter Island). European explorers encountered this small segment of land almost three centuries ago in the middle of the enormous South Pacific Ocean. Its human civilization developed to a degree of social sophistication that resulted in one of the most developed societies and technical feats of Neolithic communities anywhere else on the planet. Easter Island's stone-working abilities and competency were far better compared to those of any other Polynesian culture, as was its distinct system of writing. This exceptional society grew, prospered, and persevered for possibly more than a thousand years – before collapsing and becoming extinct (Peiser, 2005). Easter Island's natives were thought to have damaged their woods, deteriorated the island's soils, obliterated their vegetation, and driven their livestock to extinction. As a result of its self-inflicted ecological destruction, its successful society crumbled, devolving into civil conflict and self-destruction (Peiser, 2005). Not surprisingly, how ecocide is another name for natural or human-caused environmental degradation was yet another most frequently used word in the academic literature on Ecocide. Table-VII provided below contains some of the key activities reported in Ecocide literature, causing environmental degradation:

**Table VII:** Some major environmental degradation activities causing Ecocide

| | | |
|---|---|---|
| **Ocean Damage** | **Industrial fishing** | One of the ways people are causing irreparable damage to seas and life under oceans is by deep-sea bottom trawling, which destroys entire ecosystems by dredging the ocean's bottom; and overharvesting of fish, which results in the extinction of several species. |
| | **Oil spills** | There have been numerous incidents, the greatest of which being the Deepwater Horizon oil spill in 2010, which resulted in a slick stretching more than 57,500 square miles (149,000 square kilometres) and fouling an estimated 1,100 miles (1,770 kilometres) of shoreline. |
| | **Plastic Pollution** | Plastic garbage makes for 80 percent of all marine litter discovered from surface water to deep-ocean sediments, and at least 14 million tonnes of plastic waste end up in the oceans every year. Marine life ingests plastic waste or becomes entangled in it, resulting in serious harm and death. |
| | **Deep sea mining** | This nascent mining and processing sector is sparking calls for a complete prohibition due to the effects of physical disruption and pollution in the Pacific. |

| | | |
|---|---|---|
| **Deforestation** | **Industrial livestock farming** | Cattle ranching for beef production, as well as soy cultivation for animal feed, are the two most significant causes of Amazon deforestation. |
| | **Mineral extraction** | Copper, iron ore, and gold mining, as well as oil drilling, all contribute to deforestation and cause further harm to land and river systems by contaminating them. |
| | **Palm oil & wood production** | In Indonesia and Malaysia, these are the primary causes of deforestation. In Indonesia, palm oil has pushed orangutans and other wildlife species to the verge of extinction. Palm oil plantations on a large scale have resulted in widespread worker exploitation, human rights breaches, and evictions of Indigenous and rural populations. |
| **Land & water contamination** | **Oil spills** | Over many decades of oil exploitation, the Niger Delta has been plagued by oil spills, and it is still one of the most contaminated areas on the planet. |
| | **Mining** | Mining has a long history of contaminating land and water, from gold mining to mountaintop removal. |
| | **Tar sands** | The Athabasca tar sands in Alberta, Canada, are the largest of these activities, destroying animals, indigenous territory, and leaving scars that can be seen from space. |
| | **Fracking** | The toxicity of unconventional oil and gas production has been well recognised-and the impacts are cumulative. Countless Pennsylvanians who live near fracking wells experience explosions only feet from their homes, are compelled to drink contaminated tap water that is dangerous to their health, and inhale toxic vapours in the air. |
| | **Textile chemicals** | Wastewater from dyeing and tanning, for example, has a large contaminating impact on the textile sector. |
| | **Agricultural pollution** | Industrial agriculture chemicals and monocrop techniques have a significant impact on soils, river systems, and insect populations. |
| **Air pollution** | **Chemical disasters & weapons** | There are numerous examples, the worst of which is the Bhopal gas disaster. The use of the chemical weapon Agent Orange was the first time the term "ecocide" was used. |
| | **Radioactive contamination** | Nuclear disasters like Chernobyl and Fukushima, as well as contamination from nuclear testing and the deployment of nuclear weapons, are prominent examples, but the oil business has recently been found to be involved as well. |
| | **Industrial emissions** | Our climatic system, which serves as the umbrella environment for all others, can only remain stable within certain planetary bounds, therefore the fossil fuel, agriculture, and cement sectors are all involved in the production stage. |

### 3.2.5 ECOCIDE AND THE NEED FOR INTERNATIONAL LAW

Humanity and the climate are inextricably linked and mutually constitutive. The deterioration of the environment has had a considerable influence on the present generation and presents a threat to succeeding generations as well. The global health status and healthcare costs imply the need for legislative proposals to save the climate to avoid the majority of health problems. The existing national scale laws for environmental sustainability have authority over a limited geographical boundary (Mwanza, 2018). Therefore, the majority of work in the discipline puts forth the establishment of international law to protect the entire planet. Researchers believe that international law must make environmental damage a crime while also encouraging its sustainable

use of resources paving way for sustainable development. The sustainable use of the environmental resources is one thing but restoring the environment to its original state is quite another (Higgins, Short, South, 2013). The need of the hour as per many studies is to make such advancements that aid in economic growth as well as the sustainability of the environment (Lytton, 2000, Prakasa, 2021). The recognition of ecocide as an international crime was deemed as the single most potent measure because of the increased loss of biodiversity globally and the lack of reversal procedures to help make up for systemic failures, which help to emphasize that the safety of the planet must be assured on a global scale (Dunlap, 2021)

### 3.3 RQ3: A REVIEW OF LEGAL FRAMEWORKS IN THE AREA OF ECOCIDE

Environmental protection is primarily a civil matter, and where environmental offenses are described, they are typically quite precise (e.g., a certain degree of pollution in a certain context). Because the majority of the world lacks a legal plan to cope with mass widespread destruction, corporate actions tend to take the path of least opposition, able to operate most destructively in areas with the least safeguarding and merely budgeting for civil litigation. Ecocide establishes a new ethical benchmark, making anything that causes mass destruction of natural ecosystems unacceptable.

| Country | Article | Ecocide Law |
|---|---|---|
| Georgia 1999 | Article 409 | Ecocide, defined as the polluting of the environment, land, and water resources, massive destruction of plants and animals, or any other activity that could have resulted in an environmental collapse, is punishable by prison ranging from eight to twenty years. |
| Armenia 2003 | Article 394 | Mass degradation of plants and animals, contaminating the climate, soils, or water supplies, and other actions that cause an ecological disaster are punishable with imprisonment for 10 to 15 years. |
| Ukraine 2001 | Article 441 | Mass degradation of plants and animals, contaminating the climate, soils, or water supplies, and other actions that cause an ecological disaster are punishable with imprisonment for 10 to 15 years. |
| Belarus 1999 | Article 131 | Deliberate mass degradation of plants or animals, or contaminating of earth's atmosphere (air, soil and water), or pursual of other conscious choices likely to cause an ecological disaster (ecocide), shall be punishable by prison for ten to fifteen years. |
| Ecuador 2008 (Constitutional), and 2014 (Criminal Code) | Article 71 | While Ecuador doesn't really lawfully use the term "ecocide," any deliberate destruction to the climate during war or peace is a punishable crime, and the nation is the first in the world to make Environment a subject of powerful constitutional protections and assurances. "Nature or Mother Earth, where life takes place and propagates, has the right of comprehensive respect of her existence, as well as the upkeep and renewal of her vital cycles," according to Article 71 of the Law. |
| Kazakhstan 1997 | Article 161 | Global extinction of plants and animals, pollution of the environment, land, or water, and other actions that have induced or may cause an ecological disaster will be penalised by deprivation of freeddom for a time frame of ten to fifteen years. |
| Kyrgyzstan 1997 | Article 374 | Massive destruction of animal or plant kingdoms, polluting of the environment or water supplies, as well as the committing of other acts likely to cause an environmental catastrophe, shall be guilty by a 12- to 20-year sentence of deprivation of freedom. |
| Republic of Moldova 2002 | Article 136 | Deliberate mass degradation of plants or animals, or contaminating of earth's atmosphere (air, soil and water), or pursual of other conscious choices likely to cause an ecological disaster (ecocide), shall be punishable by prison for ten to fifteen years. |
| Russian Federation 1996 | Article 358 | Massive destruction of animal or plant kingdoms, polluting of the environment or water supplies, as well as the committing of other acts likely to cause an environmental catastrophe, shall be guilty by a 12- to 20-year sentence of deprivation of freedom. |
| Tajikistan 1998 | Article 400 | Mass degradation of plants and animals, contaminating the climate, soils, or water supplies, and other actions that cause an ecological disaster are punishable with imprisonment for 10 to 15 years. |
| Vietnam 1990 | Article 342 | Those who engage in acts of widespread annihilation in a particular area, decimate their means of income, undermine a country's culture and traditions, fundamentally alter the foundations of a society with the intent of subverting it, as well as other mass atrocities or ecocide or ruining the ecological landscape, shall be convicted to between ten and twenty years in prison, life in prison, or death penalty. |

### 3.4 RQ4: IDENTIFICATION OF FUTURE AREAS OF RESEARCH IN THE DOMAIN OF ECOCIDE

To achieve this outcome, Biblioshiny was used as a bibliometric tool. Biblioshiny is an open and free tool for conducting quantitative research in scientometrics and bibliometrics.

It supports all major bibliometric analytical techniques. In terms of the conceptual model, Biblioshiny employs the thematic map to denote the study's conceptual framework. This latter method employs a word co-occurrence matrix analysis to describe what existing literature is discussing in a given field, as well as key themes and patterns.

Thematic map (Caust and Vecco, 2017) enables the visualization of four distinct thematic classifications, as illustrated in Figure 3 based on high and low density and centrality. While high density represents the themes depicting the depth of literature dedicated to a specific domain of study (low density depicting lesser focused themes), high centrality represents themes most pertinent to the field of study (low centrality depicting less relevant themes). Further, thematic maps make use of the 'KeyWords Plus' field as an analytical unit. Scopus

editorial specialists equate these keywords with the assistance of a semi-automated algorithm. They review the titles of all references and highlight additional pertinent but unmentioned keywords that the authors did not include. The Keywords Plus field, in contrast to the authors' keywords, is normalized. Keywords Plus terms are more capable of capturing the depth, intensity, and variety of a content of a publication. The motor concepts are depicted in the upper-right quadrant. They are defined by a high degree of centrality and density. One of the evolved "motor themes" in the literature, it was discovered that the significant area of focus in the extant literature is ecocide and climate change, as well as eco-anxiety.

Naturally, the analysis's central theme was found to be climate change due to ecocide. This theme was associated with a variety of concepts, including environmental degradation and eco-anxiety to name a few. The term "Environmental degradation" refers to environmental damage that occurs when natural resources such as air, water, and soil are depleted; ecosystems are destroyed; habitats are eviscerated; wildlife is extirpated, and pollution increases unexpectedly. It is described as any alteration or disruption to the climate that is deemed detrimental or unacceptable. Environmental destruction and climate change have risen to the top of global concerns, with findings of Emissions of co2 reaching historic levels in 2020, 178 million hectares of forests – as big as about the size of Libya – being compromised since 1990, and oil wells erupting, seeping into the sea, and wreaking havoc on coastal cities (while beneath, 70% of the planet's coral reefs are threatened). More topsoil erosion, drought, wildfires, and flooding are all anticipated – at least according to the sizable percentage of the 1.2 million survey participants surveyed by the United Nations Development Program who believe climate change is a worldwide crisis. And this is only pollution during the peace.

Apart from the apparent destruction caused by dispute, War Junk – weapons and ammunition materials such as minefields, cluster bombs, and chemical and radioactive armaments – also leaves environmental traces post-conflict, limiting farmland use and contaminating water and soil sources with explosives and lethal contaminants such as TNT, adamite and mustard gas, to name a few (Opiniojuris.org, 2021). An associated theme represents a plethora of literature focusing upon climate change in Amazon due to ecocide. The scientists claim that forest and habitat destruction and climate change have wreaked havoc on the forest in the Amazon's southeast area. Temperatures in this region have risen by 3.07C in the two warmest months of the year – equivalent to the rise witnessed in the Arctic region and thrice the global average (bbc.com, 2021). A closely related concept found as a central theme was eco-anxiety. Eco-anxiety is a concern about environmental degradation or ecosystem collapse.

This anxiety is motivated primarily by the state of the environment in the present and anticipated future, as well as a human activity, caused by climate change. According to a 2018 national survey, 70% of Americans were concerned about climate change, and approximately 51% feel anxious about their future (medicalnewstoday.com, 2021).

Concerning the upper-left quadrant, it shows high-density themes but unimportant external links and so are of only limited importance for the field (low centrality). In this quadrant, no pertinent themes were deciphered.

In the lower-left quadrant are the emerging or declining themes. The theme of the need for establishing 'Environmental law' that sets the premise for criminalizing the ecocide was witnessed as a major theme. It is interesting to notice that one of the most emerging themes in Ecocide literature currently getting the most traction is the work revolving around having an international environmental law that criminalizes the people/organizations responsible for Ecocide. The deterioration of the environment has had a considerable influence on the present generation and presents a threat to succeeding generations as well. The global health status and healthcare costs imply the need for legislative proposals to save the climate to avoid the majority of health problems. The existing national scale laws for environmental sustainability have authority over a limited geographical boundary (Mwanza, 2018). Therefore, the majority of work in the discipline puts forth the establishment of international law to protect the entire planet. Researchers believe that international law must make environmental damage a crime while also encouraging its sustainable use of resources paving way for sustainable development. This area is one of the most emerging themes in ecocide literature.

At last, the lower-right quadrant highlights fundamental and transversal themes. These themes address broad issues that populate the fields of scholarly interests. The capitalist system and colonialism as a cause of ecocide, ecocide as a form of genocide, and green criminology were prominent themes in this area, to name a few.

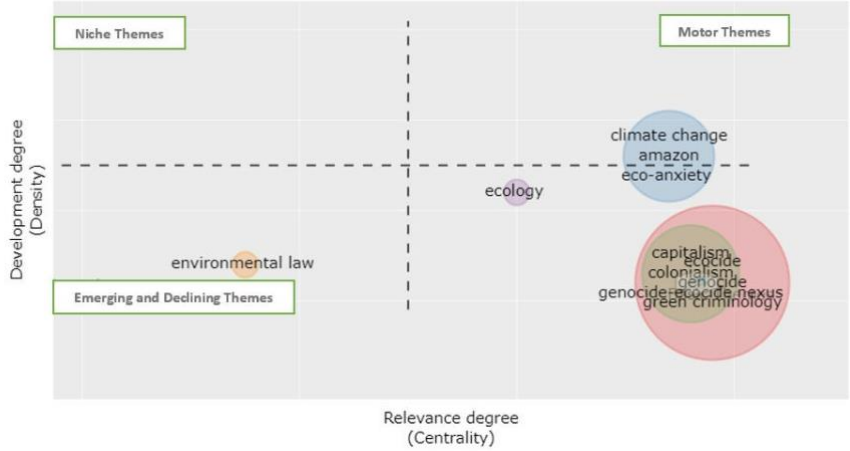

Figure 4: Thematic Map (Source: Biblioshiny)

Bibliometric analysis of 111 publications published between 1990 to 2022 and focusing upon the extant literature revealed that the University of London, University of Oslo, University of Tasmania, Medawar Institute of Medical and Environmental Research, and University of Essex were some of the universities associated with the highest number of publications (26 percent) highlighting various aspects of Ecocide. United States (with 30 publications and 189 citations) and the United Kingdom (with 21 publications and 226 citations) were the two most productive nations followed by Australia (14 publications, 55 citations), Norway (7 publications and 18 citations), and Netherlands (3 publications and 18 citations) in ecocide literature.

Most prolific writers namely Rob White, Damien Short, Nigel South, Martin Crook, and Alexander Dunlap were identified to be from 3 nations namely the United Kingdom, Australia, and Norway (based on several publications and citations). There was a total of 15 unique publications (4 publications shared between authors as co-author) by these writers. These top five writers' 15 unique publications were cited 307 times. Rob White, in his research on Ecocide, examines climate change-related criminal activities through a criminological lens. Damien Short's work revolves around explaining how Ecocide is another form of Genocide. Nigel South's idea argues that the notion of ecocide represents a robust tool in the perspective of this special issue mirroring the implementation of environmental criminology. Martin Crook's work aims to contribute to an evolving "ecological turn" in genocide research by putting the material "extra-human environment" at the heart of the biological and social integrity of communities like indigenous people and territorially reliant place-based communities. Alexander Dunlap's mainstream work examines wind energy progress in Mexico, coal exploration in Germany, and copper extraction in Peru to help bolster the post-liberal or institutional approach to ecocide-driven genocide research.

The bibliometric analysis also showed that the International Journal of Human Rights published 6 documents with 219 citations followed by Critical Criminology, Journal of Genocide Research and Environmental Ethics with 2, 5, and 2 documents with 73, 37, and 2 citations respectively. Keyword co-occurrence analysis revealed the most commonly occurring themes in the selected 111 publications. This allowed an understanding of various aspects of ecocide covered in extant literature so far. Ecocide paving the way for genocide, ecocide as a key driver of climate change and environmental degradation, Criminalizing Ecocide, and international law governing Ecocide were some of the major themes identified in the keyword occurrence

## 4.0. CONCLUSION

Bibliometric analysis of 111 publications published between 1990 to 2021 and focusing upon the extant literature revealed that the University of London, University of Oslo, University of Tasmania, Medawar Institute of Medical and Environmental Research, and University of Essex were some of the universities associated with the highest number of publications (26 percent) highlighting various aspects of Ecocide. United States (with 30 publications and 189 citations) and the United Kingdom (with 21 publications and 226 citations) were the two most productive nations followed by Australia (14 publications, 55 citations), Norway (7 publications and 18 citations), and the Netherlands (3 publications and 18 citations) in ecocide literature.

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threat of catastrophic climate degradation, mass extinction, habitat loss, and ecosystem collapse, ecocide (both "organic" and "human-made") will be a key cause of genocide (Dunlap, 2021). Ecocide as a key driver of climate change and environmental degradation was yet another key theme in the pertinent literature. The current geological epoch is called the Anthropocene because human activities are continuously degrading the environment (White, 2015). Literature was focused on how Carbon dioxide, methane, and CFC emissions from burning fossil fuels have transformed the atmosphere. Criminalizing Ecocide, and international law governing Ecocide were some of the major themes identified in the keyword occurrence analysis. These themes were the themes mostly covered in extant literature. In this research, the theme of the need for establishing 'Environmental law' that sets the premise for criminalizing the ecocide was witnessed as a major theme. Humanity and the climate are inextricably linked and mutually constitutive. The deterioration of the environment has had a considerable influence on the present generation and presents a threat to succeeding generations as well. The global health status and healthcare costs imply the need for legislative proposals to save the climate to avoid the majority of health problems. The existing national scale laws for environmental sustainability have authority over a limited geographical boundary (Mwanza, 2018). Therefore, the majority of work in the discipline puts forth the establishment of international law to protect the entire planet. Researchers believe that international law must make environmental damage a crime while also encouraging its sustainable use of resources paving way for sustainable development.

The study also deciphered future research areas using thematic maps in Biblioshiny (a bibliometric tool). The theme of the need for establishing 'Environmental law' that sets the premise for criminalizing the ecocide was witnessed as a major theme. It is interesting to notice that one of the most emerging themes in Ecocide literature currently getting the most traction is the work revolving around having an international environmental law that criminalizes the people/organizations responsible for Ecocide.

## 5.0. LIMITATIONS OF THE STUDY

The research attempted to minimize the shortcomings in its approach, yet this work has limitations that provide opportunities for future research. The study concentrates on obtaining papers from the Scopus that were published from 1990 to 2021 that ignored books, chapters, conference proceedings, and notes making this study not completely bias-free. Moreover,

there are other databases such as WOS that include rich content on ecocide. Future studies might involve bibliometric analysis from such databases along with Scopus to increase the depth and coverage of extant literature.

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## CHAPTER 21

# SOCIO-LEGAL INCLUSION OF LGBTQ RIGHTS-ISSUES AND CHALLENGES

-Dr. Parmila Dhiman, Asst Prof., KPMSOL,NMIMS
-Ms. Pinny Pathak, Asst. Prof., KES' Sh.J.H.Patel Law College

**ABSTRACT**

The *6th day of September, 2018* marks a historic moment by bestowing the rights and identity to the LGBT Community. The honourable supreme court on this historic day for the very first time recognised the fundamental rights of LGBTQ community by decriminalising section 377 of Indian Penal Code*[1]* but even after more than three years homosexuality and queer identities are not fully accepted by their families, homes and schools. It will be difficult for members of the Indian orthodox community to embrace LGBT people and their sexual orientation. Transgender persons in India face an uphill battle because of the difficulty of publicly expressing their gender identity, despite the fact that this is a fundamental right for every Indian citizen.

The Act recognising and protecting the rights of this community was introduced in the parliament which got its presidential assent in 2019 and got enforced on 10th January 2020 as ***The Transgender Persons (Protection of Rights) Act, 2019***. Unfortunately the Central Government and State Governments seems failed to provide social security and protection to this community. The rights and struggles of the LGBTQ community are some issues which are examined in the research paper followed by the domestic and the international legal framework for protecting the LGBTQ community with concluding remarks and recommendations.

**KEYWORDS**

Queer, LGBT, Transgender Persons (Protection of Rights) Act 2019, Socio-Economic challenges, Equality, Discrimination, Societal acceptance, Homosexuality

## STATEMNT OF PROBLEM

***"I am what I am, so take me as I am"* – Johann Wolfgang von Goethe**

It was very well said by the renounced English writer cum poet Shakespeare once while playing his role in a drama that what is in the name, if we call a rose flower by any other name it won't change it and would still give the same fragrance and these lines conveys a very impressive

and substantial message that there is nothing in the name but what matters is the basic qualities of a person. Similarly, no human being shall be discriminated or denied the human rights as well as the fundamental rights on the basis of their sexuality and gender preferences.[2] The fundamental ideology of human rights is to treat all human beings with dignity. Any type of discrimination on any basis is the violation of the natural principle of morality and equality as well as it violates the spirit of the Preamble which is a key to Indian Constitution and article 15 of our Indian Constitution which ensures justice and equality to all its citizens socially, economically and politically.[3]

Many movements such as the Gay Pride parades have taken place in metropolitan cities on 29 July, 2008 which witnessed that the Indian youth largely in number has started accepting LGBTQ identities open heartedly more than ever since, but they are still constantly struggling within their own homes, families and schools for being accepted for their sexuality and for the freedom to express their gender preferences in a diverse country like India.[4]

As per 2011 census report, there are over four lakh eighty thousand transgender people in India and they consist one of the most depressed and vulnerable sections of the society and within the LGBTQ community as well. Over the period the LGBTQ community people have experienced a lot of discrimination by the society at large as well as by the State authorities. The emotional anguish and physical abuse that transgender people endure is never fully appreciated by the general public. Since time immemorial Transgender people have been discriminated from the masses, criminalised and have faced criminal threats, forced to work on streets, pushed into prostitution, and denied the access to social welfare including health, education and employment. They have been exploited sexually as well as physically and also many people from the community have been killed due to their gender choices.[5]

**UNDER STANDING THE TERMS - SEX, GENDER, & GENDER IDENTITY**

The biological gender that an individual is assigned at birth is the only aspect to know the gender whether it's a boy or a girl. It is not always possible to determine a person's identity based on its biological or ascribed sex. To understand this concept one should know the difference between these three terms called sex, gender and gender identity. In first instance all these terms look common so people easily get confused with these terms but when they are explained and discussed they all are entirely different from one another.[6]

- A human is tagged, with a label of male or female as soon as it gets birth, by a medical professional, which is based on the chromosomes that person possesses and the genitals

that person is born with. Sex is a label that identifies a person as being either male or female. It will be included on his or her certificate of birth.

- Gender isn't as simple as the word "Sex." It is considered as a status of a person in the society and his role as a human being in the society. It’s a set of expectations or can be said a set of social rules made by the society for everyone to behave in the society being a part of it as a male or female. Every culture has some basic rules and standards about how men and women should act, which are usually based on their gender. But it has less to do with body parts and more to do with how a person should act because of their sex.
- Whereas gender identity refers to how a person identifies themselves on the inside and how they display their gender outside through things like clothes, behaviour, and their own personal look. It is a sentiment or sensation that manifests itself at a very young age in a person's life.

**‘GENDER’**

A person's biological sex is only one aspect of their gender, which is a more expansive and nuanced concept. The concept of gender encompasses gender roles, which is more likely expected by the society from the people regarding their behaviours, ideas, and qualities that are associated with their ascribed sex. Consider, for instance, ideas regarding the appropriate ways for men and women to act, dress, and interact with one another in the culture. Girl and boy, man and woman, each signify a different social position in addition to their assigned roles in the legal system.

It is easy to get confused with the terms 'sex' and 'gender'. One should just need to understand that the biological or assigned sex is something related to the chromosomes ,biology and anatomy whereas the term 'Gender' is society’s assumptions and lookout about how a man or a woman must act in the society as a part of it.[7]

**‘GENDER IDENTITY’**

When a person has some feelings inside and the way he expresses those feelings is the 'Gender identity'. The way one wears the Cloths or how it appears or behaves in the society shows the one's gender identity.

The vast majority of society or people have the perception that are either man or a woman. Some people have the experience of being a feminine man, while others have the experience of being a masculine female. Those individuals who do not identify with either gender may want to be referred to as "transgender", "queer", "gender variant," or "gendesr fluid." The feelings about a gender identity begins earliest at the age of 2 or 3.[8] Some people are referred to as "Cisgender", since their biological sex and gender identification are same. Meanwhile, the people who don't identify with their biological sex i.e. when a person's biological sex is male but their preferred gender is female or vice versa are described as "Transgender" or trans people.[9]

**Meaning of LGBTQ+**[10]

The term 'LGBTQ+' is not a single term but has different communities of genders in it. It is used to denote the various sections of people of the society. In the term LGBTQ+, the first letter stands for **Lesbian** which means a girl or female who is a homosexual and is attracted sexually as well as romantically to same sex i.e. a woman. Next letter denotes a **Gay** community where a man is a homosexual and is attracted sexually and romantically to same sex i.e. a man. The third letter represents in the term denotes **Bisexual** which means a person of either sex is attracted sexually to both the sex i.e. male and female both. Further is a **Transgender** is a person who's biological sex is different from his/her gender identity means whose biological sex is a male but he likes to be female and prefer to get dressed up like a female and vice versa. The last letter Q denotes **Queer** and these are all those people whose sexual and gender identities are neither heterosexual nor cisgender which is opposite of transgender. Queer is considered as a whole community in itself, who like to be called by the pronouns instead of being called as male or female. The symbol '+' in the term 'LGBTQ+' signifies that the term is not restricted to these above mentioned sections only but it also includes many more categories like pansexual, intersex, asexual etc.

**EVOLUTION OF THE 'LGBTQ' COMMUNITY**

Till 18th century, these two terms 'gender' and 'sex' were used as similar terms based on male-female specific binary and till then the only way to determine the gender of a person was the person's biological birth sex but then in 1920's many researchers started studying the sex, gender and gender identities. one of the many famous researchers a German sexologist Magnus Hirschfeld came up with new concept of sexuality and gender identity. He then published his work explaining the difference between the homosexuality and a transgender for the first time.[11]

Before the 1950s, there was no study done concerning gender and gender identity except some of the psychologists such as Jerome Kagan and John Money who believed that the gender of a human is determined only on the basis sex assigned as male or female at the time of its birth and the identification of their gender is the role they have to perform as a male or female in the society which is necessary for possessing a secure sense of self and for the well-being of the society in which they live.[12]

Later in 1960's to 1980's many researchers such Richard Green, Robert Stoller, Harry Benjamin, and Sandra Bem came up with many more different concepts and the theories of gender and gender identities. Sandra Bem argued and explained how societies pressure or expectations from a human being performing gender roles as a male or female in the society is promoting negative adjustments rather than making it positive which would further bring inequalities among the people of the society. Whereas, Benjamin, Stoller, and Green believed that there is more of biological , rather than psychological nature responsible for incongruence between a person's assigned sex at birth and its gender identity. They furthered with their studies and went on to pioneer the establishment of gender identity clinics, as well as gender-related medical and surgical treatments.[13] Hence, it is proved by many researchers that the sexuality and the gender identity is not decided only on the basis of assigned birth sex but it can be determined even by the person's feelings and belief of being one self in the society without any assumptions and expectations of the people expecting them to behave in a prescribed manner restricting them just to be a man or a woman. [14]

**LEGISLATIONS DECLARED 'EUNUCHS' CRIMINALS**

In India, it was not only the section 377 of Indian Penal Code [15] which was violating the fundamental rights of the LGBTQ community but there were many rigid, violative and derogatory legislations passed by the Britishers in the country discriminating the people on the basis of their gender identity. Under the Britishers laws the transgenders and intersex was criminalised and they were termed as 'Eunuchs'. Later they passed an amendment in 'The Criminal Tribal Act,1873' which was applied specifically to the 'Eunuchs' in the year 1897 to bring them in the category of the criminals who are pre-assumed to be the criminals for any crime happens in the society.[16] The 'Eunuchs' under this law was defined as the people who being a male sex has accepted themselves or declared as impotent medically and local government required to maintain a register of the names and the addresses of all these eunuchs wo were assumed the suspects of committing crimes like kidnapping or castrating young children or of committing offences under section 377 of IPC or any other crimes under such provisionS"[17]

In 1949, The Criminal Tribes Act, got repealed, but some other legislations made by Britishers against Transgenders were still prevailing in the society like 'Telangana Eunuchs Act', which was enacted in 1919 and was having exactly the same provisions to keep an eye on the activities of transgender people to hold a control on them. Under Section 4[18] of the said Act, the transgenders could be arrested without any warrant if they are seen being dressed up not belonging to their sex.[19] Similar provisions were also incorporated in the, Karnataka Police Act 1963 where under Section 36A[20] the Eunuchs were surveillance and assumed as criminals. All these legislations were mostly inspired by laws and ordinances of the United states making the people criminals appearing dressed up not belonging to their respective sex.[21]

Despite of many such illegal legislations and provisions making transgenders criminals no such initiative or any mass movement took place in the country opposing such laws. Though from 90's onwards the Human rights activists including Transgender activists were very active and enthusiastic to highlight LGBTQ issues in various cities of the country but till then they never united to initiate a mass movement for LGBTQ rights, also never thought to oppose such arbitrary laws including section 377 of Indian Penal Code.

**DECRIMINALISATION OF SECTION 377- A long battle for the rights**

The battle for the rights of LGBTQ community initiated in the year 1994 for the first time when an activist group called ***AIDS Bhedbhav Virodhi Andolan*** which was working on HIV/AIDS challenged section 377 as violative of constitutional rights but unfortunately it couldn't make through. Then the real legal tussle for the protection of LGBTQ rights initiated in the year 2001 when a petition was filed in Delhi High Court [22] by the Naaz Foundation , which was working exclusively with a Gay community, challenging the validity of the section 377 of IPC. The said petition filed by the Naaz NGO was the outcome of the police raid in Lucknow where many innocent people were got arrested by the police unreasonably for distributing condoms and other materials as a part of their HIV health works, on the grounds of suspected homosexuality.

When the said PIL was filed in 2001 challenging Section 377, the LGBTI community and activism never thought of embracing any legal action and use of the law within their social work. Even the people from the transgender community too criticised the action taken and raised concerns that the aim of the petition is to achieve social transformation and not to get conflicted with the laws as they believed that the laws and litigation have very limited effect. Many of the members, transgenders and gender minorities were scared of the fact that if they get conflicted

with the laws and officials they would be harassed sexually and mentally and also the nation and the Higher courts would not support them. Then in 2004,the fear of many gender minorities and transgender turned into real when the Delhi High Court refused to consider the petition lacking Locus Standi. But, thereafter, in the year 2006, the petitioners appealed to the Apex Court where the court ordered the Delhi High Court to take the petition back and treat it as a PIL and decide on it.[23]

At last, in 2009, Delhi High Court in the case before *[24]* held that Section 377 of IPC is unconstitutional and violates the fundamental rights of LGBTQ community. Court also said that section 377 of IPC imposes unreasonable restrictions over two major people consensus on having sexual relations even privately. Thus, imposing such restriction to a certain group of a people is a massive violation of articles 14 ensuring Right to equality, Article 15, non-discrimination, Article 19, Right to speech and Article 21 which guarantees Right to life. The judgement in Naaz Foundation case brought a big relief and happiness to the sexual and gender minorities across the nation. Contrary the religious leaders condemned it and declare it and discouraged the decision [25]. Thereafter in 2013 the Supreme Court over-ruled the judgement pronounced by the Delhi High Court in case of ***Suresh Koushal v. Union of India***[26] and held that Section 377 is a valid provision which cannot be repealed and it was left with the Parliament to take all such aspects into consideration and decide on decriminalization of homosexuality. [27]

Once again, gays are prosecuted as criminals for engaging in consenting sexual acts after the 2013 verdict of the Delhi High Court was over-ruled by the Apex Court in Suresh Kumar Koushal Case. When prominent Indians across the country including *hotelier Keshav Suri, actress Ritu Dalmia, and dancer Navtej Singh Johar*, among many others, joined and questioned the validity of Section 377 of the IPC in a petition to the Supreme Court, an outpouring of support for LGBT rights emerged across the country. After hearing multiple petitions on the matter, the Supreme Court agreed to forward it to a larger bench. Additionally, the government has declared that it will not intervene in the dispute and will allow the Supreme Court to make a decision based on the law as it sees fit. Petitioners claimed that Section 377 went against their constitutional protections against invasion of privacy, stifling of free speech, discrimination, and more.[28]

Subsequently in 2014, the Supreme Court in its "NALSA" judgement [29] recognised the identity of transgenders, and legally declared them as '***Third Gender***' and the most noticeable and appreciable part of this judgment was granting a 'Right of self-determination' to LGBTQ community with regards to their gender preferences.

Then in the year 2017, another landmark judgment was passed by the Supreme Court of India recognising the 'Right to privacy' in ***Puttuswamy v. UOI*** *[30]* where the Supreme Court

held and interpreted that the Right to life (Article 21), Equality and Fundamental Freedoms include ***'Right to Privacy'*** which specifically includes the right to sexual orientation and gender identity and a right to have sexual relations of one's own choice without any discrimination.[31]

Finally, in September 2018 in ***Navtej Johar v. Union of India*****[32]** a long awaited judgement was passed by the supreme court where the section 377 of IPC was struck down decriminalising all consensual sex amongst adults including all the genders.[33] a five- judge bench headed by the chief justice of India established a precedent by over ruling the the Kushal judgement. J. Chandrachud, recognized that Section 377 was not only destructive of the identities of a group of people but has also pushed off such people to the corner and held that every human of any gender as a citizen of India are equal and enjoy all the fundamental rights and the protection fully in the country.[34]

## THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019- SHORTCOMINGS & LOOPHOLES

The Transgender Persons (Protection of Rights) Act, 2019, aims to cover each facet of the rights of the transgender community, promising them of a better future, equality and justice in the eyes of law and society. However, a perusal of the Act, demonstrates grave problems which will pose difficulty for a citizen to comply and abide with. Following enumerated are the shortcomings: -

- The Act focuses majorly upon the "Identity" and on the ways to "identify a transgender'. The Act puts forward of making application and attaining Identity Card.
- The concept of introducing Identity Card or having one is itself inappropriate and degrading because: -

  - One can claim no benefit of it apart from acknowledging or being acknowledged as "Transgender".

  - The process can be misused by the people by creating or giving false statements in the application form for or on behalf of a person leading to defaming him/ her.

  - As per the provisions of the Act, the person declaring himself as transgender is allowed only to change the First name and not the Last name. Therefore, the fear of social threat and name shaming of the family members and the relatives doesn't decline with the change of name in the Identity Card. Therefore, the Act does not focus or list out what actions will be undertaken by the government authorities and agencies to include and accept them as members of society and the approach of the society towards them.

  - The legislative authorities fail to realize that the Identity Card will be of use only when privileges such as reservation will be allotted to them. The legislative authorities cannot

expect that just by displaying or flashing their Identity Card they will be accepted in the society members.

- The Act fails to provide a humanitarian concern and approach of the society towards them.
- The Act provides for a very less punishment for the failure of compliance by the people of any of the provision of the Act.
- One of the provisions of the Act states that the government has to provide data and statistics of the facilities and availability of infrastructure at various sectors for the transgender community. However, the Act fails to provide the duration within which it has to be complied with, the manner in which the data has to be collected and records to be maintained.
- The Act fails to mention about the necessary amendments to be brought under personal laws for e.g., Right to Education Act, Adoption Act to co-occur with the provisions of this Act.

**CONCLUSION & SUGGESTIONS**

To provide protection to the LGBTQ community from the abuses and discriminations, 'The Transgender Persons (Protection of Rights) Act 2019' was passed which came into existence on 10th January 2020. Surprisingly, the Act not only ignores the recommendations made by the Standing Committee but also fails to meet the directions given by the Apex Court. Government has to come up with some strong legislation/ amendments so that the Equality, the basis of the Constitution, can be achieved but this is also fact that the law alone cannot ensures the Trans-equality but the society has to change its way of looking at the 'Third Gender' community.

- Along with a strong and effective legislation government should also initiate programs to sensitize the society from the very basic level.
- Strict punishment for discrimination and criminal offences against this community.
- To make the legislation more effective the term Third Gender/LGBTQ+ should be used instead of 'Transgender' to include all the members of LGBTQ+
- Establishment of an active redressal mechanism to deal with the complaints from this community.
- Separate sanitation facility at restaurants, schools, hospitals.
- Reservation in education and in Government bodies
- Equal opportunities in employment should be provided
- Homosexual Marriages should be legalised.
- Right to Adoption should be given.

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**CHAPTER 22**

# Analyzing the New Surrogacy Norms in India in light of The Surrogacy Regulation Act, 2021 & Its Social Implications

NAME: NEHA PUROHIT

DESIGNATION: ASSISTANT PROFESSOR, SCHOOL OF LAW, ALLIANCE UNIVERSITY, BENGALURU.

ADDRESS: ALLIANCE UNIVERSITY, BENGALURU

EMAIL: neha85.purohit@gmail.com

**ABSTRACT:**

Assisted Reproductive techniques have proved to be a godsend in case of spouses and partners or single parents who are not able to produce progeny due to various medical, emotional or personal reasons. Surrogacy, that may be called as a rented womb for gestation period is also a method of assisted reproductive techniques, which has become exponentially popular since its introduction in late 80s thereby giving reality to the dreams of individuals who had lost hopes of having children. Countries like Russia, Ukraine and some parts of the United States have legalized both altruistic and commercial surrogacy, by reason of which they became the surrogacy hubs of the world. India was also a surrogacy heaven along with U.S.A. until the Indian Government put a complete ban on commercial surrogacy in the year 2018 as it had become a modus operandi for jeopardizing vulnerable and poor women and neglecting their rights in lieu of being compensated by the intended parents. This paper will focus mainly on what are the new procedures of surrogacy in India after the Introduction of The Surrogacy Regulation Act, 2021. The Researcher will also try to explain what are the requisites imposed upon surrogate mothers and intended parents under the said legislations. Further the researcher will analyze the effects of such amendments in the law upon the society and to what extent the new amendments have been able to achieve the objective laid by the legislature. The Research Methodology adopted is doctrinal including the principles of fundamental research. Literature Review comprises an analysis of the write- ups and case studies, of eminent authors expert in the field of surrogacy laws.

KEYWORDS: Surrogacy, social implications, surrogate mothers, intended parents, conditions for surrogacy, Surrogacy Regulation Act 2021, India.

# Analyzing the New Surrogacy Norms in India in Light of the Surrogacy Regulation Act, 2021 & Its Social Implications.

## 1. Introduction

Reproduction is attributed to every living creature, as this is how they or we all multiply in number. While for other living beings it may be an act for just increasing their population but in case of us i.e. humans it is not so merely, it is much more than an increased population. Reproductive rights are integral to human dignity and individuality as the enforcement of these rights ensure the protection of a subset of several other rights like right to life, right to family, right to have children etc. Reproduction is a natural and inherent process and almost every individual has, desires to produce progeny who look like him or her or who can be his or her successor and lead a family legacy even after their death but this process however, is sometimes obstructed either by organic or inorganic reasons in certain human beings, thereby destroying hopes of having a complete family and natural successors. This is the gap which the development of science and technology have tried to fill in the lives of people who were not able to conceive and reproduce naturally by devising methods like the Assisted Reproductive technologies.

Assisted reproductive technologies i.e. ATR are medical procedure for treatment of infertility issues in couples who desire to become parents, it involves procedures such as in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), cryopreservation of gametes or embryos, and/or the use of fertility medication.[cxxxviii] Surrogacy is also one method of ATR which may be called as a rented womb, wherein couples who are not able to naturally reproduce may take assistance of another surrogate or substitute woman from the gestation period till the birth of child. It has been defined as, "a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth".[cxxxix] Surrogate pregnancy aids in ensuring the right to family and having genetically related children for many intended couples who are not biologically able to produce offspring.

Surrogacy may be of different types like traditional or gestational, where Traditional surrogacy uses the surrogate mother's egg for conception. In contrast, gestational surrogacy is performed by transferring embryos made through IVF with eggs from the intended mother or a donor.[cxl] Surrogacy may be of altruistic or commercial type the former one is one kind in which no monetary incentive other than the necessary medical expenses of the surrogate mother or her

health insurance is paid the latter one however is one in which surrogacy procedures or services are commercialized i.e. selling, buying or trading of embryos or providing surrogacy services for monetary incentives either in cash or kind excluding the necessary medical expenses of the surrogate mother or her health insurance.[cxli] Commercial surrogacy in India was permitted till 2018 but after the Government pushed for restrictions on it, telling the Supreme Court in a 2015 affidavit that it did not support commercial surrogacy. In 2019, the government revived a 2016 bill banning commercial surrogacy.[cxlii] This move of the Indian Government had come after the Select Committee on Surrogacy Regulation Bill, 2019 submitted a report to the parliament that expressed concerns about the misuse of surrogacy which had led to unethical practices, exploitation of surrogate mothers and children born out of it and import of Human Embryo or gametes[cxliii] as India had become one of the most popular reproductive tourism destination of the world because of the cost effective treatment and in the absence of any strict comprehensive laws to regulate surrogacy and related procedures.[cxliv]

The new surrogacy laws whether be it the, 'The Surrogacy Regulation Act 2021' or the Assisted Reproductive Technology Act, 2021' have entailed in itself the essential qualifications and disqualifications for both the intended parents or Commissioned Couple as well as the surrogate mother and also the rights and duties of the parties in surrogacy, The objectives that the said law seeks to achieve is to put a blanket ban on unethical Surrogacy practices and promote Altruistic ethical surrogacy for needy infertile married couple.[cxlv]

In this paper the researcher will try to analyze the new laws for entering into surrogacy agreements and how rise to new rights and liabilities of both the parties. This research will also focus upon the effect that the amendments introduced will have on the society and the surrogacy market in India, and also that how far this law will prove to be effective in addressing the ethical issues relating to Surrogacy.

## 2. The New Surrogacy Norms After 2021-

The Surrogacy Regulation Bill 2019, received the assent of the President of India on 25th of December, 2021 after thorough background deliberations and recommendations from various Agencies and Ministers of the government like the Law Commission of India[cxlvi] or Department of Health Research, Ministers of External Affairs, Minister of Health and family welfare, Communication and technology, commerce and industry etc, Parliament discussions, Report of Standing Committees of Parliament[cxlvii], and Public Interest Litigations [cxlviii], which provides for the new definitions and qualifications for intended parents and surrogate mothers and connected matters thereto. I will bring out and analyze in this part of the paper, what are the new

prerequisites of surrogacy and its types allowed in India and also what are the qualifications and disqualifications applicable for the parties who intend to enter into a surrogacy agreements.

2.1 Meaning of Surrogacy:

According to Black's Law Dictionary, 'an agreement wherein a woman agrees to be artificially inseminated with the semen of another woman's husband." [cxlix]

The New Encyclopedia Britannica defines- 'Surrogate motherhood' as the practice in which a woman bears a child for the couple to produce children in the usual way[cl]

Upon perusal of the definition of surrogacy, which provides that, "a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth"[cli] it can be said that it has not undergone any major amendment however the words '*Intending Couple*' and '*Woman*' are significant here in regard to persons who are eligible to avail surrogacy, therefore it is important here to understand as to what is meant by these two i.e. Intended Couple and Woman respectively.

2.2 Parties to Surrogacy Arrangements:

According to the statute the terms 'Intending Couple' and 'Intending women' have been given a very controlled and strict meaning, which indeed ousters a category of individuals and also affects their right to family if they otherwise are eligible for resorting to surrogacy, which will be discussed in the later part of this paper.

2.2.1 Qualifications of Intending Parents and their Rights:

Reading sections 2(1)(h) & 2(1)(r) of the Act, together gives a narrow meaning of the term 'Intending Couple' which can only be the ones who are Legally married Indian man and woman and are above the age of 21 & 18 respectively. Further here it is also important to see that the said couple apart from the aforementioned qualification have to have an intention of becoming parents by Gestational surrogacy only if medical grounds necessitate it. The couple is deemed 'eligible' if they have been married for five years, the wife is aged between 25-50 years and the husband is between 26-55 years. The couple must not have any living

child (biological, adopted or surrogate.)[clii] An Indian Widow or Divorcee woman between the age of 35-45 is also qualified to be and Intending Parent.[cliii]

The Intending parent shall have rights of the natural guardian over the surrogate born child as they would have in case of a legitimate biological child and they shall also give all the privileges to the child as would have been given to a natural child for parentage, support and inheritance.[cliv] The Intending parents shall not have a right to give consent for abortion it is only given to the Surrogate woman.[clv]as it will require a written consent of her and also an authorization of the appropriate authority appointed under the said Act.

2.2.2 Qualifications for a surrogate Mother And her Rights:

A surrogate mother as defined by Merriam Webster, "a woman who becomes pregnant by artificial insemination or by implantation of a fertilized egg created by in vitro fertilization for the purpose of carrying the fetus to term for another person or persons"[clvi]

Oxford learners define Surrogate as, "a woman who gives birth to a baby for another person or couple, usually because they are unable to have babies themselves."[clvii]

Both the abovementioned definitions give a general idea about who a surrogate mother is, however the Surrogacy Regulation Act, 2021 provides a specific and strict understanding of the term which is as, "a woman who agrees to bear a child (who is genetically related to the intending couple or intending woman) through surrogacy from the implantation of embryo in her womb and fulfils the conditions as provided in sub-clause (b) of clause (iii) of section 4."[clviii]

Certain other qualifications as regard the woman being between 25-35 years, should be married, should have had a child of her own and a certificate of being both physically and psychologically being fit, should also be given from a Registered Medical Practitioner, have been mandated by the Section 4 of the Act. This definition specifically provides for a surrogate woman to be genetically related to the Intending couple, which is being argued to be a discriminatory qualification on the ground that it is restricted only to such women who are related to couple and the ones who are otherwise fit for surrogacy and willing as well, are disqualified and so it is violative of the Article 21 of the Constitution of India[clix], that guarantees Right to life and Personal Liberty, which also includes right to reproductive choices of a woman as has been interpreted by the Supreme Court of India in the case of *Suchita Srivastava V Chandigarh Admn.*[clx]

The Surrogate mother have been provided rights and benefits under the Act like Right to Voluntary Consent to becoming surrogate, Informed Consent of procedures and side effects of it, right to withdraw consent before implantation of the Embryo in her womb[clxi]. Further an insurance cover of 36 Months covering the post-delivery complications has also been directed under the Law, from the Intending Parents/Woman.[clxii] However the surrogate shall have not rights of any kind over the child born and she is under legal obligation to handover the child to the Intending Parents/Woman, as the child is considered to be their biological child, but a Report on a study conducted in the cities of Delhi and Mumbai on surrogate mothers by the Centre For Social Research[clxiii] have concluded that the surrogate mothers have not replied to the question of how do they feel about handing over the child to the intending parents the reason behind it that the surrogates were in the middle of their pregnancy and this is the most uncomfortable question for which they are not emotionally prepared. It should not be forgotten that though the surrogate mother is not genetically linked to the child, yet, the life they rear in their womb has got some emotional attachment towards it which is humane[clxiv]

2.3 Types of Surrogacies:

Surrogacy is of three kinds. They are Genetic surrogacy/partial surrogacy, Total surrogacy and Gustatory/Gestational surrogacy.[clxv]

In Genetic/ Partial Surrogacy, woman's egg either through artificial insemination or less often by natural intercourse is fertilized by the sperm of the male partner of the couple desiring the child (commissioning father). Here the surrogate mother is the genetic mother of the child and the commissioning mother plays the role of social and legal mother. This type of surrogacy is also called as Partial Surrogacy or Traditional Surrogacy.

Total surrogacy is where the surrogate's egg is fertilized with the sperm of the donor or the commissioned father.

In Gestational commissioning couple (or from anonymous donors), and the resultant embryo is subsequently implanted into the surrogate or carrying mother. Here, the surrogate mother has no genetic link with the child. This type of surrogacy is also called as Full Surrogacy.[clxvi]

2.3.1 Commercial and Altruistic Surrogacy:

Surrogacy may be commercial or altruistic, depending upon whether the surrogate receives financial reward for her pregnancy. If surrogate receives money for the surrogacy arrangement, it is considered commercial, and if she receives no compensation beyond reimbursement of her medical and other pregnancy-related expenses along with the insurance coverage for her, it is referred to as altruistic.[clxvii]

The Surrogacy Regulation Act, 2021 also explains both the above types still, it only allows the latter one and completely prohibits and criminalizes the former i.e., Commercial Surrogacy and may also attract punishment of Imprisonment which may extend to 10 years along with fine which may extend to 10 lakh Rupees.[clxviii] Commercial Surrogacy started in India in the year 2002 and since then it became the one of the most favorite fertility tourist spots for the people from countries like Britain, Australia, Japan and United States to name a few, owing to low-cost technology, skilled doctors, scant bureaucracy and a plentiful supply of surrogates as has been reported by Thompson Reuters foundation.[clxix] The scale of economics involved in surrogacy is unknown, but a study by the United Nations in July 2012 estimated the business at >$400 million a year, with over 3000 fertility clinics across India. And the maximum number of it being reported to be in Gujarat.[clxx]

As reported in a study conducted by the Centre for Social Research supported by the Department of Women and Child Development of the Government of India, around the year 2012 that majority of the surrogate mothers in the metropolitan cities of Delhi and Mumbai were from economically weaker section and they alleged that poverty and illiteracy was one of the main causes to opt for Surrogacy as a means to raise, money and become financially stable. The report also highlighted that the majority of the surrogates were underpaid and Uncared for.[clxxi]

Commercial Surrogacy had other negative incidents as question on custody of children like in the case of Baby M in U.S.A.(1998), or in case of Baby Manji Yamada v Union of India[clxxii], abandonment of surrogate children on separation of partners of spouses, or on the child being born with some mental or physical disorder like the tragic story of Gammy from Thailand, a child with Down Syndrome, whose parents abandoned him with the surrogate mother after he and his twin sisters were born to an Australian couple.[clxxiii]

Banning Commercial surrogacy in light of the above grounds and even as recommended by the 228th Report of the law commission in 2009 and the report of The Select Committee on Surrogacy Regulation Bill, 2019 submitted to the Parliament of India in February 2020, it appears that the legislature has tried to address the ethical issues involved in commercial surrogacy practices, but how far does it prove to be effective is yet to be examined as the law has just been introduced.

2.4 Regulation and Registration of Surrogacy Clinics:

The Legislature has also incorporated provisions relating to the regulation and registration of surrogacy clinics by an Appropriate Authority. These provisions put restrictions on the Surrogacy clinics and the medical practitioners involved in the surrogacy process like gynecologist, pediatrician, embryologist to not engage, advertise or promote commercial surrogacy in any manner and also not to misuse surrogacy for, sex determination of the child. All these acts have been declared as criminal offences [clxxiv] and it may consequently lead to cancellation of registration as well.[clxxv]

2.5 National & State Assisted Reproductive Technology and Surrogacy Boards:

The law further makes provisions for setting up of two tier Assisted Reproductive Technology and Surrogacy Boards, one at the National Level and Others at State levels. The key functions of the boards include advising Central Government on surrogacy policy matters, reviewing and monitoring the implementation of the provisions of this Act, lay down Code of Conduct for the surrogacy clinics, performance of various bodies and supervise functioning of the State Boards, which are constituted under Section 26.[clxxvi]

2.6 Offences:

The New law on surrogacy enumerates a range of acts as offences like engaging, advertising, promoting or inducing anyone for commercial surrogacy, determining sex by abuse of surrogacy procedure, abandon or exploit surrogate child and mother, unlawfully selling or buying human gametes or embryos and any act which amounts to contravention of the law relating to Surrogacy or Assisted Reproductive Techniques. [clxxvii] These offences invite severe punishments of imprisonment along with monetary fines.

After comprehensively analyzing the major amendments on the Law relating to surrogacy it can be stated that the move of the legislature in bringing the surrogacy practices in line with the ethical and legal safeguards is a constructive one, as exclusion of commercial surrogacy and permitting altruistic one indeed prevents commoditization and exploitation of needy and vulnerable women, and further keeps intact the sanctity of the relation of between surrogate and the Intending parents and the child as well, and this is also why majority nations including the developed and the developing of the world have opposed commercial surrogacy. But nonetheless, only prohibiting commercial surrogacy would not essentially mean that all the objectives that the Law seeks have been attained and also that it is in conformity with all the constitutional philosophies like right to equality, right to life, right to dignity etc. as the present provisions regarding the qualifications

and disqualifications of the parties to a surrogacy agreement still leave certain grey areas in them, which needs to be illuminated and functioned upon, as to attune the law with the rights of those individuals, who seem to be adversely affected by them.

## 3. **Social Implications of the Law.**

Since the Indian market was opened for Commercial surrogacy in 2002 India became the most desired fertility destination in the world, because of factors like highly skilled doctors, availability of medical services, abundance of poor, unguarded and unregulated surrogate laborers and absence of concrete regulations, from the government.[clxxviii] After which several agencies of the government like Law commission of India, the opposition, Human rights activists, and the media all pressed for safeguarding the interest of the parties involved in the surrogacy agreements, which were being exploited at the whims and fancies of infertility clinics/agencies who gained the utmost economic benefits out of it.[clxxix] In response to such enigmas, the Parliament Introduced the Surrogacy Regulation Bill,2019 and The Assisted Reproductive Technology Bill, 2019 which as stated by the Union Health Minister Sri. Mansukh Mandaviya was to protect women and children from exploitation.[clxxx] Although from prohibiting illegal and unethical practices of surrogacy which is the objective of the Act, the interest of surrogate mothers, children and the intending parents can be safeguarded to an extent, but still there are certain areas in this Law which the legislature has not taken into consideration as to whether they are in conformity with the basic rights guaranteed under the constitution of India like right to equality, right to life, right to profession, right to family, to those individuals, which have been disqualified from availing surrogacy, and indeed how adversely different sections of society will be affected by these gaps. I will highlight those area s here.

### 3.1 Implications upon unmarried couples:

As it has been discussed earlier that for an Indian couple to avail surrogacy now, the existence of legal marriage must be there, so indeed it bars all the couples who are not married but are in live in relationship and they are otherwise suited to avail surrogacy. This is a paradox of law that if the law[clxxxi] and the Apex Court in India recognizes live in relationships,[clxxxii] and gives certain rights and duties to the live in partners, and further the court has also given legitimacy to children born in such relations.[clxxxiii] how can a discrimination of being married and not married be said to be persuasive under the lens of article 14 of the constitution, which gives right to equality to every person before the state. The right to have genetically related children to a couple who is not married, cannot be

denied to them only on the distinction of marriage, if they are medically unfit to produce progeny, even when the science has been developed for the benefit of such people.

3.2 Implications Upon Single Males & Females aspiring for children:

The Surrogacy Regulation Act, 2021 disallows any single unmarried female excluding divorcee and widow and single male whether they are widower or divorced to become Intending Parents. This distinction is again, inconsistent with the fundamental rights of equality and right to life of an individual as depriving someone of his or her basic freedoms like right to children or family which are recognized by international documents as article 8 &16 of Universal declaration of Human Rights,[clxxxiv] to which India is also a signatory, without a reasonable nexus is encroachment by state.

As reported by India Today Magazine Insight in article by, 'Sonali Acharjee'[clxxxv] who interviewed several single/prospective divorcee women in Delhi, and certain medical experts in Mumbai in the field of surrogacy who spoke of their or their patients plight, who would not be able to avail services of surrogate and become mothers of genetically related children, after the passing of this Act, because of only the fact that they were not married, and were unable to give birth, biologically due to medical unfitness.

Besides of all these loops, the Law leaves no scope at all for single men, whether or not they are widower or divorcee, to become a parent of a genetically related offspring, which appears to be very unkind reflection of the Law. This discrepancy in the eligibility of a person to avail surrogacy is violative of the Right to Life under Article 21 of the Constitution that also includes the right to procreation and parenthood under the right reproductive autonomy, as has been held by the Supreme Court in the case of Suchita Srivastava & Anr v. Chandigarh Administration, (2009) 9 SCC 1.[clxxxvi]

3.3 Implications on Homosexual couples & transgenders:

It has not been a very long time, since the Apex Court of the Country has recognized the identity of Same sex people and secured their right to live with dignity as a dimension of right to life under article 21 of the constitution[clxxxvii] upholding that every individual irrespective of their gender identity and sexual orientation have the right to live with dignity, autonomy and make personal and private choices without State interference.[clxxxviii] Furthermore the liberalized approach of the Indian Judiciary was reflected in the landmark case of National Legal Services Authority v Union of India[clxxxix] which recognized transgender people as the third gender, and they to have similar rights as other individuals.

It is very ironical that although both these sections i.e. homosexuals and transgenders are considered equal in the eyes of Law in respect of other rights then why have they been denied the right to have a family or children by traditional means of surrogacy. They have been kept out of the scope of the Act, thereby jeopardizing their rights to equality, and right to life. Is it that only human who are considered as the so called 'normal' can have access to family and children, which is an unacceptable opinion?

3.4 Implication as to only Married Woman eligible as surrogate:

The Act specifically states that a woman can only be a surrogate if she had been married and has had a child of her own earlier. The incidence of such requisite's points at a very narrow, meaning of a surrogate mother. The idea that a married woman only can be a fit surrogate appears to be irrational, again on the ground of equality. This leads to the interpretation that a woman who has never married but who is otherwise fit to bear a child and give birth, is absolutely interdicted from the purview of this Act although she may be a willing woman to opt for surrogacy. Further the woman can only be a surrogate once in life time, which is contradicting with the right of the woman over her body and reproductive choices.

As India has legitimized surrogacy and abortion and the Indian Courts have progressively interpreted the right to reproductive choices[cxc] and also India is a party to international conventions like CEDAW,[cxci] ICCPR, ICESCR[cxcii], CRC[cxciii] which recognize reproduction rights, so it is obligatory upon the government that it secures this right to all of its citizens without any discrimination. Having a mandate of becoming surrogate mother only once in lifetime intersects with the right to trade and profession under the article 19(1)(g) as has been argued by women rights activist and doctors[cxciv] as putting a ban on commercial surrogacy completely also denies a woman autonomy over her body and deprives her of the financial gains that she could have by legally adopting to be a surrogate mother and bring economic stability for her. It has been reported by an author Chandrika Manjunath[cxcv] in her article, where she quoted Dr. Nayana Patel who is a fertility expert, that the life standard of surrogate women had raised because of the income that they could earn by becoming surrogates, several times.[cxcvi] Having been married and become surrogate only once deprives a considerable section of society of their reproductive rights, autonomy over body, right to life and, right to profession, which could only be denied to a citizen upon reasonable restriction, and the Surrogacy Act, 2020 does not provide any such reasonable restriction considering the above arguments.[cxcvii]

3.5 Implications on the surrogacy market:

3.5.1 Black market & corruption:

Penalizing commercial surrogacy completely, may shutdown the official surrogacy market in India, which was reported earlier as the largest provider of commercial surrogacy services in the world. The Confederation of Indian Industry estimated commercial surrogacy to be a 2-billion-dollar industry by 2012, and the Indian Council of Medical Research, before recent regulation, expected those numbers to rise to 6 billion dollars way back in 2018.[cxcviii] However, the complete ban will not hinder intentions of people still to make money out of such surrogacy agreements, this may indeed give rise to black marketing and corruption by agencies like hospitals and clinics running business of surrogacy.[cxcix]

3.5.2 Exploitation of Surrogate:

Promoting altruistic surrogacy is an ethical step but nonpayment of appropriate compensation to a woman who puts her life to a hold for almost two years without the unforeseen pre and post effects of child birth,[cc] coz sometimes pregnancy results in very serious complications for life, of a woman in also a way of exploitation, especially when she knows that the child is not hers, and even after an emotional connect it.

3.5.3 Exaggerating Pregnancy Compensation:

The woman who opts to become a surrogate and when she can do it only once in her life, she also may in disguise, demand for a compensation, for her bill for healthcare and hospital charges, which may be much more than that prescribed by the law. This is possible when she has no second chance to earn from surrogacy, so that it can give her a stability for a certain time.

3.5.4 Resorting to adoption by deprived couples and individuals:

As a considerable section of the society is deprived under the provision of this Act of their reproductive rights, therefore the adoption industry may get a boost as a substitute of surrogacy,[cci] but still the desires on an individual to have a biologically related child of his or her own cannot be fulfilled as adoption is taking someone else's biological child to be your own.

The law has forbidden commercial and transnational surrogacy which, may be a step in preventing exploitation of women, children, intending parents as well as put end to numerous cross border litigations regarding surrogacy, how ever the exclusion of various sections of individuals as mentioned above from the scope of it, certainly has an inimical

effect upon their fundamental rights of privacy, equality, and right to life which is the responsibility of the state to safeguard and remedy. These implications as analyzed above must be taken cognizance of by the legislature while drafting any law, which is a beneficial law for Public like the Surrogacy Regulation Act, 2021.

4. **Conclusion:**

The surrogacy law is a welfare legislation that aims to protect the rights of the people involved in it and regulate the procedures for surrogacy and Assisted Reproductive Technology. These laws have entailed in them several provisions that fails to incorporate the vested interest of different sections of the society like unmarried men and women, homosexuals, and transgenders, by unconditionally rejecting them as being ineligible for surrogacy without giving cogent reasons for such exclusion. The objective of the Act is to prevent exploitation of women and children, however the implications that the strict enforcement of this law will have on society may result in their exploitation indeed. The Approach of the Legislature is narrow in terms of discriminating between individuals who could and who could not avail surrogacy, thereby consequently encroaching upon their fundamental rights enshrined in the part III of the constitution of India, as it fails to strike a balance between who should be included and who should be excluded from the scope of The Act.

The solution to problems of exploitation of surrogate parties is not absolute ban but a strict check upon the entire process of surrogacy, by authorized agencies of the government. If the reflections of the Surrogacy Regulation Act, 2021 upon society are considered and addressed closely, better enforcement of the Law can be ensured and the objectives that it lays down could be more relatively achieved.

**CHAPTER 23**

# CRITICAL DISCOURSE ANALYSIS OF THE POLITICAL PERSPECTIVE ON CLIMATE CHANGE

Yasir Ahmed
Dr Akshay Kumar
Email: Yasirahmed78614@gamil.com

## Abstract

Climate change is one of the major global issues in recent political discourse on climate change. Climate action is one among the seventeen goals set by UN for sustainable development that can change the world for better. The issue has exposed the ideologies of the global leaders towards climate change. Donald Trump called climate change "mythical", "non-existent", or "an expensive hoax", and Prime Minister Narinder Modi stated that people lose the ability to adapt the climate when they grow old." This recent development makes the subject more important to be taken up for the research. This study looks to fill the gap in Indian political discourse on climate change by analyzing the PM Modi's speech at the conference of parties 26 (COP26). It attempts to investigate the textual features of climate change and the ideology of the prime minister by using Fairclough's three-dimensional framework (2001). The speaker at large has focused on the future. This suggests that the speaker wanted to present a good image of his country's government to the world. His statements make his "testimony persuasive." Modi also means the panel be flexible in policy-making, which presents him as a progressive individual at a global stage. He also refers to the developed countries' leaders to be more proactive on the subject.

**Keywords;** Climate change, Political discourse, Prime minister Modi, Conference of parties 26 (COP26), Fairclough's three-dimensional framework (2001).

## INTRODUCTION

Climate change is a global problem, and many conferences around the world are organized to make people aware of its consequences and precautions. United nation is a key organization that

organizes international events in the form of meetings and conferences. Most of these events are attended by the head of the states of the countries. The agenda behind organizing such meetings and conferences is to provide suitable solutions catering the climate change problems. Mostly the speakers are either Prime Ministers, Presidents or chancellors. Their address unfolds their policies in accordance to climate change agreements. The UN's Intergovernmental Panel on Climate Change (IPCC) defines climate change as; Climate Change refers to the shift in the state of the climate that can be identified (by using statistical tests) by changes in the means and the variability of its properties, and that persist for an extended period, typically decade or longer. It refers to any change in the climate over time, whether due to natural variability or human activity[1] Climate change is a major problem in India; it directly impacts the health of people and the economy; Intergovernmental Panel on Climate Change (IPCC) has warned India of extreme consequences if the government fails to act swiftly on the measures to tackle climate change issues[2] IPCC has further warned of "frequent intense heat waves, extreme rainfall events and erotic monsoons as well as cyclone activity, among other weather related calamities, in decades to come"[3]

In India, Delhi and Mumbai are among the top ten most polluted air cities around the world[4]. Similarly, "India's average annual mean temperature during 1901-2020 showed an increasing trend of 0.62°C/100 years, with a significant increasing trend in maximum temperature (0.99°C/100 years) and relatively lower increasing trend (0.24°C/100 years) in minimum temperature"[5]. The purpose of this study is to analyze the themes of the speech and also attempt to study the rhetorical meanings involved in the content of the address of PM Modi, delivered at COP26, 2021.

The casual attitude of PM Modi towards climate change has been criticized several times in the past. One such incident was when Prime Minister had to face humiliation on his statement, where Prime minister said "Older people – 70, 80 and 90 years old – say in winter 'this time it's colder than last year'. It's not colder. People lose their ability to tolerate the cold as they grow older. In the same way, the climate hasn't changed. We have changed."[6]

## LITERATURE REVIEW

India in the last decade has witnessed two of its worst floods. First in the year 2014 Utrakhand floods and the second one in the following year in Kashmir. Both had devastating effects on human lives. As per the Government of India data, "6000 people were killed, believed to be dead or missing", along with that "4200 villages were effected" (Tandon, 2022). Similarly, in 2014, Kashmir witnessed a catastrophic flood leaving thousands of the families homeless; as per the data, "9,814 residential houses were fully damaged in the floods" (Jammu & Kashmir 2014 Floods, 2022); not only has India been affected by unseasonal rainfalls and floods but it has also witnessed unprecedented droughts, according to the data 7.86% of the land in India was under "drought-like condition" which increased 60% in 2021, taking it to 21.06% which makes "fifth of India's land under drought like condition."[7] IPCC has warned the state of Kolkata of worse effects of climate change on its annual mean temperature, alarming the state may witness an increase of "4.5 degree Celsius rise in annual mean temperature in 2081-2100 compared to the pre-industrial period (1850-1900) under the worst possible greenhouse gas emission scenario, according to the report released August 8, 2021."[8] The available data indicates at a grim future ahead for the people, and political leaderships seems to be recognizing that as in the 2019 Lok Sabah elections both parties included, climate
change issue in their manifesto for the first time.

Despite being one of worst nation facing climate change it possesses a significant research gap in terms of analysing the political discourse on climate change. This study looks to fill that gap by analyzing PM Modi's speech at the conference of the party's 26th summit. The study is done by using the critical discourse analysis CDA, before discussing the methodology, it is imperative to discuss the word Critical, Discourse and Text, "Text is a particular utterance, writing or image, while 'discourse' is a form of knowledge and a field that demarcates specific expression." According to Michel Foucault (1973), the use of language is framed by conventions and principles that restrict people's knowledge of the things around them and their meanings. Accordingly, discourse is a field that constructs social relations, performances and attitudes[9]. What makes this arena of analysis (CDA) distinctive from the other approaches of discourse analysis is the word 'critical'. This word implies that it reveals the relations and thecauses that are hidden beyond the discourse[10].CDA is critical since it takes an obvious attitude towards the investigation of the ideologies that are hidden beyond discourse[11]

According to Wodak, CDA is an interdisciplinary field since it is associated with various fields whose primary concern is the discourse, such as pragmatics, ethnography of speaking, semiotics, psycholinguistics, sociolinguistics, discourse studies and conversational analysis[12]. CDA is

different from discourse studies in that it deals with complex phenomena of social issues. Thus, CDA needs to be tackled by multi-methodological approaches[13]. The common misunderstanding of CDA is that it attacks serious, negative, and problematic issues. This belongs to the misperception of the word critical, which has a denotation of negativity[14]. The usage of discourse or text has been a controversial issue in many discourse studies; it has been emphasized by Wodak and Meyer. Power and solidarity are essential notions in ideological discourse analysis[15]. Language plays an essential role in the creation of power; ideologies are mainly manifested in peaks of struggle overpower. In as much, hegemony and the dominance of power are the most important issues in ideological discourse analysis[16.] Climate change is one among the seventeen goals of Sustainable Development Goals set by UN in 2015, in which 195 countries agreed upon, with the aim to change the world for better, the goals are believed to be achieved by 2030. This study also attempts to investigate the efforts of the government and its plans to achieve the *"Climate action"* goal by analyzing the address of the Prime mister at COP26.

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[1] (Glossary — Global Warming of 1.5 ºC, 2022).

[2] (www.dw.com), 2022),

[3] (www.dw.com), 2022).

[4] (Goshwami, 2022).

[5] (World Bank Climate Change Knowledge Portal, 2022)

[6] (Narayanan, 2022)

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[7] (Drought scare looms large over a fifth of India, 2022). [8]

(Drought scare looms large over a fifth of India, 2022). [9]

(Littlejohn and Foss, 2009)

## METHODOLOGY

The study is qualitative in nature and Fairclough's CDA technique was used to conduct the investigation of the selected content of PM Modi's speech at "26th UN Climate Change Conference," COP26; content analysis is a family of systematic, rule-guided techniques used to analyze the informational contents of textual data[17] The conference of parties summit was held in Glasgow, Scotland, on November 2, 2021. Original translated transcript of PM Modi's address was downloaded from the Ministry of external affairs website[18]. The transcript consists of 1094 words, PM address at COP26, the emphasis on the Indian plan to overcome the climate change issues facing the country and the world. Fairclough 2001, approach is used in the study. Fairclough argues that only analysis of the text is not enough to carry out the critical research,making it mandatory to take along the two other stages of "interpretation and explanation[19]" to unfold the ideologies.

In the first stage, Description stage text is analyzed in the form of the usage of pronouns in the address, vocabulary and structure. The speaker uses personal pronouns, 'I' and 'me' when others' opinions are not included in a given perspective. It provides the speaker with a "personal voice". The behaviors suggest that the speaker is in a power position[20]. Similarly, 'we' and 'us' indicate the speaker's position, strength and authority to speak for others on their behalf[21].

Fairclough indicated that the ideologically contested words are the essential focus of 'the ideological struggle'[22]. Fairclough stated that the terms used in a discourse reflect how the speaker experiences the natural and the social world. The next component of the descriptive stage deals with the denotation and connotation meanings, Crystal defined the denotative meaning as the objective relationship which exists between the word and the real world to which it refers. Thus, the denotative meaning can be said to be the dictionary meaning of words, without any associative meaning[23].

From Fairclough's framework, the second component is the text structure in the content analysis. Fairclough described the text structure as the construction of the text in an expected order[24]. The next stage is the 'Interoperation stage'. This stage analysis 'situational context and intertextuality' here; situational context investigates four questions; first 'what's going on, what purpose of the activity is performed within the text? Next, it examines "who is involved in the subject of the situation" it addresses the 'power relation' meaning the relationship that is highlighted in a speech. At last, it studies the language and its role in that event address by matching the content of it with the situation[25]. In intertextuality, the speaker demonstrates his/her stance on the subject, his ideology and belief as well[26]

The last stage involves the explanation. It has two components, according to Fairclough (2001), concerning two dimensions; the first one is discourse which focuses on originality as part of social struggle, and the second one is a discourse view as a result of that power struggle relation, where the focus is on purpose and the past discourse.

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[10] (Frawley, 1993)

[11] (rogers, 2011)

[12] (Wodak, 2001)
[13] (van Dijk, 2007)
[14] (Wodak,2008)

[15] (Minelli de Oliveira, 2011)
[16] (Kendar, 1987; Fairclough, 1989; Jones & Peccei, 2004)

[17] (Mayring, 2000).

[18] (MEA | Statements : Speeches & Statements, 2022)

[19] (Fairclough 2003)
[20] (Jensen, Jakobsen and Pichler, 2016)
[21] (Maybin, Mercer and Hewings, 2006)

[22] (Huspek, 1991)

[23] (A dictionary of linguistics and phonetics, 1997)
[24] (Carranza, 1997)
[25](Jawad and Al Jiburi, 2017)

[26] (Jensen, Jakobsen and Pichler, 2016)

## Data Analysis

4.1 Analysis of Prime Minister Modi's speech which was delivered by the prime minister of the Republic of India in COP26. The speech includes the Prime minister's views about the 'climate change' future planning's to cater for the climate issues, suggestions and solutions for this global issues; the address includes the steps that the government of India has taken to control the effects of global warming, the text of prime minister's speech is investigated by using Fairclough's three-dimensional approach as well as conceptual metaphor 'CMT' of Lakoff's. The first three stages concerning with Fairclough's framework, and the last stage deals with the CMT.

### *4.1.1 Description stage*

The first stage of Fairclough's framework includes an investigation of discourse; in this step researcher analysis text structure, pronouns and vocabulary, meaning a language that helps to revels the speaker's ideologies.

#### 4.1.1.1 *Text Structure*

At the start of the speech, PM Modi laid emphasis on the country he represents and its principles; he starts his speech as

*Today I am representing amid you, the land which gave this mantra thousands of years ago-*

| | |
|---|---|
| ***सम्-गच्छ-ध्वम्,*** | *That is, let's move together* |
| ***सम्-व-दद्वम्*** | *let's all interact together,* |
| ***सम् वो मानसस जानताम्।*** | ***everyone's*** *minds should also be one.* |

After making the first statement, PM talks about the Paris climate summit and its many promises; adding to that PM enlightens about Indian tearless efforts to fill its obligations. Then the speaker talks about the lifestyle and suggests that lifestyle has played a significant role in climate change. He also means One World Movement to be taken forward, which includes a healthy lifestyle for the environment, again the PM suggests five elements' Panchamrit' that

will help in dealing with the climate issues at the end of his address, he apologizes to the speaker for taking extra time but states that it was his duty to raise the voices of the developing countries and eventually PM thanks to the speaker for giving him time.

#### 4.1.1.2 *Pronouns*

Pronouns play a vital role in investigating the speaker's ideology, the usage of the pronouns helps to deliver particular messages. The statements from the PM address are quoted and explained below. These statements illustrate the function that pronouns serve.

*"We all know this truth that the promises made to date regarding climate finance have proved to be hollow."*

*"We have to take big steps today to save the world."*

*"We are making every effort with determination." "We are working hard and showing results."*

*"Our future generations,"*

*"Our energy mix."*

In the above statements, the speaker has used 'we' and 'our', specifying the efforts of the people present in the event, which gives the impression of inclusiveness further when a speaker uses "our future generation", he does not talk only about his nation but a future generation of the world,

*"I first came to Paris for the Climate Summit,"*

*"I am happy that a developing country like India,"*

*"I would like to draw your attention to one more important topic. Today, the world admits that lifestyle has a big role in climate change. So, I propose before you a One-Word Movement."* In the above statements, PM Modi has used 'person singular pronouns' to show his feelings, commitments, efforts and draw the attention of the speakers towards the essential subjects; it shows Prime Minister is aware of the problems, as well as the actions of his government, this person singular pronoun are used by the speaker to persuade the audience with all authority.

#### *4.1.1.3 Vocabulary*

The words that are used by the speaker in his address reveal the ideology of the person and his stance on the subject he speaks in his address. PM starts his speech with the expression "friends", and he uses this expression in his seven times; this expression is associated with the

social relationship that the speaker wants to establish with his audience in the panel. In the second paragraph speaker

*"Today, the whole world believes that India is the only big economy that has delivered in letter and spirit on the Paris Commitment. We are making every effort with determination, and we are working hard and showing results."*

In the above statement, the speaker has used the word ***'spirit,' 'effort'***, and ***'determination'*** to hail his nation's efforts in delivering on the Paris commitments that show the country's positive attitude towards climate change, which creates positive dissonance.

*India expects developed countries to provide climate finance of $1 trillion at the earliest. Today, it is necessary that as we track the progress made in climate mitigation, we should also track climate finance.*

The above-quoted statement from the PM address in COP26 stress the need to do more from the side of developed countries from the financial perspective; he calls upon the developed countries to "provide finance of $1tillion at the earliest" the word ***'earliest'*** indicates that the speaker recognizes the problem, and wants it to be addressed as soon as possible.

"*In the midst of this global brainstorming on climate change, on behalf of India, I would like to present five nectar elements, 'Panchamrit', to deal with this challenge.*

***First-*** *India will take its non-fossil energy capacity to 500 GW by 2030.*

***Second-*** *India will meet 50 per cent of its energy requirements from renewable energy by 2030.*

***Third-*** *India will reduce the total projected carbon emissions by one billion tonnes from now till 2030.*

***Fourth-*** *By 2030, India will reduce the carbon intensity of its economy by more than 45 per cent.*

***And fifth-*** *by the year 2070, India will achieve the target of Net-Zero.*

*These 'Panchamrits' will be an unprecedented contribution of India to climate action."*

The speaker then provides the five ***'nectar'*** elements to deal with the problems, the word nectar indicates the good results that would be achieved by following the steps, and further, these five steps are the efforts that the country would take to complete the target of net zero by 2070, which would be '***unprecedented***, the word unprecedented indicates about the difficulty of the task but yet presents in a doable way.

*We all know the truth that the promises made to date regarding climate finance have proved to be hollow.*

The speaker shows disappointment in the statement and focuses on the reality, and the word ***'hollow'*** suggests that the speaker wants the addressees to make more efforts as for as the climate finances are concerned and wants them to fill this space to fight the climate change problem.

We have to take big steps today to save the world. This is the need of the hour, and this will also prove the relevance of this forum. I am confident that the decisions taken in Glasgow will save the future of our future generations, giving them the gift of a secure and prosperous life. The above statements are the concluding remarks of the speaker; here speaker makes a statement of ***'taking big steps'*** suggesting that the things that are being done are not enough; this also refers to being more serious to words the problem than the speaker show faith on the members, the word ***'confident'*** reflects that positivity and faith of the speaker on the members and makes them conscious about the future generation of providing them with a "secure and prosperous" life.

### 4.1.2 INTERPRETATION STAGE

This stage includes the contextual meanings and details used by a speaker in his address, along with intertextual expressions,

#### 4.1.2.1 *Situational Context*

The discourse of the Prime minister's speech is about the nation's plan to fight the climate change issue; most of the parts in the address as directed to the addressees about making more contributions to help the developing countries fight this issue effectively. The speaker also shares five elements that would help India fight climate change. Throughout his address, he has given a sense that it's the developed countries that are not putting in the hundred per cent

that is required to fight the problem. The speaker addressed in his speech both the addressees and the people outside the conference hall; the relationship that the speaker has tried to make his address revolves around "politics and society."

#### 4.1.2.2 *Intertextuality*

The speaker has used this discourse many times in his speech; the statement quoted below from his speech is an example of intertextuality, where the speaker shares the detail of his nation's position of strength, which is targeted to persuade the member of the conference that it is not that difficult to do,

> *Today, India ranks 4th in the world in installed renewable energy capacity. India's non-fossil fuel energy has increased by more than 25% in the last 7years, and now it has reached 40% of our energy mix.*

Prime Minister Modi refers to commitments and the solution that the country has "cooperated with the world", which he calls a revolutionary step in solar power; he mentions the "initiative of international solar alliance" "coalition for disaster resilient infrastructure for climate adaptation" to save the life of millions of the people. Again speaker has engaged the audience in the panel with the Indian efforts, seriousness and active participation in fighting this global issue. All these statements are an attempt to persuade the addressees.

> *The proper justice would be that for the countries which do not live up to their promises made on climate finance, pressure should be put on them*.

The extract presents the speaker's view that no casual attitude should be entertained, and if anyone does so world community should put pressure on them to fight is problem effectively. Which would lead to saving countless humans on earth

> *"I came as a representative of a culture that gave the message of 'Sarve Bhavantu Sukhinah',*

The speaker does not only focus on the climatic discourse but also makes the panel aware of its cultural history by quoting *'Sarve Bhavantu Sukhinah, meaning happiness for all"* indicating that the people of India possess no menace for anyone and always stand for the good of the people. He also uses emotions in his statements, when states, *"for me the event in Paris was not a summit, it was a sentiment and a commitment. And India was not making those promises to the world, but 125 crore Indians were making those promises to themselves."* The speaker uses the emotional statement to persuade his colleagues and the penal member by giving reference *to "125 crores Indian making promise to themselves"*.

### 4.1.3 Explanation Stage

In this stage ideologies of the speaker are revealed; this stage will show the PM Modi's discourse, his attitude towards the problem, *"Every year more passengers travel by Indian Railways than the population of the world. This huge railway system has set a target of making itself 'Net Zero' by 2030. This initiative alone will lead to a reduction of emissions by 60 million tonnes annually. Similarly, our massive LED bulb campaign is reducing emissions by 40 million tonnes annually. Today, India is working at a faster pace on many such initiatives with a strong will*" the extract gives the impression about the speaker that he is optimistic and is hopeful of its targets to be achieved on time. The speaker is actively involved in restoring the climate for a better future. The speaker at large has focused on the future. This suggests that the speaker wanted to present a good image of his country's government to the world. His statements make his "testimony persuasive." Modi also means the panel be flexible in policy-making, which presents him as a progressive individual on a global stage.

## Conclusion

Concerning the data that is analyzed, the research concludes that Prime Minister is happy with the progress of the country in talking the climate change, but the reality is not as good as it is being portrayed in the speech; the textual analysis of PM's speech composing of description and interpretation stage indicates at a positive text structure, which is more persuasive and optimistic in nature, PM has repeatedly used the word 'I' in his speech which suggest that PM kept indicating as him representing the country, and also conveyed his solidarity with the addressees, the ideology of the speaker in the address is of optimistic individual, a man who is hopeful of good things to come.

Climate Actions remained in focus throughout the address of the prime minister Modi, the important points that were raised were '*India will reduce the total projected carbon emissions by one billion tonnes from now till 2030.'' and ''By 2030, India will reduce the carbon intensity of its economy by more than 45 per cent.*

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## CHAPTER 24

# RIGHT TO SELF-DETERMINATION AS HUMAN RIGHT AND DEVELOPMENT

**Yuvraj Sharma**
BA.LLB, NMIMS (Deemed-to-be-University), Hyderabad Campus
**Prithivi Raj**
Assistant Professor (Law), NMIMS (Deemed-to-be-University), Hyderabad Campus

**Abstract**
*Human rights and fundamental freedoms ideas include equal rights and people's self-determination. Acceptance is an unavoidable logical consequence of human rights acceptance. It's not going to be possible to separate them. Civil rights cannot be fully protected without political freedom, and human equality before the law cannot be guaranteed unless the nations to which they belong are likewise equal. As a result, the right of peoples to self-determination, like other human rights, has universal validity. The idea of equal rights and self-determination of peoples has a long and historic history at the United Nations, and it has been invoked more frequently than any other Charter fundamental of international law. It has become one of the world's guiding ideals and a potent motivator for political action in a variety of scenarios. All peoples who have been subjected to colonial or alien oppression have a deep desire for equality and self-determination. This study will examine the notion of self-determination over time to see how it has evolved. The authors will try to link the right to self-determination to human rights and development.*

**Key Words**: Right to Self-Determination, Right to Development, Human Rights, Civil Rights, Political Rights.

### 1. Introduction

There are numerous features of self-determination that have been articulated on various legal platforms, making it a contentious issue in public international law. Self-practical determination's use has always been more contentious than its theoretical underpinning. It has served as a powerful slogan and a critical rationale for colonial peoples' independence since their independence. The colonial aspect of the right to self-determination is undeniable, because the right to self-determination is made up of several parts and dimensions. The right of people to make their own decisions in the international system is referred to as "self-determination". Self-determination has been formalised as an overarching legal notion by various international treaties and conventions, with roots in customary international law. The right of people to self-determination is a key premise of modern international law (commonly regarded as jus cogens rule).[ccii] The most important and fundamental notions in public international law are linked to this right, as is the concept of peoples' freedom to choose their own path without outside intervention or enslavement, presuming that all peoples are equal. The right to self-determination strengthens the fundamental underpinnings of public international law, such as sovereignty, equality, and territorial integrity, as well as the prohibition of force and the principle of non-interference. While using "self-determination" as a rallying cry, ethnic minorities and indigenous peoples push for independence or secession from an existing sovereign state. Equal rights for all citizens within a state are included in this right, which is recognised by both public international law and human rights law. In fact, the right to self-determination is extremely useful in a wide variety of global

contexts[cciii]. An essential element is that the right to self-determination might be internal or external. External expressions of colonialism reveal a desire to gain independence from other countries and the world community. The feature of self-external determination requires and sets obligation on states to support and facilitate a people's desire for independence. Self-determination takes on an internal dimension outside of decolonization and entails the freedom to develop one's economic, social, and cultural assets through democratic means. According to researchers such as Ove Bring, internal self-determination also involves the right to be free from outside influence and action in accordance with UN principles and international law. When it comes to internal self-determination, bring up the fact that the most common definition is that of non-interference, which is a negative responsibility imposed on the States (as opposed to the positive obligation imposed regarding external self-determination).[cciv]

Individuals have the freedom to select their own political position and pursue their own personal, economic, social, and cultural interests under the umbrella concept of "right to self-determination." The right to self-determination refers to a people's power to make decisions regarding their own fate. The notion also allows people to choose their own political perspective, as well as their own economic, cultural, and social growth. This right can result in a wide range of results, from political independence to full absorption into a state.[ccv] The ability to make judgments is crucial, and the results of a popular vote should have no bearing on this privilege. In reality, governments' perceptions of a people's or nation's legitimate claim are often impacted by the anticipated outcome of a self-determination exercise. As a result, while nations are more willing to accept claims of cultural autonomy, they are less likely to accept claims of independence. International law recognises the right to self-determination as a process right rather than a result right that applies to peoples rather than nations or governments.

**United Nations involvement in Self Determination**

As an authorised interpretation of the Charter's requirements, self-determination is binding on the United Nations as a basic principle of international law. Nations that adhere to the ideals of equal rights and equal opportunity have the option to select their level of sovereignty and international political position, according to the Atlantic Charter. The right to self-determination was a key component of the United Nations' founding texts when it was created in 1945. When the United Nations Charter was adopted in 1945, following World War II, self-determination became a part of international law and diplomacy. "To establish friendly relations among States based on respect for equal rights and self-determination of peoples, and to take other relevant steps to strengthen global peace," is stated in the United Nations Charter's Chapter 1, Article 1(2). As part of the UN's mission, the organisation proceeded to elaborate on the notion of self-determination. The United Nations General Assembly adopted Resolution 1514 (XV) on December 14, 1960, which stated that the goal of decolonization necessitated a new international law-based right of freedom in economic self-determination, which was to be based on a new international treaty, the Declaration on the Granting of Independence to Colonial Countries and Peoples. A Special Committee on Decolonization was established by the General Assembly to monitor the implementation of General Assembly Resolution 1514, which stated that self-determination is a core principle of the United Nations (XV). In 1966, the United Nations adopted an international treaty on civil and political rights, as well as an international convention on economic, social, and cultural rights.[ccvi] Both conventions begin with the following in their introductory paragraphs: "As long as there are people, there is the right for them to decide how they choose to live their lives. This right gives them the freedom to make their own political decisions and pursue their economic, social, and cultural growth."

The Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly in 2007, also recognises self-determination as a right of indigenous peoples. Indigenous peoples' rights to culture, identity, language, work, health care, and education are all outlined in the statement. "Promotes their full and effective participation in all matters that concern them, and their right to remain distinct and to pursue their own visions of economic and social development," it reads. The declaration's Articles 3, 4, and 5 are as follows:

(a) The right to self-determination of indigenous peoples is a cornerstone of human rights. As a result of this right, they have the freedom to make their own political decisions and seek economic, social, and cultural development.
(b) According to self-determination, indigenous peoples have the right to autonomy or self-government in matters relevant to their internal and local affairs, as well as the means to support their independent tasks.
(c) Indigenous peoples have the right to preserve and build their own political and legal institutions, as well as to actively participate in the state's political, economic, and social life, for as long as they want.

**UN Charter**

The principles of self-determination are specifically mentioned in the UN Charter's Articles 1(2) and 55.20. The trustee states of Non-Self-Governing and Trust Areas are expected to help such territories in gaining self-government under Chapters XI, XII, and XIII of the UN Charter, recognising the principle.[ccvii] Although the United Nations Charter recognises the importance of self-determination, it provides only a limited amount of information. Self-determination and the way it is viewed now.

**UN Agreement on section of 1970 declaration**

The Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States in Consonance with the United Nations Charter (General Assembly Resolution 2625 (XXV), 1970) lays out the principles of international law that govern inter-state relations. The right to self-determination is an important aspect of international public law, and this statement is an important part of that body of law. Its immense significance is due to a number of factors. First and foremost, the information contained within this declaration is solely legal in nature. As a second point, the declaration was adopted unanimously (with no vote) and thus expresses the opinion of the States on the themes it addresses. It is one of the few UN resolutions that have a distinct legal character, despite the fact that it is not legally binding as such, as was the case with the Declaration on Colonial Peoples (Resolution 1514). The character of international customary law, on the other hand, is preserved in this text. To become customary international law, Ove Bring argues that a Broad Assembly resolution must meet two criteria: first, it must be adopted by agreement or "without a vote," and second, the language must explicitly assert legal concepts of a general scope and applicability. The Charter of the United Nations' legal principles were, to some extent, affirmed or interpreted and clarified in a legally authoritative manner by the adoption of this proclamation. The scope of non-intervention is better defined in the statement, which is an example of one of these principles. Article 2(4) of the Charter prohibits the use of force as another option. Although the Charter is legally binding in and of itself, the declaration's elucidation of the Charter's principles are equally so. Because of their consensual nature and authoritative manner in which they interpret and articulate principles of international law, these two GA resolutions, the Declaration on Colonial Peoples' Independence and the Friendly Relations Declaration, are clear examples of GA Resolutions that are not legally binding but help develop customary law. It's possible that there are parts of the declaration that

don't express themselves clearly because of the need to compromise on the international stage. As long as the more ambiguous statements are correctly interpreted, the entire declaration will remain legally enforceable due to the fact that it was agreed upon by all parties involved. State practise or statements are needed to fill in the gaps in this understanding. Because of its role in both affirming and interpreting key international law concepts, the declaration is important in and of itself. Also, the declaration perfectly reflects the two areas of tension regarding the right to self-determination.

To begin with, if one examines the writing process leading up to the approval of the declaration, it highlights the incompatibility of the two sides of the right to self-determination. The sovereignty, geographical integrity, political independence, and unity of a state, for example, are not only considered fundamental elements in international law, but they are also seen virtually as hallowed ideals. While this may seem counterintuitive to some, the declaration goes into great detail about the right for people to self-governance, which can run afoul of the territorial unity required by an independent state. Second, there is disagreement over the divergent stances taken by the developed and developing worlds. At first look, the proclamation does not appear to have any major distinctions. At the time of the declaration's preparation, the world's political landscape was still divided along a dividing line between western countries and socialist and Third World nations. As a result of this contradiction, the Friendly Relations Declaration and its contents were drafted differently. However, the rising consensus on decolonization has narrowed the gap between the West and the Third World on most of the topics addressed in the statement.

According to GA Resolution 1514, as a clarification and expansion of the UN Charter, the 1960 Declaration on Colonial Peoples (GA Resolution 1514) aided in turning the UN Charter's principle of self-determination into a legal right in international law. From the perspective of the Third World, this increase of the external part of self-determination might be seen as a victory. Contrary to popular belief, Westerners' belief that the internal right-wing debate over democratic principles deserves greater attention and universal application was largely ignored in the proclamation and relegated to a supporting role. The ambiguity of the language in these parts of the proclamation has led to a number of different interpretations. Under the header "The principle of equal rights and self-determination of peoples," the section of the statement that causes the most concerns reads as follows: “Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self- determination of peoples as described above and thus possessed of government representing the whole people belonging to the territory without distinction to race, creed or colour.”

The Third World's perspective can be taken into consideration in this paragraph. Since territorial integrity is so crucial, this could be seen as an additional endorsement. To be fair, "...conducting themselves..." in the second section of the paragraph can be interpreted as a saving clause and an exemption to the previously established principle of territorial integrity. It's possible that a Western-style interpretation would imply that the principle of territorial integrity has an exception. The situation is far from straightforward, as this paragraph contains an additional intriguing feature. As a result, internal self-determination receives some consideration. This clause has been "missed or played down" by certain critics, according to one author, despite its importance. As a starting step, this paragraph challenges the concept that territorial integrity is practically absolute, if not by Third World advocates, then by Third World regimes, if not by the regimes of Third World nations. Also in this context of the right to self-determination, it might

be seen as highlighting the interior part of the right. However, it does not appear to resolve the problem of the right to self-inherent determination's contradictions. Instead, it seems to amplify this conundrum by allowing for a large range of possible interpretations.

**Right to Self Determination in International Law**

Article I of the United Nations Charter emphasises the right of peoples to self-determination. It had already received support from Woodrow Wilson, Vladimir Lenin, and others, and it was the driving force behind Europe's reconstruction after World War I.[ccviii] This idea was endorsed by both the Atlantic Charter of 1941 and the Dumbarton Oaks proposals, which subsequently became the United Nations Charter. It must be included in the United Nations Charter for the concept to be recognised as important to the maintenance of friendly relations and peace among nations. Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, which both came into effect in 1976, recognises this as a universal human right.[ccix] This Article's first paragraph explains: Self-determination is a fundamental human right. Because of that right, individuals are able to make their own political decisions and pursue their own economic, social, and cultural advancements without interference from anybody else.

The Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States was adopted by the United Nations General Assembly in 1970, the Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE) was adopted in 1975, the African Charter of Human and Peoples' Rights was adopted in 1981, and the CSCE Charter for Self-Determination was adopted in Paris in 1985. The International Court of Justice has confirmed its ergaomnes character in the instances of Namibia, Western Sahara, and East Timor. The right to self-determination was recognised at the International Meeting of Experts for the Elucidation of Concepts of Peoples' Rights, which was convened by UNESCO from 1985 to 1991,[ccx] the above-mentioned International Covenants on Human Rights and the Vienna Declaration and Program of Action emphasise that self-determination is an important feature of international human rights law. All other human rights and freedoms, whether civil, political, economic, social, or cultural, are contingent on one's ability to exercise one's right to self-determination; this is a universally acknowledged fact.

The power of self-determination cannot be overstated. The concept of self-determination is "nothing more powerful, visceral, emotional, turbulent, as steep in developing dreams and hopes than self-determination," Wolfgang Danspeckgruber wrote. It elicits strong feelings, which might lead to conflict and violence. Experts suggested that international law should or already does limit the rights of title holders. All or some groups of titleholders should be limited in their ability to win. Finally, the best way to approach the right to self-determination is to understand it in its broadest sense, as a process that allows for a wide range of possible outcomes depending on the specific circumstances of the people involved.[ccxi] International law affirms the principle and fundamental right of all peoples to self-determination.

**Importance of right to self-determination in international law & Regulation**

There is a general consensus that plebiscite monitoring should consider the entire process, not just the results of the election itself. As Elklit and Svensson point out, the preconditions for a democratic plebiscite must not be overlooked[ccxii]. Coercion stands in stark contrast to freedom. It is mostly concerned with the game's regulations, such as the legal/constitutional foundation and the timing; Fairness entails impartiality and consistency, i.e., the unbiased application of norms and reasonableness; the distribution of appropriate resources among competitors that is not excessively unequal.

**International Parameters in Right to Self Determination**

A plebiscite is a kind of democratic decision-making that can be either legally binding or not. It is commonly used in connection with new legislation, constitutional amendments, and other major public issues. When it comes to big issues like whether or not a country should join another or whether it should amend its constitution, international law requires a popular vote. There are two main types of plebiscites: constitutional referendums, which are required by law and are always binding, and government or parliament-initiated consultations, which are mostly non-binding because government or parliament-initiated consultations are institutional packages and, as a dynamic process, can limit the power of already existing institutions.

Direct democracy has a feature called plebiscite. People's views are solicited on all issues of national significance pertaining to their government under a direct democracy. Direct democracy's success or failure can't be judged solely on the results of the political process. With direct democracy, the general public is given the opportunity to participate in the decision-making process to the fullest extent possible in modern nations[ccxiii]. There should be no doubt that this is a fundamental human right. Unlike other fundamental human rights, the acknowledgment of the right to political co-determination is not conditional on whether or not the outcomes of plebiscites suit a person's own personal interests. Such a conclusion would actually be anti-democratic in nature. As a result, the actual results of direct democracy must be evaluated in light of this context. Direct democracy makes it easier to participate in plebiscites by keeping oneself informed about current events and concerns in politics. Direct democracy is likely to reduce negative attitudes toward taxation and tax avoidance, as people have the opportunity to participate in public spending decisions and tax hikes must be approved by the public. When it comes to modern representative democracy, it's important to know exactly what the advantages of an indirect and direct system are over the old and dominating model of parliamentarian democracy. As a result, basic democratic principles such as responsibility, transparency, and participation cannot be met in a satisfactory manner in the EU, because national governments operate as European lawmakers and thus hold dual power. Social innovation with positive economic effects can be defined as combining indirect democracy with direct forms of co-determination. As a result of this social innovation, citizens have a stronger connection to government policies, feel less alienated from politics, and have a better understanding of the programmes themselves. Per capita income and tax efficiency are directly connected to a plebiscite, as proven by reduced tax rates and a decrease in the number of people who evade paying their taxes. Direct democracy has the potential to improve a society's well-being if it is implemented according to carefully crafted rules. Plebiscitary processes, however, must meet the basic prerequisites of 'freedom' and 'fairness' in order to accomplish these favourable results. Plebiscites have become the buzzword of the people, but what really makes a 'free and fair' one? There is a general consensus that plebiscite monitoring should take into account the entire process, not just the results of the election itself . Furthermore, Elklit and Svensson argue that the preconditions for a democratic plebiscite must not be overlooked. Coercion is the opposite of freedom. Most of the discussion focuses on game rules, such as legal/constitutional basis and timing; "fairness" refers to impartial application of rules and consistency, which means that the rules must be applied consistently and fairly; the distribution of relevant resources among competitors must be equitable but not excessively so.

**Right to Self Determination in India**

For India, self-determination is a fundamental right for peoples under foreign rule, but not for Indian citizens; the Indian Constitution does not explicitly mention self-determination and is quiet in that regard. Technically, this privilege does not apply to Indian soil. Re: The Berubari Union

and the Exchange of Enclaves References the Supreme Court of India ruled that under Article 143(1) of the Indian Constitution[ccxiv], the acquisition and cessation of territory is not covered by the Constitution. The Berubari region was partitioned between India and Pakistan as a result of the war; nevertheless, the Parliament has no jurisdiction to give Indian land to a foreign country. The Indian Constitution's Article 1(3)(c) only pertains to territory that can be acquired and not to areas that can be relinquished. It has been argued that Article 1 does not give the government the power to buy land; rather, the article's goal is to assist in the absorption of foreign lands. As a result, if the Constitution does not provide for it, the ability to transfer a portion of national territory should not have been included in the Constitution's provisions. For sovereignty, two powers are required, and they can only be exercised by a sovereign state like India. Despite the Constitution's prohibition on self-determination, the right to do so is unalienable. It can still be claimed by the people, but the Union has the final say on whether or not to allow it. The current criminal laws in India do not penalize anyone for calling for the right to self-determination. When a group's right to self-determination is recognised as a sovereign right, secession becomes legal. Legally speaking, however, if it is followed with the use of violence, those involved will be prosecuted. According to Indian law, the right to self-determination is only applicable in conditions of foreign rule and colonialism, not in post-colonial or other circumstances. Its statutory and constitutional foundations are deafeningly mute on the subject. Based on the applicable constitutional values, the Supreme Court held that land purchase and cession are sovereign rights and so outside the Constitution. To sum up, a sovereign authority's decision to transfer territory does not preclude a sovereign's right to self-determination from leading to secession. Secession and the right to self-determination cannot be deemed crimes. Whether such demands succeed or fail is largely determined by the political system in which they are made. India believes that the right to self-determination is limited to conditions of foreign rule and colonialism under international law, and so refuses to apply it to postcolonial and other contexts. Its legal and constitutional frameworks are deafeningly silent on the issue. Based on the associated fundamental principles, the Supreme Court concluded that land purchase and cession are sovereign privileges that are not protected by the Constitution. According to this opinion, as long as the state has the sovereign authority to cede its territory, the right to self-determination that leads to secession cannot be restrained. As a result, secession as a means of exercising one's right to self-determination cannot be considered a crime. The political process determines whether such requests succeed or fail.

**Where Does India Stand on the Right to Self-determination?**

The recent arrests of a few students at the Jawaharlal Nehru University drew national and international attention[ccxv]. It was claimed that these students organized an event in which slogans regarding India's breakup and the Kashmiri people's suffrage were uttered. Section 124A of the Indian Penal Code was invoked against several of the students involved in this incident to prosecute them for sedition. To determine whether or whether the chants constitute sedition, the courts of law must be consulted. When it comes to a demand for self-determination, what comprises a nation and what constitutes nationalism? Self-determination has evolved over time at the international level, passing through a number of distinct historical stages. Since its inception, it has always been a contentious idea, with political processes ultimately determining its applicability and usefulness in a given situation. As a result, asserting it as a legally enforceable right has legal consequences. However, political pressure to put it into practice persists.

**Right to Self Determination as a Human Right**

GA Res 1514 and 1541, the initial resolutions that paved the way for self-determination to become a legal norm, were passed in 1960. Self-determination wasn't explicitly recognised as a human right until 1966, when the two UN human rights agreements were signed, according to Wilde.[ccxvi] Although it has been criticised for being a human right, it is not a contentious issue in international law.[ccxvii] Even while self-determination was accepted as a human right, rather than as an international legal standard, it has not been without consequences for the norm's character. According to Wilde, the idea that self-determination was a human right impacted the prerequisites for exercising an entitlement to self-determination in the colonial setting. Consultation was only required when a more related to colonialism option was being considered, and this emphasis was placed solely on delegitimizing colonialism in the earlier legal norm.[ccxviii] The emphasis on a people's right to define their external status was shifted in the norm when self-determination was articulated as a human right. A lack of substantial support for independence meant that various types of integration with foreign states were no longer a strong priority. The result was that all solutions open to a people who had been under colonial control required consultation.

As soon as self-determination is recognised as a human right, it is included in the human rights legal framework. McCorquodale has identified and summarized the key rules of this legal framework that have influenced the norm's evolution.[ccxix] Self-determination, as a non-absolute human right, has to be limited in some way. Among these are Article 5(1) of the Human Rights Covenants, which states that "nothing in the present Covenant may be understood as indicating for any State, group, or person a right to engage in any activity or conduct any act intended to destroy any of the rights and freedoms recognised herein." There must be a proper balance between self-determination and other rights, such as freedom of expression and freedom of religion based on Article 5. However, a group of citizens who claim to be entitled to self-determination may not always end up breaking away from their home state. In light of the need to accommodate the individual rights of inhabitants within a territory, other solutions, such as the formation of a federation, may be deemed more appropriate. The introduction of the concept of self-determination as a human right led to the development of internal self-determination as an alternative to external self-determination.[ccxx]

The legal ramifications of the recognition of self-determination as a human right are not [ccxxi]good chance this is not the case at all. The human rights framework, for example, assigns the state responsibility [ccxxii]for striking a balance between the right to self-determination and other human rights. The obligation to balance the right would remain with states regardless of whether the right to self-determination were made more specific. This would allow states to avoid any unintended consequences that may result from a more specific right. Furthermore, official procedures for enforcing international human rights law may be lacking.[ccxxiii]In these cases, other states parties may have to raise the issue with the state in question in order to ensure adequate implementation. This is something that hasn't always been pursued by states, which may be due to the fact that human rights have traditionally been viewed as a domestic concern by states. 103 States' interests are aligned with those of self-determination, which is why they have accepted it as a human right. Certain higher characteristics of normative status attributed to the right have received little attention by states, as will be shown.

**Right to Self Determination as Basic Right**

Regardless of whether or whether they are useful in achieving or attaining other rights, basic human rights generate claims. Non-fundamental rights' derivatives give rise to claims because they help secure or realise basic rights or are prerequisites to doing so. What a person might claim as a matter of human right may include things that are not vital to safeguarding human dignity on their own (i.e., aside from the contribution they make to other rights). The right to due process, for example, is frequently treated as a fundamental right: it is valued in and of itself, regardless of its contribution to the protection or promotion of other rights such as the right to free expression. As a result, it is sufficient to prove that a state has violated my human rights by failing to provide me with due process. During judicial procedures, on the other hand, the right to an interpreter is frequently viewed as a derived right: it is treated as a right that one has since it contributes to the right to due process. So, if a state can show that supplying me with an interpreter was not necessary for me to enjoy due process in a particular set of circumstances, it will have demonstrated that it did not breach my human rights in those circumstances ( even though , in In most cases, refusal to provide an interpreter is rights-violating).[ccxxiv] Reading indigenous peoples' human right to self-determination as a special case of the general principle in international law that all peoples have the right to self-determination suggests that the legal norms governing states' obligations to one another and the legal norms governing states' obligations to persons as such should be read as mutually informing one another that the norms governing behaviour toward persons are neither completely separate nor completely similar. People are named as subjects of human rights in the declaration, and self-determination is included as one of the basic rights.

**Conclusion**

India takes a firm stance on self-determination, claiming that the right has no place in the post-colonial era. When a sovereign right can be exercised in this regard, however, demands asserting the right to self-determination should be heard and legitimised. Oppressed peoples' identities should be allowed to evolve, and the Union of India should respect and preserve their collective rights. If that is not the case, the State's only option is to refrain from taking any violent action that would deny those people their right to enjoy it. The primary feature is people's right to self-determination, which includes the right to form their own state, the freedom to unify with other states, and the right to unrestricted economic, social, and cultural development. The duty to respect and promote the right to self-determination requires nations to not only respect and promote the right, but also to refrain from any violent action that denies individuals their right to self-determination. The use of force to prevent individuals from exercising their right to self-determination is especially illegal, as the international community has repeatedly stated. International law recognises the principle and fundamental right of all peoples to self-determination. If nations recognised the power of the human rights approach to reform their relationship to the concept of self-determination, it would be mutually advantageous for governments, claimant peoples, and all others whose rights are implicated by a self-determination claim. As a result of the emergence of human rights cultures in domestic settings, international legal standards on self-determination and human rights have significantly enhanced their constructive potential. To summarise, "National aspirations must be recognised; people can no longer be ruled or governed without their agreement. Self-determination is not just a slogan; it is an actionable principle." As a result, the phrase "self-determination" has evolved to refer to the ability to choose one's own actions without being coerced by others. Everyone has the right to self-determination. They have the freedom to select their political stance and pursue their economic, social, and cultural development as a result of this right. As seen by the preceding

summary of modern international law norms, the notion of self-determination and human rights legislation are inextricably intertwined. Despite its status as a universal human right, the right to self-determination must be investigated and evaluated in a much broader context. Its fulfilment is required for the proper exercise, promotion, and development of all individual human rights as defined by international human rights law norms. The position has been advanced in UN debates, as evidenced by a number of General Assembly resolutions and the Human Rights Committee's excellent general comments on the International Covenant on Civil and Political Rights. Despite the fact that opportunities for exercising the right to self-determination are significantly fewer today than they were in the second half of the twentieth century, the principle of self-determination will continue to play an important role in the implementation of international human rights law. India claims that under international law, the right to self-determination is limited to conditions of foreign dominion and colonialism, and so refuses to apply it to postcolonial and other contexts. Its legal and constitutional systems are deafeningly silent on the matter. As a result, secession used to exercise one's right to self-determination is not a crime. The political process decides whether such demands are granted or denied.

**CHAPTER 25**

# UNIFORM CIVIL CODE- A RAY OF HOPE FOR GENDER EQUALITY

Chalasani Jainesh

BBA LLB (Hons), School of Law, Lovely Professional University

Dr. Seema Modi

Assistant Professor, School of Law, Lovely Professional University

## Abstract

India is the world's largest democratic country. As India is a secular state, it enables its citizens to practice and preach their own religions. But, the question is what cost will have to be paid for it. A religious interest should be within the border of one's comfort level and it shouldn't harm the interest of others. In India, the personal laws especially referring to civil matters such as marriage, divorce, property, inheritance, adoption were based on religious customs and applicable to only their religious population. The time has come to change this pattern and implement Uniform Civil Code. This isn't an alien proposal because the debate for the implementation of UCC is dated back to the proposal of First Legal Commission in pre-independence era and Article 44 of Indian Constitution which turned proposal into article in post-independence era. However, Art. 44 is not enforceable by law, as it is the part of the Directive Principle of State Policy. Uniform Civil Code is far away, even the common civil code has also not been implemented. Its cost has to be paid in the form of gender inequality where these personal laws have some biased provisions for men. For example, multiple marriages for men and no maintenance for wife is allowed in Muslim laws. In the same way, under the Hindu Minority and Guardianship Act the father and then, mother has been declared to be the guardian of child. This inequality can be eliminated only by implementation of Uniform civil code.

**Keywords:** Uniform civil code (UCC), Indian Constitution, Personal Laws, Gender equality.

## 1. Introduction

Gender equality is one of the hottest topics that hits the hard reality to consider it for the establishment as a common point in the civilized world. But to achieve its agenda it requires the support of laws in the country. Not just laws but the nature of the thought process should also be generalized for achieving its complete objective. The nature of the thought process of the human being is always a subject of the culture and religion that the particular human being follows. Every religion teaches its followers to respect women. But it isn't an excuse of oneself to illustrate it as gender equality. Because being respected is one aspect of gender equality but not the whole concept of it. Gender equality is all about being respected, treated with equality, giving them their chances of being individual, considering their opinions and so on. No doubt, women has always been the victim of gender equality not just in India but throughout the world.

To achieve its objective, gender equality needs proper laws in the country. Because the law has the ability to turn a right into a duty of its abided citizens. In India, laws relating to personal matters such as marriage, adoption, inheritance, divorce etc., were based on religious customs and every religion has their separate laws in spite of the uniform civil law alike the western countries. This is something India has to look into its chambers for uplifting its objectives of achieving gender justice.

Uniform civil code (UCC) means a code consisting of common civil laws for all the citizens of India without any discrimination based on religion, caste, color, creed, race etc. As said by *Sathe*, *"*The word 'uniform' same law for all but it should mean similar laws for and similarity should be regarding equality and gender justice*"*[ccxxv]

## 1.2 Statement of Problem

India is a land of multi-cultural people where the caste, religion, language, creed, and customs are different from one another but the phrase "*We the people of India*" which is the starting point of our preamble brings all these divided branches under one roof called "secularism" which makes this sub-continent a very unique blessed land in the eyes of the world. But in the question of implementation and achieving the objective of the word called 'secularism', this country is bound to self-assessment. No doubt the quality of peace for following one's religion has never been an excuse to proclaim or question, but it can be said that its pampering of religious freedom and law are overbidding.

Religion should be a matter of one's personal conscience be the matter in court and laws. The making of different civil laws relating to marriage, property, inheritance, adoption and other issues with the view of religious customs and religious preaching is definitely a blackspot in Indian Judicial System. Civil Laws based on religion such as *the Hindu Marriage Act,1955, the Indian Christian Marriage Act,1872, the Hindu Succession and Adaptation Act,1956,* etc has deprived the term oneness under the Law.

On the other hand, these laws are not just drawbacks in the context of secularism but in the context of gender justice as well. Especially, women being the victim of religious customs which have been supported and turned out to be matrimonial and property laws in the country are definitely subject to scrutiny for the betterment of future generations. Thus, the last hope for eradicating gender injustice in civil laws of the country is to bring Uniform Civil Code (UCC) into existence and make our judiciary more elegant.

## 1.3 Research Objectives

1. To Understand the historical background and conversional circumstances in failure of implementation of Uniform Civil Code (UCC) in India.
2. To evaluate the existing Laws and their nature and scope towards the gender justice.
3. To critically analyze the Role of Judiciary in setting up the Uniform Civil Code.
4. To analyze the view point of contemporary government in bringing Uniform Civil Code (UCC) into existence.
5. To Analyze the need of implementation of Uniform Civil Code (UCC) in India with outline of gender justice with secular laws.

## 1.4 Research Questions

i. Can uniform civil code (UCC) come into existence in India, without hurting the religious sentiments and customs?

ii. What is the relationship between uniform civil code (UCC) and gender equality and what are the changes require in personal laws?

iii. What is the judicial overview on uniform civil code (UCC). Will it have any impact on government to bring UCC into existence through legislative framework?

## 1.5 Hypothesis

Enabling gender equality through laws can be achieved through the implementation of the uniform civil code (UCC). Being called a secular country it is important to respect the religious customs and teachings of every religion but isn't necessary to have different personal laws based on religion. India to turn into a developed nation needs the change and that can attain through the implementation of unform civil code (UCC).

## 1.6 Research Methodology

The present research paper has adopted the doctrinal form of research as its research methodology. The doctrinal research method was used from the sources of books that are in from of print and pdf, articles that are printed, published online, published in newspapers, statues from bare acts, case laws from the online database such SCC online, Indian Kanoon, Lexis Nexis were used to get the information.

## 2. Historical Background of Uniform Civil Code

All Indian laws which are prevailing today in India have the flavor of English laws. During their regime, the British were very positive in bringing the uniform set of rules to govern the laws of the country. This is very much evident in report of First Law Commission, 1840 which is said to be '*Lex Loki*' which means '*Law of the Place*' Report.[ccxxvi] The main objective behind the constituting this first law commission was to study the ground reality and feasibility of bringing the uniform civil code (UCC) into existence in the country.

But the final recommendation of the Commission has wiped out the hopes of implementation of uniform civil code (UCC) where the recommendation stated that there is a necessity for the codification of criminal laws such as the Evidence Act, the Contract Act, etc. But, on the other side for the personal matters such as marriage, maintenance, adoption, divorce. There is no need of any such codification. This is resultant of the policy consideration that was proposed by Warren Hastings in his mention of Administration of Justice Regulation,1780.[ccxxvii] In this policy it was clearly mentioned that the disputes such as marriage, divorce or inheritance, people should be governed by their personal laws.

But, after the formation of Indian Constitution, the uniform civil code (UCC) has not been able to grab its hotspot. Though, Article 44[ccxxviii] clearly emphasized the formation of the uniform civil code (UCC) in Indian territory.

Despite, all the recommendations and formations the uniform civil code (UCC) has become a dream yet to full filled for many social reformers and citizens because in the initial days the minorities has opined that their rights and laws relating to civil can be suppressed in the uniform

civil code(UCC) and the majority religion that is Hinduism can have benefits by bringing large portion of their customary laws into existence via Unform civil code (UCC).

While on the other hand this has led to a confusion for the newly formed government and first Prime Minister of India Shri Jawaharlal Nehru and his cabinet and in the year 1948, he constituted a sub-committee to draft a new code to dethrone The *Hindu Code Bill* and appointed Dr. B R Ambedkar as its head. This has resulted in suggestions of equality between men and women in the inheritance property. The maintenance for wife and so on.

On 23rd November, 1948, a member of Parliament who belong to the Muslim community has challenged the government for its implementation of code and he said '*India won't be same if this code comes into existence*'. On the other Nehru ji countered his party will resign if they fail to bring it into existence.

But, the saga of allegations and susceptions has led to many obstacles where the implementation of uniform civil code was been a roller-coaster ride for the framers of the constitution and members of the legislature as well. Where the final output was still the implementation was left a dream for many in the year 2022.

## 3. Existing Personal Laws and Their Role in Providing Gender Equality

It is open secret that the personal laws in India were based on religious teachings and religious customs. Thus, the personal law matters such as marriage, divorce, adoption, inheritance, maintenance, etc., were different from one person to another person based on their religion. In this chapter we will be discussing personal laws existing in India and their role in providing gender equality.

## 3.1Hindu Laws

In India, majority of the population belongs to the Hindu religion, this religion is very ancient has a broad history according to the Hindu mythology. And the Hindu laws were not originated from one script but many scriptures and scripts that exist from many generations, the whole concept Hindu mythology is predominant on term called '*Dharma*' which in translation mean righteousness. On the other hand, the ancient Hindu history tells us about the *'Smriti'* and *'Shruthi'* which are based on *vedas, dharamsatras and puranas* which are considered as the sources of Hindu laws.

### 3.1.1 Gender equality under Hindu personal laws

In Hindu mythology women are considered more powerful and worshiped as goddess and respected with dignity and integrity. But this isn't the excuse to say that the Hindu women were treated equally with men. The art of inequality is existent in the Hindu personal Laws.

In the year 2005 the status of equal rights in possession was given to women. Earlier, Men has upper hand in possession and women were deprived of this right which proves that the inequality has prevailed in Hindu personal Laws. *Kirthi Singh***,** a senior advocate at Delhi High Court in her interview with The Hindu Magazine says[ccxxix]

*"*Among Hindus, the rules for inheritance of a woman's property are different from a man's property. If a woman dies intestate and has no husband or children her property will go to her husband's heirs and only if they are not alive, the property will devolve upon her father's heirs and only lastly to her mother's heirs, this method of succession was upheld by the Supreme Court even though it recognized the injustice of this provision*."*

Thus, the Hindu personal laws in civil matters of marriage, divorce, adaptation, guardianship, inheritance are primarily helpful in nature to safeguard the rights of Hindus according to their teachings and customs but kind of outdated with the present-day scenario. In today's world men and women were very much equal and every law governing rights should treat them equal.

## 3.2Muslim Laws

It is well known that Islam is one of the most followed religions in the World. In context of India, Islam seems to be bit different though the spiritual teachings are same with regard to world the Indian Islamic laws stand out of the box. Coming to the history and sources of the Muslim personal laws. They are mainly derived from the '*Quran*' their holy book besides Quran they have four schools for Sunnis who differs from Shias. The four schools were Maliki, Hanafi, Sahafi and Hanbali. These schools were named after their religious heads who can called as the Muslim jurists. The problem exist with Islamic law is that their laws weren't something that derived out with human moral ground but they were said to believed they were delivered from the words of God.

### 3.2.1 Gender equality under Muslim personal laws

The concept of gender equality under Muslim personal laws is not a positive side of these laws. In Islamic laws women are always beyond men and never shared equal status. This is evident with every judgement that the Indian civil courts have dealt with Muslim cases.

In context of marriage, it is always the age that plays the factor where a girl who attains 18 and boy who attains age of 21 were legally bounded to get married under the eyes of laws. But, for

Muslims the scenario is bit different. In *Yunusbhai Usmanbhai Shaikh* v. *State of Gujarat*[ccxxx] In the above case Justice J.B Padiriwala has said that-

*"According to the personal law of Muslims, the girl, no sooner she attains puberty or completes 15 years of age, whichever is earlier, is competent to get married."*

The other aspect that needs our attention is witness at time of marriage according to the Sunni's law the proposal for marriage and acceptance for the same should be done in the presence of two male witness or one male witness and two female witnesses. In the case of *Abdullah* v. *Beepathu*[ccxxxi] the court held that-

*"*The marriage invalid as there were two female witnesses only. That means as per the above law a single man has an equal status to two women. A woman is half to a man which is nothing but sheer discrimination*."*

Thus, even the Islamic personal laws were not an excuse for the cause of gender inequality through the personal laws based on religious customs and preaching's. These laws make the implementation of Uniform civil code (Code) more necessary.

## 3.3 Other Personal Laws

Even the Christian personal laws were not an exemption for the gender inequality. Before 2001, a husband only needed to show the cause of adultery to obtain the divorce whereas the wife had been subjected to show bigamy, adultery, dissertation etc to obtain divorce. However, after the amendment in 2001 it allowed equal gratifications for both men and women. In the case of *Mary Roy* v. *State of Kerala*[ccxxxii]

*"*Mary Roy has challenged the discriminatory personal law of the Christians namely The Travancore Christian Succession Act 1916, almost forty-seven years after the commencement of the Constitution. As this Travancore Christian Act, was very biased as this Act put the rights of the daughter, one fourth shares of the son (Travancore Christian Succession Act, 1916)*"*

Even the Parsi personal laws has the same old song where the gender inequality prevails in larger ration and is no exception. "The children of a Parsi Zoroastrian man married outside the community can become Parsi, but the same is not true of the children of a Parsi woman married to a non-Parsi. Some women in the community have questioned the practice and taken the matter to the courts.*"*[ccxxxiii]

## 3.4Common Civil Law As An Alternative for Personal Laws?

Once we take all the drawbacks in the personal laws it will be very much evident that these laws need a complete amendment to safeguard the rights of women and provide gender justice. India

is a secular country which values the ideologies of every religion with greatest interest. But it is also evident that these can be a drawback for the future generations because the taught process of living nature and ideologies about the gender roles have been changed from our past generations. Thus, the need for change in law is also evident in nature.

Common civil code is never an alien subject because many western countries follow these common civil laws pattern. Common civil code in simpler terms can said as the common law for all the people irrespective of their caste, color, creed, religion. Customs, etc., this can emerge as a solution for these personal laws depriving the women rights. Many scholars were also insisting that these common civil laws can be very much helpful in making justice deliverance a positive sign in India by saving the time of court and making laws understandable for the public with easy access.

## 4. Judicial Perspective on Implementation of Unifrom Civil Code in India

The first voice of court about the uniform civil code (UCC) to confront with the government has come up in this case that is *Mohammad Ahmed Khan* v. *Shah Bano Begum*[ccxxxiv] which is known as Shah Bano Case, the apex court held that *"It is also a matter of regret that the Article 44 of our constitution has remined a dead letter."* However, the joy of the many people on the Court's statement has evaporated as the central came with new regulation and laws for Muslim women based on religious customs and made it clear that the Muslim women were not entitled to maintenance after the divorce under section 125 of the Criminal Procedure Code (Cr.P.C) of India.

But in 1995 the hope for the implementation of uniform civil code (UCC) has once again raised its bars with judgement of *Smt. Sarla Mudgal, President, Kalyani and others* v. *Union of India and Others*[ccxxxv] where the apex court has addressed the government to take the effective measure in implementing the Article 44 of the Indian constitution and to present an affidavit stating the steps and measures taken in implementation of the Article 44. However, the joy didn't last much time because the Apex Court delivered a reversed judgment in the case of *Ahmadabad Women's Action Group (AWAG)* v. *Union of India*[ccxxxvi] in which the court held that the part of removal of gender biasness and discrimination involves a state issues and the court has nothing to with these matters. This judgment was widely criticized by many activists who taught the implementation of uniform civil code (UCC) has fallen on track.

The Supreme Court stood firm with it uphold on Uniform Civil Code in the case of *Lily Thomas etc.* v. *Union of India and others*[ccxxxvii] the court opined that the desirability of implementation of uniform civil code can be achieved by the mass awareness created by the statesmen and the change of taught process in the common man for the gender justice.

In the year 2006, the apex court in the judgement of *Naveen Kohli* v. *Neelu Kohli* [ccxxxviii] has urged the government to look after Hindu Marriage Act and advised to add irretrievable break a ground to divorce for the concern of justice to both the genders.

Recent trend about the gender justice has come up with *Shayara Bano* v. *Union of India*[ccxxxix] which is known as triple talaq case this was a sensational case which came in ration of 3:2 judgement which outlined the gender injustice with the nominal principles of the religion.

So, under the Judiciary perceptive it has been a positive sign of implementing the uniform civil code (UCC) but it needs the help of legislature which is always a reason for delay. And it is open fact that judiciary had not forced or rubbed its opinion legislature it would have be more effective if the judiciary has extended its efforts in suggesting legislature for the implementation of uniform civil code (UCC).

## 5. Uniform Civil Code- Its Need for Implementation

The debatable question the need for implementation of uniform civil can continued till the existence of thought process of the religious head and their followers who believe that if the uniform civil code (UCC) is implemented the common law under the uniform civil code (UCC) This thought process should be changed and the people should start looking out of the box rather than being surrounded by the orthodox thinking of religious thinking which is based on their time period and resources available. The implementation of uniform civil code (UCC) will strengthen the unity and make state a first place to be respected.

### 5.1 State of Goa- An Inspiration

Goa is the only state in country which uniform civil code (UCC) implemented in its state. The law is named as *"Goa Family Law"* which has its roots from the Portuguese ruling period i.e., *Civil code of 1876,* these set of civil laws brings some exiting set of rules and regulations these laws are applicable to all the people of Goa irrespective of their caste, religion, or their ethnicity. These laws include provisions such as income is shared equally between men and women and children and on the other side every event of birth, death and marriage should be registered compulsory its also has bring the scope of gender justice and equality where provisions state that Muslim men in state has no right of bigamy by pouncing *'talaq'* and after the divorce the property is shared equally.

The present government's minister Shri Rajnath Singh told that *"Whenever we talked of Ram Mandir people poked fun at us and said we didn't have any other issue to talk about but, we filled*

*our promise. We also promised and fulfilled article 370 and triple talaq. We will do what we said about common civil code also"*[ccxl]

## 6. Suggestions

The desirability of implementation of Uniform civil code (UCC) requires attention for some the suggestions. Because uniform civil code (UCC) is socio-legal subject which is highly ranked in nature of criticizers as well as people who are very firm on belief for its implementation. Many political parties have used this subject as a vote bank and failed to bring their promises into existence. After doing the whole study of the subject, the following suggestions may be given for actual implementation of the Uniform Civil Code:

### 6.1.1 Bringing Article 44 of the Indian Constitution into existence

Article 44 which clearly says, *"*the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India*".* This should come into existence.

### 6.1.2 A Judicial committee for reviewing the demands of religious heads for making common law

A judicial committee should be established within the inclusion of Judges, senior lawyers, legal Professors and highly scholars in matters of laws to have a word with the religious heads.

### 6.1.3 To draft uniform civil code (UCC) based on fundamental rights and moral status and give the religious customs and teachings a less importance.

The upcoming uniform civil code (UCC) must be having the laws based on fundamental rights and moral status and likely less importance for the religious customs and their teachings.

### 6.1.4 To make gender equality a subject in academics.

Gender equality should be a mandatory subject in schools for children. Because though we have laws like section 498A of IPC we fail to eradicate the existing problem. This can only be attained by knowledge and awareness among people.

### 6.1.5 To bring fast-track courts in civil matters for personal laws.

The Uniform civil code (UCC) can make courts work more easier and the judgments can expect to more efficient and faster than usual because the courts were barking a hectic burden of reviewing personal laws which is different for every religion.

## Conclusion

Uniform civil code (UCC) is always an amplifying idea which needs to be brought into existence. But things turned out in favor of fortune for the religious laws which established themselves as the civil laws turned personal laws in the country. The concept of uniform civil code (UCC) has always been in consideration not just in post-independence era but its roots were traced before this era which included the colonial rule over the country. However, all these efforts have remained efforts rather than to turned out as an actions. This concept is not just the like hood of the framers of constitution or the few political leaders or experts or activists but the judiciary is also one among those.

The *Shah Bano* case has turned the tables with its judgement where it is involved of topic raised about the *Article 44* of the Indian constitution which states the implementation of uniform civil code (UCC) has been brought into lame light. Its is also followed by the events of cases and the recent judgment of *triple talaq* case also brings the positive signs that the Indian judiciary has opined on Uniform civil code (UCC).The question remains is that can this Uniform civil code (UCC) eradicate the gender inequality which is pursuant in the India society the personal laws which are based on the religious customs and religious preaching's and teachings has added more fuel to it.

Gender equality needs be abolished from the present-day society and the new generations should witness the concept of equality with the pure form. To make this happen the only way can be regarded as the implementation of the uniform civil code (UCC) the implementation of civil code isn't just the hope for the gender equality but the hope for oneness and one law for one nation. Gender equality isn't a question of right but is a question of taught. Man being a social animal has evolved throughout his journey the concepts of life has changed with one generation to other and such should also be an inspiration for the future generation's and that can achieve with the uniform civil code (UCC).

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**CHAPTER 26**

# Sociolegal Perspectives Related to Suicide in India

**Dr. Harguneet Kaur*, Assistant Professor, Department of Psychology, CHRIST(Deemed to be University), Delhi NCR**
**Prof. (Dr.) Bhupinder Singh**, Associate Dean - School of Law, NMIMS, Chandigarh, Mohali, India.**
**Aastha Jain ***, Research Scholar, Department of Psychology, CHRIST (Deemed to be University), Delhi NCR**

## Abstract

Suicide is the third greatest cause of mortality among adolescents and young adults throughout the world. Suicide rates have also been rising in India for some years now. However, the causes of suicide and the methods used to commit it vary across cultures. This study discusses the socio-legal aspects which contribute to suicide in India, as well as highlights some suicide prevention measures. Multiple regression analysis was employed to investigate the relationship of suicide rate with literacy rate, unemployment, inflation, and social sector expenditure prevalent in the year 2018-19 in India. The sample of the study comprised 33 states and union territories of India. The literacy rate ($\beta$=0.48, t=2.47,$p<0.05$) was found to be a positive predictor of the suicide rate explaining 18% of the variance in it (F=6.10,$p<0.05$). The unemployment rate ($\beta$= -0.41,t= -2.58*,$p<0.05$) was found to be a negative predictor of the suicide rate for the same year explaining 17% of the variance in the criterion variable (F=6.65, $p<0.05$). The total variance explained by these socio-economic factors amounted to 35% of the criterion variable. It is opined that community-based prevention initiatives and the identification of susceptible individuals may be more successful than global strategies to curb suicide worldwide.

**Index Terms:** Suicide, Literacy, Unemployment, Social Sector Expenditure, Socio-legal analysis, Prevention

## Introduction

According to WHO's newest estimates, suicide remains one of the major causes of death globally. Suicide kills more people each year than malaria, HIV, breast cancer, conflicts, and homicide combined. More than 700,000 individuals died by suicide in 2019 which accounted for one out of every 100 deaths prompting WHO to issue new guidelines to assist nations in improving suicide prevention and treatment (WHO, 2019).

Dr. Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization categorically emphasized in one of his recent addresses that in no circumstances we should neglect the major issue of suicidal deaths and attempts. Suicide stands out as the fourth-largest cause of mortality among young people aged 15 to 29 years, following traffic accidents, tuberculosis, and interpersonal violence. The suicidal rates, however, differ across countries, regions, and gender. Males commit suicide at almost double the rate as compared to females (12.6 per 100000 males as compared with 5.4 per 100000 females). In general, suicide rates among men are greater in high-income nations (16.5 per 100000 males). Female suicide rates have been reported to be higher in low and middle-income nations (7.1 per 100000 females). Suicide rates in the African (11.2 per 100000 persons), European (10.5 per 100000 persons), and South-East Asian (10.2 per 100000 persons) regions have been found to be higher than the global average i.e. 9.0 per 100000 persons in 2019. The lowest suicide rate has been reported in the Eastern Mediterranean region i.e. 6.4 per 100 000 persons.[ccxli]

The data found in the National Crime Records Bureau (NCRB) is based on police records. The reliability of these records is affected to an extent by sociocultural variables. Suicide attempts are declared a criminal offense under the Indian Penal Code (IPC Section 309), which leads to its underreporting in many regions. Additionally, in rural locations, the procedure of recording a death is extremely inefficient.[ccxlii]

Key factors related to suicide can be categorized as personal, interpersonal, and cultural. Personal factors include being afflicted with mental illness such as mood disorders viz., depression/anxiety or personality disorders viz., schizophrenia/anti-social personality disorder; chronic illnesses/pain or suffering from a crippling or fatal condition; financial or legal issues or substance abuse, etc. Interpersonal factors include being a victim of physical/ emotional/economic/sexual abuse and/or neglect or bullying; loss of relationships due to break-ups, divorces, or death of loved one(s); being socially isolated and experiencing loneliness. Cultural factors include being aware that one needs professional assistance, however, feeling embarrassed or afraid to seek treatment due to cultural factors, or when an individual hails from a culture where suicide is regarded as an acceptable alternative for resolving a personal crisis, etc.

Indian legal system prohibits suicide and has framed specific provisions for the same. Sec 309 of the Indian Penal Code, 1860 states "whoever attempts to commit suicide and does any act towards the commission of such offense, shall be punished with simple imprisonment for a term which may extend to one year or fine, or both." In the *Gian Kaur v. State of Punjab*[ccxliii] case in 1996, however, this was a point of contention. It was alleged that section 309 of the IPC infringed on Article 21[ccxliv], which stated that everyone has the right to life. It was argued that if a person had

the right to live, he also possessed the right to die. This argument was totally overturned by the court ruling which declared that there was no reason to believe that Section 309 of the IPC is unconstitutional. The opposite stance expressed by *P. Rathinam* v. *Union of India*[ccxlv] to include the right to die in Article 21 was not recognized as a valid argument. Even on the basis of Article 14, Gian Kaur v. State of Punjab's judgment cannot be upheld. It was further established that while the Right to Life is a natural right enshrined in Article 21, suicide is an unnatural termination or extinction of life, and hence incompatible with the idea of the right to life. According to the Mental Healthcare Act 2017, suicide is a psychiatric problem and not a manifestation of criminal instinct under this legislation.

The lack of proper national prevention suicide strategy, legal conflicts in the understanding of the law related to suicide, media reporting, and lack of engagement of multi sectors are some of the major barriers to effective suicide prevention techniques (Vijaykumar et al., 2022).

Durkheim (1897) is usually regarded as the first researcher to suggest that socio-economic causes influence suicidal behavior (Gibbons, Hur, Bhaumik & Mann, 2005; Kelly, Davoren, Mhaoláin, Breen & Casey, 2009). His theory postulated that when economic changes take place, the suicide rates are expected to increase, on the other hand, these rates are expected to decrease when there is economic stability (Lester, 2001). This relationship was later studied and corroborated by various other researchers (Lester & Yang, 1997; Neumayer, 2003; Stack, 2000). Kimenyi and Shughart (1986) provided evidence that suicide can be explained as "an outcome of rational choice". They opined that along with emotional factors like divorce, suicidal behaviour is also affected by economic factors like employment, income, and cost of healthcare. When an individual feels that the benefits of living are higher than the costs attached to it, they invest in medical care which is likely to increase their lifespan. However, when an individual observes greater costs of being alive, then they might commit suicide acting as a maximizing utility agent.

Suicide and unemployment are intricately linked. Unemployment may increase vulnerability to stressful personal and social life events; it may indirectly lead to suicide by increasing the risk of factors that precipitate suicide viz., financial difficulties, mental illness, etc. It has been suggested that societal, cultural, and individual (Durkheim, 1897) along with economic factors like inflation, income, and consumption (Chuang & Huang, 2003) affect the changes in suicide rates. Among them, unemployment has been studied the most (Webb, Glass, Metha, & Cobb, 2002). In most parts of the world, unemployment has been linked with increased cases of suicide (Aihara & Aiki, 2002; Gunnel et al., 1999). The impact of the economic crisis of the year 2008 has been studied around the world. Chang, Stuckler, Yip, and Gunnell (2013) studied the "crisis effect" on the suicide rates in 54 countries, and concluded a significant rise in the unemployment magnitude

and suicide rate in men. However, other researchers argue that this association is heterogeneous across nations. France has one of the highest "employment protection indexes", but still France also has one of the highest suicide rates among the Western European nations (Eurostat, 2013). Studies in different countries have found different relationships between education and suicide rates. Suicide rates in Japan (Otsu, Araki, Sakai, Yokohama & Voorhees, 2004), European countries (Lorent, Kunst, Huisman, Costa & Mackenbach, 2005), and Lithuania (Kalediene, Starkuviene & Petrauskiene, 2006) were found to be negatively correlated with education. In the United States, different parts of the country were found to have different kinds of relationships between suicide rates and education. While some studies reported a positive relationship between suicide and education (Kowalski, Faupel & Starr, 1987), some obtained a negative relationship (Abel & Kruger, 2005) while few reported no relationship (Saucer, 1993). Among Indians (Mayer, 2003) and among African Americans (Lester, 1991) literacy rates and suicide rates have been positively linked with each other.

Arya, Page, River, Armstrong, and Mayer (2018) in their Indian study found that more developed states have higher rates of suicide for both the genders. They found that higher suicide rates are linked with higher literacy rates, religious orientation toward Hinduism, and higher male unemployment rates. Pandey and Kaur (2009) investigated the economic correlates of suicide in India in males and females for a period of 1967 to 2006. They concluded that suicide rates were higher in males than in females. Also, the tendency of committing suicide declined for the people aged below 30 years during that period, but the same increase for the people aged above 30 years. It was also observed that suicide rates were higher for people who studied up to matriculation and beyond secondary high school. They also found a higher suicide rate with more unemployment, but the relationship was weak. Inflation, increase in real GPD and industrial growth have also been positively linked with suicide rates (Poduri, 2015).

India is losing a large number of young people (15-24 year-olds) to suicide than any other country in the world, and this calls for urgent attention as it may affect the country's future with respect to economic, demographic, and social development (Mythri & Ebenezar, 2016).

## Method

The present study attempted to determine the relationship of suicide rate with literacy rate, unemployment, inflation, and social sector expenditure. The sample of the study comprised 33 states and union territories (UT) of India. The union territory of Daman and Diu was excluded as data was missing on quite a few variables selected for the purpose of the study for this UT. Data were obtained on the suicide rate per 1000 population, literacy per 1000 population, total

unemployment rate (rural and urban combined) per 1000 population, inflation rate prevalent in 2018-19, and social sector expenditure made by the government in crores. The suicide rate data were obtained from National Crime Records Bureau for the year 2018-19. The unemployment rate, inflation, and social sector expenditure data were obtained from the Reserve Bank of India, Handbook of Statistics 2018-19. The literacy rate taken in the current study has been obtained from Census 2011. Due to the pandemic, the latest data on a few variables taken for the purpose of the study was not available because of which data for all the variables considered in the study was taken for the year 2018-19.

**Hypotheses**

Based on the review of literature the following hypotheses were framed:

H1: It is hypothesized that the suicide rate will be positively associated with the literacy rate prevalent in India for the year 2018-19.

H2: It is hypothesized that the suicide rate will be positively associated with unemployment prevalent in India for the year 2018-19.

H3: It is hypothesized that the suicide rate will be positively associated with inflation prevalent in India for the year 2018-19.

H4: It is hypothesized that the suicide rate will be negatively associated with social sector expenditure prevalent in India for the year 2018-19.

## Results

**Table 3.1** *Descriptive Statistics showing Mean, Standard deviations, and sample size*

| Variable | Mean | Standard Deviation | Total Number(N) |
|---|---|---|---|
| Suicide rate | 0.13 | 0.10 | 34 |
| Literacy rate | 784.01 | 81.07 | 34 |
| Unemployment rate | 163.97 | 112.73 | 34 |

| | | | |
|---|---|---|---|
| Inflation rate in percentage | 37.52 | 16.78 | 33 |
| Social sector expenditure | 49,168.03 | 45,370.42 | 30 |

*Note*: Literacy, unemployment, suicide are at the rate of 1000 population. N is varying as data for a few states and union territories was not updated by the National Crime Records Bureau on their website and by the Reserve Bank of India as in their Handbook of Statistics 2018-19.

**Figure 3.1** Bar Graph depicting Means and standard deviations of suicide, literacy, and the unemployment rate

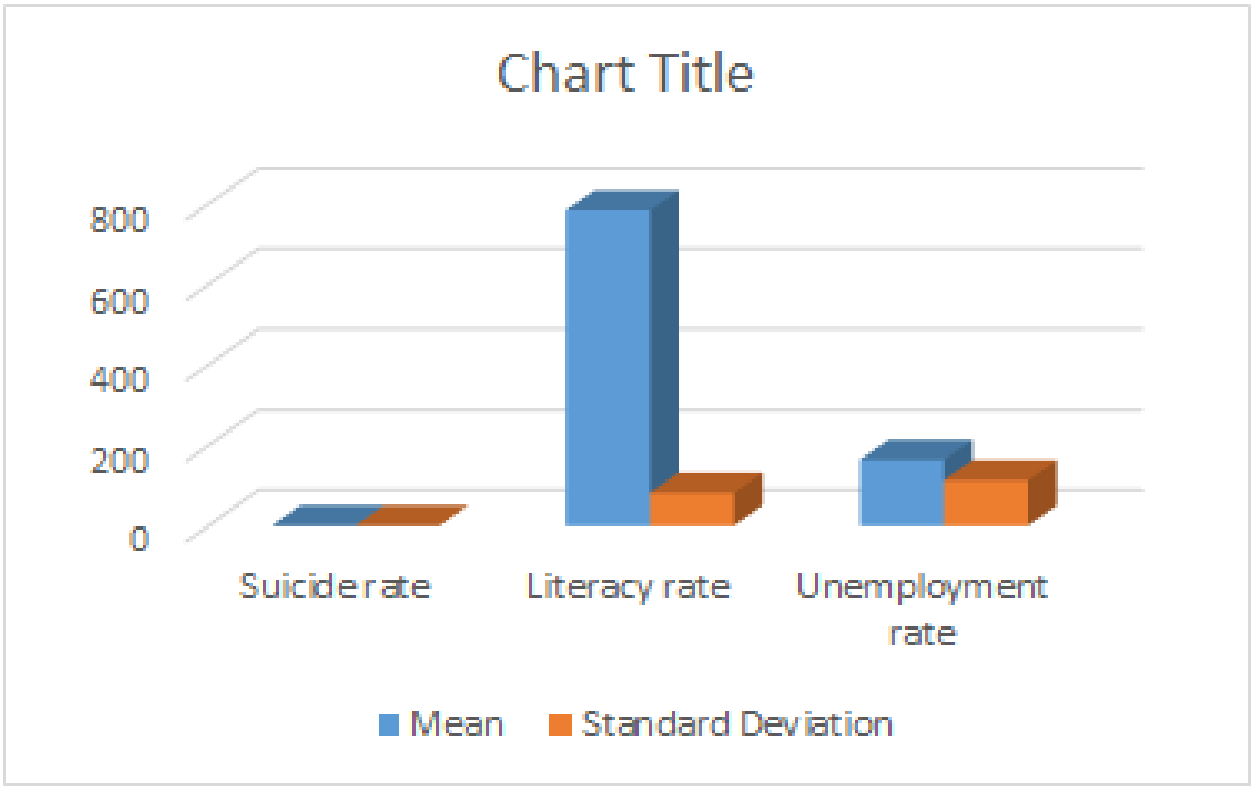


**Figure 3.2** Bar graph depicting mean and standard deviation of inflation rate prevalent in 2018-19

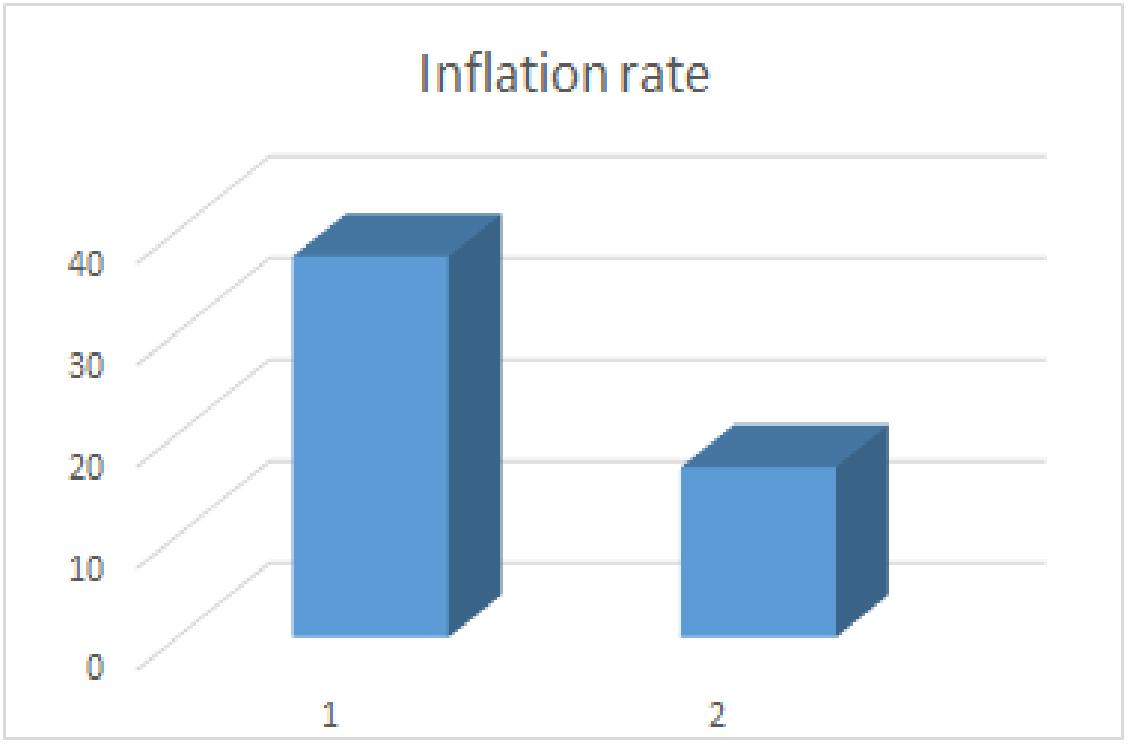


**Figure 3.3** Bar graph depicting mean and standard deviation of social sector expenditure during 2018-19

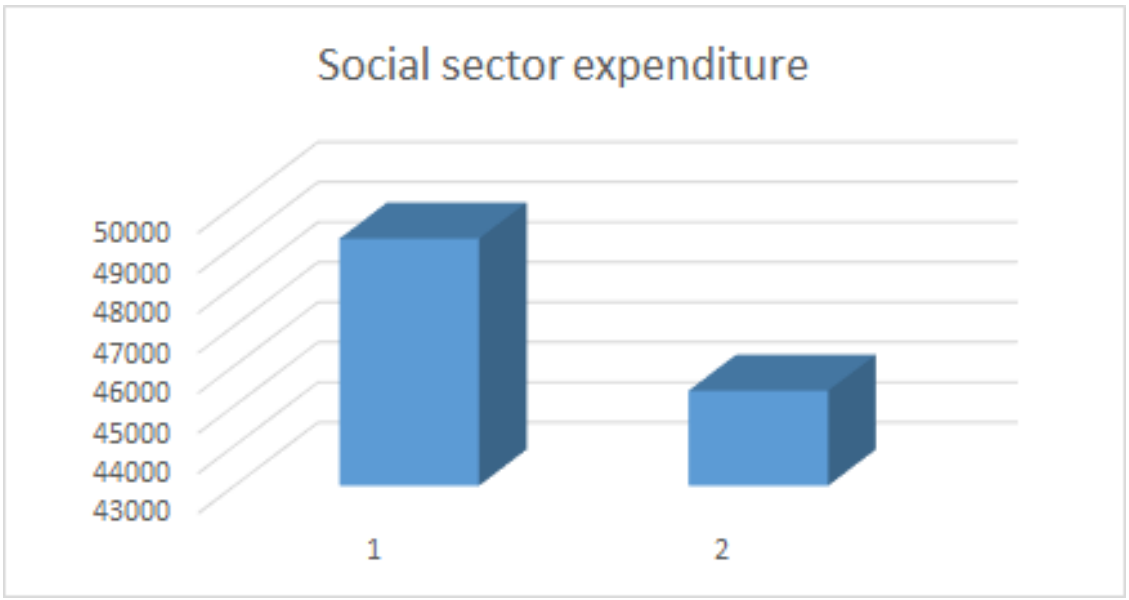


**Table 3.2** *Bivariate Correlations*

| Variable | Suicide rate | Literacy rate | Unemployment rate | Inflation rate | Social sector expenditure |
|---|---|---|---|---|---|
| Suicide rate | 1 | 0.35* | -0.23 | .01 | -0.12 |

| | | | | |
|---|---|---|---|---|
| Literacy rate | 1 | 0.32 | .18 | -0.38* |
| Unemployment rate | | 1 | 0.46** | -0.32 |
| Inflation rate | | | 1 | -0.13 |
| Social sector expenditure | | | | 1 |

*Note*. *=significant at 0.05 level and **=significant at 0.01 level

**Table 3.3** *Predictors of Suicide*

| Predictors | R | Beta Coefficient(β) | t | R2 | R2 change | F value |
|---|---|---|---|---|---|---|
| Literacy | 0.43 | 0.43 | 2.47* | 0.18 | 0.18 | 6.13* |
| Unemployment rate | 0.59 | -0.41 | -.2.58* | 0.35 | 0.17 | 6.65* |

*Note*. *=significant at 0.05 level

Means and standard deviations of the variables were computed as depicted in Table 3.1, Figure 3.1, 3.2 and 3.3. Correlation analysis and multiple linear regression analysis was conducted on the obtained data as shown in Table 3.2 and 3.3. The literacy rate ($\beta$=0.48, t=2.47,$p<0.05$) was found to be a positive predictor of the suicide rate for the year 2018-19 explaining 18% of the variance in it (F=6.10,$p<0.05$). This finding supported Hypothesis 1 of the study. The unemployment rate ($\beta$= -0.41,t= -2.58*,$p<0.05$) was found to be a negative predictor of the suicide rate for the same year explaining 17% of the variance in the criterion variable (F=6.65,$p<0.05$) and thus rejecting the Hypothesis 2 of the study.The total variance explained by these socio-economic factors amounted to 35% of the criterion variable. Hypotheses 3 and 4 could not be proved in the data obtained in the present study

The findings of the current study suggest that the greater the literacy and employment rate, the higher the suicide rate. Rajkumar, Senthilkumar, Gayathri, Shyamsundar, and Jacob (2015) also

reported that literacy rates were associated with state-wise suicide rates in 15 Indian states. States like Pondicherry and Kerala which have higher literacy rates also had higher suicide rates. The negative association between suicide rate and unemployment rate highlights that there is much more than just socioeconomic indicators of literacy and unemployment which can lead people to commit suicide. People have probably other individualistic reasons apart from general socioeconomic indicators which make them vulnerable to committing suicide such as increased stress, dissatisfaction at the workplace, work-life imbalance, marital dissatisfaction, and poor coping mechanisms. Studies that have suggested that unemployment is positively linked to suicide have maintained that it cannot be regarded as a cause for suicide. Unemployment and suicidal act both may be a result of psychopathology (Bagadia, Ghadiali, Saraf & Shah, 1976). A longitudinal study concluded that people who have poor mental health had higher chances of losing their jobs when compared to their healthier counterparts (Butterworth, Leach, Pirkis, & Kelaher, 2012). Another study concluded that the increased risk of suicide as a result of job loss/ unemployment could be explained by preexisting physical and mental health issues (Lundin, Lundberg, Allebeck, & Hemmingsson, 2012). Secondly, being employed does not ascertain that an individual has been gainfully employed. Especially in cases where literate people are underemployed or are employed at less salary/lower position; employed in organizations where the work culture is not favorable or where the individual is not valued or does not feel a part of the organization, increased suicide rates become possible. Thirdly, the accuracy of suicide reporting due to the stigma attached to it, the availability of lethal means along with the availability and quality of the health care system cannot be ignored (Mann et al., 2005).

Poduri (2015) concluded that development does not promote suicide, but it affects the people at a societal and individual level in terms of the pace of life, interpersonal relationships, and social equations, and these factors may lead to suicide. Also, it is also important to note that biases like ecological fallacy may occur. An association that is observed in two variables at an aggregate level, might not also be found at an individual level for people. Hence it can not be stated that literacy levels or employment levels lead to increased suicide rates for an individual (Rajkumar, Senthilkumar, Gayathri, Shyamsundar, and Jacob, 2015). Mythri and Ebenezar (2016) remarked that Indian suicides are due to psychosocial issues which are complex, and which need a comprehensive health plan which includes accessible psychiatric care.

## Conclusion and Future Implications

Socioeconomic indicators such as literacy, unemployment, inflation, and social expenditure were used in the present study to determine the suicide rates among different states and union

territories. Individualistic factors would further shed light on some important determinants of suicides happening across the country. In the current study, as the latest data for a few variables was not available due to the COVID-19 pandemic, once it is computed and made available in the public domain, a similar study or a comparative study to compare predictors of suicide in the current year would become meaningful.

In developing nations like India, on one hand, mental health services are not adequately available and are often neglected (Ngui, Khasakhala & Ndetei & Roberts, 2010) and on the other hand, they are becoming very expensive. Tondo, Albert, and Baldessarini (2006) suggested that the policymakers and health care administrators of India should consider resource allocation for public health care specifically mental health care needs. Suicide prevention cannot be handled by just one or two sectors as the risk factors for suicide cuts across many other domains. A multisectoral strategy is necessary for successful suicide prevention. Multisectoral cooperation comprises both multisectoral and multistakeholder methods. Multisectoral approaches are also known as "whole-of-government," "intersectoral," or "cross-sectoral," and refer to any initiative involving more than one government sector, such as health, education, labour, transportation, agriculture, justice, law, defence, and social development. "Whole-of-society" approaches are occasionally used to denote multi-stakeholder initiatives. They incorporate engagement with nongovernmental organizations (NGOs) or community stakeholders, as well as government sectors, unlike multisectoral models.

A robust system that continuously carries out identification, assessment and monitoring of individuals who have attempted suicide or are at risk of committing must be brought in place. Documented evidence suggests that individuals who attempted suicide once have higher chances of attempting it again. Creating suicide survivors groups who share their suicide attempt stories and communicate how their perspective towards life has changed over a period of time after counseling and self measures would be helpful for people at large. Individuals in crisis already have access to crisis services such as both government and non-governmental helplines and hotlines which provide round-the-clock assistance. Promotion and awareness of such services, especially in rural areas, may help in preventing a greater number of suicides. Suicide prevention interventions that have been implemented around the world in countries like Australia, Ghana, Guyana, India, Iraq, the Republic of Korea, Sweden, and the United States, can be used by anyone interested in implementing suicide prevention activities, whether at the national or local level and in the governmental and non-governmental sectors. "While all governments should strive for a comprehensive national suicide prevention strategy," said Dr. Alexandra Fleischmann, a suicide prevention expert at the World Health Organization, "starting suicide prevention with positive

interventions which can save lives and prevent heartbreak that follows for those left behind" is imperative.

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**CHAPTER 27**

# CHILD LABOUR IN HAZARDOUS INDUSTRIES ANALYSIS IN RAJASTHAN

**Shubham soni**
**Author : law student(B.A.,LL.B(Hons)) at school of law 'lovely professional university**
**Bhavyya sharma**
**Co-author : Assistant professor at school of law 'lovely professional university**

## Abstract:

The sociodemographic overview of India indicates that this country is rising to its peak of success only by the inclusion of labour to an ample extent. *Rajasthan* is considered to be one of the main states which are reported abundantly by child labour. There is a wide range of industries in Rajasthan, such as the *mining industry, brick industry, crackers industry, granite and marble industries* that are reported to have problems related to child labour. The mining industry has been rising to a spacious assortment which indicates that mining and brick industries are hazardous because it has a large workforce that needs to be maintained for generations of revenue. In case of the sandstone mining, child labour is also reported to a large array that is the main rising problem in this regard.

Children are involved *2.68%* under *14 years* of age which is the rising problem in this scenario. *Child labour* prohibition act, 1986 has involved prohibiting children under age of *14 years* with approx*18 occupations* and *involvement* in *65 processes.* Therefore, the mitigation of child labour is considered to be important for shaping the future of this country. This study discusses some critical aspects of child labour in hazardous industries in Rajasthan with the aid of, civil society, labour statistics and some other aspects. Trafficking and the modern form of bondage child labour have also been properly highlighted for proceeding with the best outcome. Moreover, *acts, policies* and Government initiatives have also been discussed widely in this study to understand the process of mitigation of child labour.

***Keywords:*** *Child labour, child labour prohibition act, Government initiatives, Government laws.*

## Introduction:

Child labour is considered to be a present-day practice that engages children in case of economic activities that are based on both *part-time and full-time.* The worst picture of poverty

is visible in the form of child labour and represents an *underdeveloped form* of a country. *India* is ranked *113th* in the case of child labour among *182 countries. Rajasthan* is ranked after *Uttar Pradesh* in child labour, is one of the most important aspects of this research. Affix of child labour is happening at the end of *2021* which is detrimental in these recent times. The situation of child labour is considered to be debated in present times. In the case of high skilled industries, workers with a perfect are inaugurated to an ample extent. Child labour in hazardous industries is region and case-specific. In *urban areas* of *Rajasthan,* children labour is suspended to *manufacturing, service, and repairing.* In semi-urban and rural areas, it is become changed from a low resolution to high resolution. For example, in rural areas, *agricultural and field-level* labour consists of children. Poverty and helplessness are significant facets of child labour in India.

*Amendments* of *Industrial Labour law* indicate that there is a significant change in chapter A and chapter B[ccxlvi]. The national policy of children indicated that *18 years* of an individual is considered to be a child. As per *ILO convention 182,* all people under the age of *18 years* is considered to be a child in this scenario. Due to the presence of harsh *socio-economic reality,* the first and foremost crucial aspect is dependent on the responsibilities of children in the direction of *their family.* The most important cause of this problem is related to their *poor economic status and helplessness.* It is also possible that their parents or guardians are *physically challenged.* It is also possible that due to the *stubborn nature* of their guardians for earning something, some children are fully driven to the harsh world. This study discusses the problems and legal perspectives pertaining to child labour.

**The problem of child labour in Rajasthan:**

Child problems in Rajasthan can be taken into consideration as the main theme in this context. In the case of the tribal population in Rajasthan, the problem is enhanced to an ample extent. *Parental absence and poor households' characteristics* are considered to be principal aspects in this regard[ccxlvii]. On the contrary, it is evident that deterioration of the economic status is considered to be a principal aspect for the affix of child labourers. In different industries, such as *firm-based activities, the manufacturing* condition of child labour is different. Children in Rajasthan are also involved in *livestock, grazing, transportation, mining and construction,* and also in *hotels.* The problem is also presented in the case of child workers in form of *migration.* In *Dhaba and shop,* children are found to pay off their families in the opinion of *agreed contracts.*

Children trafficking become observed in the case of *Rajasthan* from different states such as *Bihar, Uttar Pradesh, Jharkhand, and West Bengal.* One of the most common consequences of child labour is observed in cases of *bodily and mental harm* and poor slavery behavior. It results in the personal and cognitive development of a child. Due to poor personal and cognitive development, one portion of society becomes *lame* in the direction of development[ccxlviii]. In the

case of the *civil sector,* problems pertaining to child labour indicate that *accident tendency* has been increased that drives an individual to death. It is one of the most detrimental aspects of child labour. Apart from that, the presence of an unhealthy and desiccative environment is considered to be the main hazard in Rajasthan. Use of the "*nimble fingers"* justification can be taken into consideration in this regard for proceeding with an appropriate understanding pertaining to the labour law . In several industries of Rajasthan, an argument can arise in this regard which indicates that *children* can only carry out a range of specific tasks in this regard and can enhance the competitive advantages of a shop or restaurant. Children need to learn and acclimatize the problem that is based on the workplace.

The most possible reason behind this is to suppress the *ramshackle skeleton* of the Indian economy and society[ccxlix]. At the time, when children are considered to be the backbone of society, some of the society is wanted to proceed with their *benefit and spoil* their future. It is not only the problem of *children in Rajasthan,* but it is a problem of the whole society of *India.* The manufacturer or the person with export contracts is considered to be responsible in this regard. In the case of the manufacturer industry child labour is associated more precisely than others. The most important reason behind this, executives or the owner do not want to appoint some *adults* due to a *low-profit margin.*

**The magnitude of the child labour:**

The contribution revolving around child labour is considered as one of the main themes in this regard because affix of business practices are also related to it. The magnitude of child labour indicates that the labour market determines the *wage level* to an ample extent. Current production and technological advancement have increased the magnitude of child labour. If the minimum *wage* is *effective* then child labour might be discouraged[ccl]. Dickensian condition of the people becomes observed in the Rajasthan district which indicates that *a majority of bangle factories* are associated with child labour. Due to the outbreak of *covid 19, the* majority of child labourers become enhanced (Pandey & Mondal, 2022). The necks and shoulders of children become *hunched* for *long periods* which are also detrimental in this scenario. Moreover, *eyes squinting against* sunlight become wracked due to the presence of malnutrition.

*Five bangle companies* in Rajasthan that become associated with child labour are taken into consideration as a serious offense. They become charged with a range of *different sections of Indian penal code 304.* The relevant section of the *Juvenile Act, 1986* are also eligible to bring a charge against *child labour.* The death rate of children has not been able to prevent a sharp *surge of labour* in this context. Moreover, it is also associated with the generation of hatred against the *government*[ccli]. Therefore, the Government of Rajasthan as well as India is facing a wide range of problems for proceeding with a hazardous outcome. *Prohibition and regulation* act of *child*

*labour, 1986* become associated with the affix of child death and increase of malnutrition. For example, *a seven-year-old boy* in *Jaipur* interpreted that, he is suffering from multifarious problems related to his health. The boy is also suffering from a *sleeping disorder* that is the main consequence of child labour[cclii]. A vast developmental problem and the *nondurable backbone* of the society are observed in this context which can downfall the socioeconomic status of Rajasthan along with India.

**Act and policies and Government initiatives to prevent child labour:**

In order to prevent hazards pertaining to the development of conditions regarding child labour, the first and foremost aspect is dependent on the *constitutions of India.* Amendments and articles of the Indian constitution represent a wide range of initiatives to solve their problem to an ample extent. *Article 24 of the Indian constitution* indicates that *no child will be included as labour in any factory* below the *age of 14* [ccliii]. Education is compulsory and minimum in case of the child below the age of *14.* The employment of adolescence is considered to be strictly prohibited by the *Government of India.* In contrast to the *child labour prohibition and regulation act,* the first and foremost essential aspect relies on the *1986 amendment bill.* An adolescent with *14- 18 years* involved in any industry as labour might be punishable by the *Indian penal code.*

This initiative of the *Indian government* is beneficial to enhance the competitive advantages to an ample extent. Moreover, the overall developmental pattern of children might be enhanced in this context by the presence of an *integrated child protection scheme.* These schemes are allocated by the *Government of India* to provide a safe and secure environment for children and the abolition of labour[ccliv]. Care and the protection of the children are also associated with *their nourishment* in thinking and learning. Another perspective indicates that the government of India ensures children's protection rights in this scenario for mitigating the problems related to it. Apart from that, the *Juvenile Justice and Children Act, 2000* for care and protection become associated with an increase of a wide range of thinking perspectives of society. The *Juvenile act* might be taken into consideration as the perfect initiative for mitigating the *affix of hatred against society* in the mind of children.

**Rajasthan Government initiatives:**

An initiative of the Rajasthan Government is also associated with *State child policies* in this scenario. The *State child Policy* is formed in the year *2008* that is focused on the comprehensive development of children. Comprehensive development of children is also

associated and intermingled with the *protection of rights* for highlighting the problems of mainstream children in this regard[cclv]. Protection of rights and enhancement of *areas* become associated with districts of Rajasthan. *RSCPCR or " Rajasthan State Commission for Protection of Child Rights* have started functioning in this scenario for monitoring implementation of *equality rights* for the children. This committee has a wide range of persuasive that is dependent on the establishment of a separate department of child rights.

The formation of a separate department of child rights is also associated with a wide range of thinking perspectives than the area of gathering knowledge. This area consists of ample objectives which need to be associated with the *programmed learning outcome of the constitution of India* [cclvi]. Indian Government has taken some perspectives for protecting *aboriginal people and children* associated with work in restaurants[cclvii]. Furthermore, in May 2015, a separate department of child rights become associated with the overarching administrative in this scenario that considered to be one of the main themes in this regard. The inclusion of a separate department of child rights is adjuvant for solving the common problem associated with the outcome. Streamline governance and perfect monitoring are also associated with the quality outcome. Directorate of the child rights in Rajasthan indicates that role of the *Government* must need to be represented as the version of equality. The programmatic intervention of some basic rights is also associated with a range of *legal perspective* fulfilling some common agenda.

These common agendas are compiled with reviewing policies that focus on *changing the action plan* of state government and *independent statutory environment.* Children legislation of compulsory education act *2009,* indicates the provision of the sustainability's to an ample extent [cclviii]. A range of child developmental programs are consists of *child-specific regulations* to an ample extent. Some important initiatives related to the *Government* focus on some schemes and rehabilitation to an ample extent. Important points are as follows:

| ***Government Initiatives*** | **Description** |
|---|---|

| | |
|---|---|
| Laws and schemes for implementation | • Inclusion of ***Juvenile justice act, 2015***<br>• Integrated child protection scheme, or ICPS.<br>• Pahalyojana, (Provision of financial supports for children)<br>• "***MukhyamantriHunarVikashYojana***that is applicable for provision of the skill development of vulnerable children.<br>• ***"Sponsorship guidelines of 2015.*** |
| ***Rehabilitation and restoration*** | • ***"Rajasthan state Child protection safety and district child protection units"*** are associated with the mitigation of problems with children complaints about child labour.<br>• Rajasthan Government has developed ***33 child welfare committees*** for developing juvenile justice boards for children.<br>• ***" 23chid line services"*** are needed for solving common problems related to child safety. |
| ***Reinforcement of child care institution*** | • ***Protsahan Yojana*** has taken into consideration for ***promoting CSR*** by taking educational responsibilities to solve common problems of the child.<br>• ***The inclusion of DCR*** has also intermingled with the ***provision of loop*** commenced in Ajmer and Jaipur. |

**Table 1: Rajasthan Government initiatives for protecting child rights**

**Challenges for civil society in Rajasthan regarding child labour law:**

A vibrant citizenry is associated with the *Rajasthan Government* that focuses on a range of legal perspectives. Rajasthan has made a wide range of *civil innovations* in this scenario. Literacy and child marriage are considered to be some of the most important aspects in this regard.

High-risk industries with the aid of civil society intervention of Rajasthan indicates that Preventive action has been taken by the Government of Rajasthan for proceeding with the best outcome [cclix]. In the case of worksites, the first and foremost important aspect relies on *service provision, unions, and rescue with rehabilitation.* Now in the present day, the first and pivotal aspect of advocacy is dependent on *human rights diligence* in this scenario[cclx]. Changes in the laws are also associated with the police sensation and building of community awareness. The building of community awareness and safety entitlement of the child is also associated with awareness outcomes.

Now in recent days, states have made *NGOs* in this regard to proceeding with the best outcomes. The organization has worked on some ethical issues by making programmatic linkage with bonded labour for the provision of sustainability in societal practices. NGOs are also improving community-based understanding between the child and them for making the society flexible. Making of a flexible society is considered to be best for the development of children. *ILO convention and minimum age convention act, 1978* indicates that due to lack of knowledge, protection from economic exploitation can be taken into consideration for sufficing with the best outcome. In recent times, it has been observed that the *Government of India* have taken a range of persuasive for mitigating child labour to an ample extent.

*The principle of effective abolition* of *child labour* indicates that the *stop of work* for children has been jeopardized to an ample extent in this regard [cclxi]. One barrier for the development is also associated with changing present-day conditions of the labour pertaining to the *responsibilities of income.* Children with poor financial status need to be taken as *vulnerable* from the perspective of *laws* and must need to take responsibility for mitigating their problems [cclxii]. *International standards* for labour focus on the proper thinking and learning perspectives through different stages of development [cclxiii]. On the other hand, the principle extends to the formal agreement must need to be focused on the mitigation of laws to an ample extent. Incorporation of *domestic service status* needs to be focused on including some common aspects such as mitigating acceptable forms of labour.

Effective abolition of labour rights might take some initiatives for enforcing minimum ages at which *children can enter* different types of works. On the other hand, economic and educational facilities are also associated with imposing some humanity practices to an ample extent. Incorporation of *pay-free e-education or offline education* might be taken as a challenge to the government for proceeding with the abolition of labour laws[cclxiv]. On the other hand, an inadequate system of social protection *and age of admission* is another aspect that needs to be driven inversely in this scenario.

Formative environment and the inclusion of the relationship difficulties are considered to be the principal aspect in this regard that need to be managed by taking concern of the child's health.

Poverty and a range of social norms have been well accounted for this purpose that including lack of decent work opportunities for adults and adolescents to a spacious assortment. Due to presence of *migration and emergencies,* children are susceptible to executive of many hazardous industries such as *mining, crackers, marble* and *others.* Another challenge in this concern shows that *deprivation of education* and problem related to the increase of skin and some other diseases need to be well incorporated for proceeding with the best outcome. It is the present concern in the industry that, if a maximum percentage of children are associated with the hazardous industries then what will be the future of the country. If the government does not take any initiative in this regard then the entire framework of a country might be thin in the air. Informal and disguised child labour is also associated with a range of major challenges for this purpose. It might be the cause of being devoid of skill education but future possibilities might be addressed for proceeding with the best outcome[cclxv]. Educational enlightenment needs to be undertaken properly for this purpose, which might be helpful to mitigate hazards.

**Child labour statistics of Rajasthan:**

Manual harvesting is considered to be another hazardous purpose which observed to be the inclusion of the child labour in present day society. In the case of the low middle class different region are observed to be consists of *50%* of child workers at least. According to the report of *2012,* released by *union ministry of statistics and programmed implementation,* a considerable increase in the child labour has observed to a spacious assortment. According to *2001 sensus, 284 children* and *55 child* traffickers have passed to the ugly reality that is the rising problem of the child labour in this context. Moreover, another crucial aspect has been observed in this scenario that is regarding status category of child. The status category of the child labour also shows that *5% of the workforce* has been generated in this context. It is suspected in the age group of *5-14 years.* Moreover, the worst performing become observed in the *Jhunjhunu district of Rajasthan.* Occurrence of the child labour in this district becomes *10.8%*[cclxvi]. This is also matched with the present day statistics of child labour occurrence in Rajasthan to an ample extent. The condition become from *9 years onwards.*

Children are also observed to be engaged in the mining factory and garment factory that is the principle aspect of hazardous condition. *3-4 major* district's in the Rajasthan are accounted for by the inclusion of the child labour system. According to the word of *Ramakanth Sathpathy,* manager of child protection department, government of Rajasthan might need to take ample initiatives for proceeding with the best outcome. Government also needs to include a range of schemes in this scenario for supporting children.

**Findings of this study also show that:**

- In the case of *brick kilns,* children are observed to be most engaged in preparing wet mud to a range of *41%, drying (47%) and making bricks (48%).* Therefore, the percentage is high in the case of making bricks. It is one of the problematic aspects for a child to cope with the inauspicious culture in the brick industry.
- In stone quarries as well as the cutting industries, engagement of the children with the age group of *8-17 years* is observable that consists of a range of departments. Those departments are *Sawig (32%), polishing (38%), lapping works (23%) and sanding (24%).* Earning of each child is observed to be *80-300 INR* per day.
- The workshop of *Jaipur, regarding cutting and cleaning,* indicates that *10-17 years* is the rating scale of age in this context. In the case of polishing, *33%* of the individual are observed to be children and are in a hazardous state related to safety. In the case of *bangle making,* children are also observed to have in decorating to *98%*[cclxvii]. In the case of making the paste, the number of workers is *22%.* Earning scale in this context becomes observed to be *50-60 INR.*
- The agricultural place is also observed to have a chunk of the labour force that is represented by the inclusion of *tribal children.* Inclusion of the tribal children is observed to be main in this context to a range of multifarious departments such as *irrigation 65%, hand weeding 55%* and *fertilizer 27%.*
- One of third of children in the Jaipur is observed to be *34%,* engaged in the hub of decorative items and bangles.

The above points indicate the hazardous condition of the child in this scenario. Moreover, another important is that the government and organizations are not taking any persuasive in this regard for implementing policies for mitigating problems related to child labour. Planning is only going in this regard that discusses the mitigation planning but, implementation programming has not started yet. Several *NGOs or charities* also need to take initiatives for mitigating this crux related to child labour.

| States/UTs | 5-9 years | | | | | 10-14 years | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Rural | Urban | Total | Male | Female | Rural | Urban | Total | Male | Female |
| Rajasthan | 1.73 | 0.99 | **1.58** | 1.48 | 1.68 | 10.23 | 2.87 | **8.61** | 7.52 | 9.84 |

**Figure 1: Proportion of the child labour statistics in Rajasthan**

(Source: Rajas, 2011)

The above figure discusses the proportion of child labour in Rajasthan. According to the census of *2011, 848,386 child workers* are accounted for in many industries in Rajasthan. Yet, this is a partial decrease to the child workers. These statistics are increasing day by day that opening the skeleton of the social system of India. It also competes with the child labour of Africa that have accounted for the highest increase pertaining to the global era.

The worker population ratio of men, women and child labour indicates that the highest increase is present in the case of rural areas in comparison with the urban area. In the case of the rural area, *1.73%* of children are accounted for an overall increase in the child labour rate, whereas in the urban areas the proportion becomes less by *1.06%.* A disaggregation of the data is observed in this context to a rate of *12.82%* of the children aged 10-14 years. It is highly competitive with the male workers that are observed to have *14.42%.* Scheduled caste of child labour is accounted in the Rajasthan to a rate of *52%* found to be highly expansive in this context.

| Age | Share in total population | | Share in total Main Workers | | | Distribution % | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Total Population | | | Main Workers | | |
| | Male | Female | Population | Male | Female | Total | Male | Female | Total | Male | Female |
| 5-9 | 52.78 | 47.22 | 0.61 | 0.64 | 0.58 | 15.45 | 15.60 | 15.29 | 0.32 | 0.25 | 0.53 |
| 10-14 | 53.92 | 46.08 | 5.23 | 5.31 | 5.14 | 13.33 | 13.75 | 12.87 | 2.38 | 1.79 | 4.00 |
| 5-14 | 53.31 | 46.69 | 2.75 | 2.83 | 2.66 | 28.78 | 29.35 | 28.16 | 2.71 | 2.03 | 4.53 |
| Rural | 52.22 | 47.78 | 30.49 | 41.35 | 18.61 | | | | | | |
| 5-9 | 52.81 | 47.19 | 0.66 | 0.67 | 0.64 | 15.76 | 15.94 | 15.57 | 0.26 | 0.26 | 0.54 |
| 10-14 | 54.15 | 45.85 | 6.01 | 5.90 | 6.14 | 13.31 | 13.80 | 12.77 | 2.62 | 1.97 | 4.21 |
| 5-14 | 53.43 | 46.57 | 3.11 | 3.10 | 3.12 | 29.07 | 29.34 | 28.34 | 2.96 | 2.23 | 4.75 |
| Urban | 52.47 | 47.53 | 24.41 | 38.94 | 8.37 | | | | | | |
| 5-9 | 52.61 | 47.39 | 0.41 | 0.52 | 0.29 | 14.22 | 14.25 | 14.17 | 0.24 | 0.19 | 0.49 |
| 10-14 | 53.02 | 46.98 | 2.19 | 2.94 | 1.34 | 13.42 | 13.56 | 13.26 | 1.20 | 1.02 | 2.12 |
| 5-14 | 52.81 | 47.19 | 1.27 | 1.70 | 0.79 | 27.64 | 27.82 | 27.44 | 1.44 | 1.22 | 2.60 |

**Figure 2: Child labour in the different age groups**

(Source: Vagdhara, 2022)

This image is about the present labour condition in Rajasthan pertaining to the enhancement of the workforce in different industries. In urban areas, the highest rate of child labour increase is observed to an ample extent. Most of the industries are observed to be on a tiar basis. The profit-making scale is observed to be high in this scenario because the rate of child labour per day is too low. The magnitude of child labour indicates that it occupies a hazardous place in the Indian economy. Moreover, another important is observed in this scenario that showcases the broken backbone of the society that have discussed earlier. Apart from that, the economic growth of the particular industry is also observed to be increased by downgrading the future of child labourers.

**Amendment of labour law:**

Child labour prohibition act is completely changed in this context that has got the president's approval. President has approved the rules and the regulation of the child prohibition act because of the decrease of socio-cultural rights[cclxviii]. It is also intermingled with the imbalance and inequality of social rights. This bill prohibits the employment status of *children within 14-18 years* [cclxix]. It is completely focused on the non-hazardous occupation and processes. Under this bill, it has been observed that children with special responsibilities can work in the grocery store but cannot work in a *chemical factory.* A balance between the need for education and reality between the socio-economic statuses has been established in this context[cclxx]. Not only that, but this bill also criticised taking away of the basic protection for some workers, those are observed to be comfortable for a typical industry.

It can also been observed that the children who are employed below 14 years for any work, except the condition of the family helping are not to be employed in that work. Those who are employed might get up to two year of imprisonment. A maximum fine of *RS. 50,000* might be observed in this scenario[cclxxi]. This law is not applicable for a child who is working in a film or any kind of the advertisement. People, practioners and policies makers have shared a range of tumultous and fraught relationship in this context which shows that *expectation and frustration* has been increased to an ample extent. Not only that, challenges and the mobilisation of the people with *mine working and mineral extraction* are observed to face a range of problems in this regard. Minor and mineral extraction industries are also observed to have a problem pertaining to the increase of child labour[cclxxii].

The administration of India has defined and expanded the prohibition act in this context for making the world adjustable for children. Social workers might help an individual in this context which shows that plantation, livestock and forestry are considered to be pivotal that is pivotally accounted for the increase of child labour. Three articles have stated well in this regard that provided a vital chance for increase *right to education and prohibition of the employment of children*[cclxxiii]. *Article 21A: the right to education,* it provides free and compulsory education to all of the children aged *6-14 years* as stated by law. Therefore, it means, it shall provide the best opportunities for providing free and compulsory education to all children for any hazardous condition. In the case of a range of hazardous employment, the first and foremost crucial aspect solely depends on the policies of securing. Policies of securing indicate the *health and strength of* workers.

*Article 39* indicates that the health and strength of workers are accounted for workers are focused on male, female and children[cclxxiv]. This act tends to regulate the condition of employment conditions to all occupations and is not observed to be prohibited under the act mentioned in *part 3 of the article. Section 3* of this article is observed to be punishable with imprisonment that is not less than *3 months. ILO* has also made a range of core interventions pertaining to child labour

which shows that international treaties and instruments are legally binding obligations for ratifying them. *8 core conventions* to the *ILO* regarding child labour are:

- Abolition of forced labour convention (No, 105)
- Equal remuneration convention (No. 105)
- Freedom association and protection of the right to an organized convention (No. 87)
- Minimum age convention (No. 138)
- The worst form of child labour convention (No. 182)
- Forced labour convention (No. 29)
- Right to organize and collective bargaining convention (No. 98)
- Convention of discrimination (No. 111)

Two of the core convention becomes observed to have a wide range of complexities that are related to the child labour and ILO convention[cclxxv]. The ILO convention becomes intermingled with *138 and 182.* India has ratified both of the core conventions that are related to the increase of child labour in Rajasthan as well as in India[cclxxvi]. In convention no 138, it has been discussed that the age of schooling is not become certified to treat a child as labour in this scenario. The physical and mental development of young people is certified in this regard.

**Sectorial dimension of child labour:**

Child labour is a big issue of entire Rajasthan and this issue is increasing day by day.
Children are engaged in many industries and the number of child labour is increasing.

- Child labour in marble industry
- Child labour in granite industry
- Child labour in glass industry
- Child labour in crackers industry
- Child labour in bricks industry
- Child labour in carpet weaving.

Rajasthan is a householder of stone of India and most of the marbles come from Rajasthan across India. This huge industry is mainly run by child labours. It is reported that 38% of children of Kota and Bundi district are involved in stone industry [cclxxvii]. It is an alarming situation for society. Poor economic condition, increasing unemployment, lack of good education are the main reasons to promote this child labour. The demand of marble is increasing all over India and with this increasing demand; demand of workers in marble industry is also increasing. As a result number of child labour in marble industry is growing. Another big stone industry in Rajasthan is

granite industry. In this industry many child labours are involved, and they are working with a average money. Among child workers most of the labours are working as cobblestones makers. The demand of granite in domestic market is increasing as people are using it immensely. The owners of granite industry are hiring more children to fulfil the market demands. The child labour is mainly used to make raw materials for sandstone. Family members who are engaged in granite industry involve their children to this industry. Lack of awareness and lack of proper education parents involve their children in stone industry to earn money. Recently many colourful types of granite are exported to over the world and to fulfil this demand more labours are needed. As a result more children are engaging with this industry. 32% children are directly involved in granite industry as child workers[cclxxviii].

Rajasthan is a house hub of raw materials of glass industry. Raw materials Ball clay, Fire-clay, Silica is mainly made by child workers. For this reason the gem industry in Rajasthan is growing and this industry needs more workers to run. The children who belong to poor families are involved with glass industry. The children are basically working to prepare raw materials for making glass. Crackers are heavily used in India to celebrate Diwali and many other occasions. For these reasons the demand for crackers is high in the market [cclxxix]. These crackers are prepared by children reducing labour cost and the manufacturing companies can sell the products in low prices compared to the other rivals. This will make the company profitable and get extra advantages. Without proper training workers should not be allowed in cracker factories. . Sometimes children lose their livers due to explosions during making crackers. Many cracker companies of Rajasthan are using children as workers in crackers factories to fulfil the need of market demands. Mud is a basic need to make bricks; owners deploy children to bring mud from the heap as it is not a difficult task. The owners prefer children doing this task to reduce cost and to make more profit. The physical and mental health of the children is affected and growth of their physical and mental is also affected. As the children are working for many hours and they do not get healthy food. Many children suffer from many diseases and sometimes they lose their lives suffering from diseases. 48% children are working as child labour in Rajasthan in making bricks .More than 33,000 children are involved in carpet weaving industry. Children do this work to support their family economically so that their family would be financially stable. About 6.00% rural and 2.30% urban children of Scheduled cast are involved in child labour in India as per the report of 2021. 10.60% rural and 3.40% urban children of Scheduled tribe are working as child labour in India[cclxxx].

**Trafficking children from Southern Rajasthan:**

Due to the high poverty level of India and high rate of unemployment many children are employed as workers. In Gujarat, there is high demand for workers for the cotton field. Every

year thousands of children from Rajasthan's Udaipur, Dungarpur and Banswara are trafficked for workers in cotton fields. Some of the children come with their parents and some of them come for money. 10% of total child labour of India works in mining industry[cclxxxi]. Sometimes thousands of children from Bihar, UP, Odisha are brought to Rajasthan to work in the mining industry to reduce mining cost. Children of Scheduled caste and tribes are engaged in different industries to fulfil their requirements. Children are found to be working in many private households, hotels and dhabas. Children from Dausa, Jaipur, Hanumangarh, Bikaner are brought to different industries regarding their labour requirement. People from Southern Rajasthan are very poor and their economic condition is bad. They are not educated and they belong to Niama, Meena, Bheel tribes. The people of Banswara, Pratapgarh and Dungarpur have no regular job opportunity. As a result their children are brought to different industries forcefully due to their unemployment and education. For the past few years children of Southern Rajasthan have been risking their lives for money[cclxxxii]. The children work as a bondage workers who work in the Surat cotton field. Brokers take the children from their poor families, promising them giving money every month. Many children are rescued by Anti Human Trafficking Units and most of the children are belonged to poor and tribe family. Many children who are parentless are working in hard working conditions. Brokers give them the temptation of salary and children agree to work in cotton factories due to being parentless[cclxxxiii]. In many cases the ages of the children are between 8 and 17. The brokers can easily bring them to Surat for working in cotton factories.

The State government of Rajasthan has taken strong action against child trafficking from Southern Rajasthan. The State government has collabourated with different NGOs to rescue children who work as bondage workers. Anti-Human Trafficking unit has rescued 25 children from Udaipur district. The children are from poor families and they belong to tribes. Brokers have taken them in Surat district of Gujarat for working the children in cotton factories. In another rescue operation 29 children have been rescued by Anti Human Trafficking unit collabourating with NGO [cclxxxiv]. In these areas most of the people belong to tribes and they are not educated[cclxxxv]. Their economic condition is below the poverty line, they have no opportunities for employment[cclxxxvi]. They cannot afford the expenses of their children's education. For these reasons the children are brought to different states of India for work in different kinds of factories and mills. Sometimes the children work in factories in dangerous conditions and they are faced with accidents.

Facing an accident the children sometimes lose their organs as for example hands, eyes and many others. It is reported that children from 60 villages are missing from Southern Rajasthan. The authorities have noticed the fact and they have discovered the children from Gujarat in cotton factories. Many children work in sari factories as bondage workers.

Many children are brought from Southern Rajasthan to Telangana for working in different chemical factories. In chemical factories many children lose their hands, eyes, noses and other organs. Many children are used to making handicrafts. Thousands of children are trafficked and collected in rooms and they make different handicrafts. In Covid pandemic children were unable to find out their home as they were from Rajasthan and they had no idea about the workplaces. After the pandemic many rural people have become jobless and their social and economic condition has become bad.

At that time they are trying to find a job where they can earn money to feed their families. Brokers come and give them a tempting salary of 4 to 5 thousand for each child[cclxxxvii]. Due to the high risk of unemployment, parents agree to send their children to different states or different cities of India. Many girl children are trafficked for sexually abused to many cities of India. The State government has taken multiple policies to stop child trafficking from Southern Rajasthan. Many NGO are active in Southern districts to counter the problems. They have come to aware the tribes about bondage work. NGOs have started to spread education for the children that they would be educated. The issue of child trafficking is raised in Rajasthan politics. Unemployment, proper education, social and economic development of tribes people are becoming main issues to stop child trafficking. Government has collabourated with Civil society that will be impactful against bondage child work. Government has been encouraged to collabourate with a large number of Civil societies to research and tackle the challenges against child labourers. The Rajasthan government has implemented many policies to highlight the right of work for the tribe's people. Several organizations are working to focus on the stone industry, brick industry and many other industries. Government should focus on building workshops in Authorities should have visited the areas several times so that brokers cannot tempt the tribes for bondage work.

**Various laws for children:**

**a) The Juvenile Justice (Care and Protection of Children) Act, 2015:**

The Juvenile Justice (Care and Protection of Children) Act, 2015 consolidates and brings amendment in the laws related to child labours; this act considers the needs of proper care, development of children, provide protection and social reintegration through adopting different kinds of approach[cclxxxviii]. Under “clause (3) of article 15”, “clause (e) and (f) of article 39”, “article 45 and article 47” on Rajasthan ensure the protection of the children’s and protect human rights. Child friendly approach is given in this Act to perform well in the child labour sector in

different industries. Under this act, the different districts in Rajasthan formed “33 child Welfare committees”, “constituted 34 juvenile justice boards” and “41 special juvenile police units”, to work in different categories to protect the children's rights[cclxxxix]

**b) Bonded Labour System Abolition Act, 1976**

Bonded labour act levied in India to protect the bonded children’s. The constitution of India ensures free movements of all children’s around the country and prohibits clicked labour through “article 21, 23 (1) and 24”. NHRC provided its report on bonded labour in 2001; through this report they said that political will is affecting the implementation of laws. Bondage laboured is still a big problem in different districts in Rajasthan. Bonded labour leads to the loss of freedom of the workers. Bonded labourers are forced to work in an intolerable situation, employers provide less spaces and less money to the bonded labourers. In order to protect the children from this situation government introduce Ultramodern Slavery in India, 2012[ccxc]

**c) Protection of children from sexual offence Act, 2012 (POCSO)**

This act provides protection to the children from sexual harassment, different kinds of sexual assaults and pornography. Objective of this act is to protect below 18 years children’s, save them from evidence recording, trial, investigation of offenses, trial of offenses and reporting. Provide rehabilitation and relief after lodging the complaint with the help of a special juvenile police unit of Rajasthan.

**d) Foster Care Rule, 2014**

Under the Juvenile Justice (Care and Protection of Children) Act, it is an arrangement by which a child gets care with the help of his family members. A child should grow with his family or with the family members of close friends or in the family of any relatives. These options are when not available then the child should come into foster care. Rajasthan is in the second place in India in the implementation of this act. Total 16 children have taken advantage of by the foster act in Rajasthan.

**e) Integrated Child protection Scheme (ICPS)**

ICPS is a scheme which builds a protective environment for the children’s in different circumstances. Through ICPS different child protection schemes come within an umbrella. This scheme creates a database of children who need the protection service, give strength to the family and the community of child protection and collect responses from grassroots level. In Rajasthan Under this scheme through 152 children home no of children benefited is 5309. 42 government

homes and 38 funded shelters hand to provide facilities to those suffering children's[ccxci] Greh Unnayan Samity is formed under the chairmanship of principal secretary to observe and improve the conditions of different child care institutions.

**f) Protshahan Yojna**

This yojna is launched to give strength to the government run homes which are beneficial for children's. This scheme enhances CSR activities and gives advantages to the corporates to do so. Under this scheme Hindustan Zinc supports the development of government children homes for boys in the Bhilwara district.

**g) Mukhymantri Hunar Vikas Yojna**

State government realized the need to develop the skills of the children's to follow this government of Rajasthan introduced CM Hunar Vikas scheme. 314 children have taken the benefit of this scheme and children's have developed their soft and technical skills through this yojna.

**h) Bonded situation of children**

Rajasthan has about 252,000 child labourers most of them are within the age group of 5 to 14 years[ccxcii]. The highest number of child labour is in the Jodhpur district after that Jaipur and Bhilwara comes in the second and third place. Ajmer and jalor district consists of more than girl child labour in respect of boys. Rajasthan is in the first place in the country in child marriage, districts are suffering high rates of child marriage (based on data from the Annual Health Survey). As per survey 22% women married between 10 to 15 years, 36% of women are married in the age between 15 to 17 years[ccxciii]. It is also noticed that the majority of the child labourers come from the outside of this state such as Bihar, Jharkhand and West Bengal. As per media reports an organized gang working on trafficked girls from Madhya Pradesh to Rajasthan, they lifted near about 1300 girls over the few years. In the last ten years missing children cases filed up to 823 in the Kota city, the police of kata city are under pressure of High court, as High court asked the state police to prove the matter and solve it as soon as possible.

Rajasthan takes several steps in order to develop the situations of the child labourers. In the brick industry children's are forced to work as their families are not financially good to run the family expenses. In a survey it is found that most of the families which are beside the brick industry the child's of these families are forced from their families to make bricks. In the brick

industry children's are suffer from eye problems which are affected by the smoke of this industry. They also suffer from breathing problems as they live beside the industry. Brick kilns consist of a large number of migrants from Bihar, UP and Assam. The Rajasthan government needs to take several steps to overcome these problems.

In Rajasthan 79 different kinds of minerals can be found both metallic minerals and non-metallic minerals. It is estimated that in different districts of Rajasthan such as Jodhpur, Bundi, Bharatpur, Bikaner, Jaisermir, Kota, Karauli near about 900 million tons of sandstones are deposited in these districts. The marble and granite industries need huge labour to conduct smoothly. In order to reduce the cost of the stones, owners engage the children's in this work. This industry uses huge amounts of chemicals which have a deadly effect on children's health. Children's are suffering from headaches, hearing problems, respiration problems and joint problems. In this industry children carry heavy weights which are the main reason for their depression. Depression pushes them to adopt different kinds of destructive habits such as drug abuse, smoking and many more. Children's are forced to work 10 to 11 hours a day in this industry which is a real reason for their anxiety. Mining is considered as a terrible for of child labour which almost destroys the normal life of children's [ccxciv]. Mining industry need more structural development in order to overcome the problem of child labour.

Agriculture sector needs a huge amount of labour to meet this situation. Family members force their children to work in the field. Large number of farmers has small plots of land; using that small land they cannot run their family expenses. Large landowners are taking advantage of this and they asked the cultivators to send their children's in the cultivation process. This situation increases the demand for bonded labourers. More than hundred families of sharia tribes are bonded to landlord owners. Sharia tribes are trapped in debt bondage with rich peoples. Most of the harvesting process in done by manually this system increases the demand of child labour. There is a good sign that the government is taking initiatives to rescue the families from this and giving employment under the government's rural employment guarantee scheme (MNREGA)[ccxcv] This scheme helps families to rebuild their financial conditions, which is reducing child labours. Bondage labourers are becoming more financially stable and they are focusing on child education. Children's are work in the glass industry to support their families. In this industry most of the child labourers are engaged in the bangle making process. Owners of this industry want to hire children's as they are more vulnerable and cheaper to hire. The glass industry in Rajasthan is not familiar with child labourers, facilities provided by the government are not properly placed in this industry. Services and social securities are almost nil in the industry. Most of the families live as a migrant beside the industry; hence they cannot enjoy public distribution system (PDS) benefits. Children's are working in contact with explosives, at the end of the work explosive dusts are coated in their full body, which is a major reason for their skin problems and eye allergies.

Most of the child labourers engaged in the firework industry is from the age of 6 to 14. This industry carries high chances of bursting; a burst of a firework can burn the childhood. Child labourers lost their lives as frequent accidents occurred in the factories. Environment and polluted air has a destructive effect on children's health. Till now the government of Rajasthan has not taken any major steps to prevent the children’s from cracker industry.

**Conclusion and recommendation:**

Working children’s to not get the chance to develop their skills and they have no opportunity to go to the schools. The Rajasthan government needs to take more crucial steps in order to decrease the child labourers in different districts. Government can take a 3 to 5 years resolution in order to improve the situation of child labourers. Business organizations should fast their CSR activities to rescue children’s from bondage. Government can enhance their PDS process and ensure that every family can avail the advantages of this scheme. Officials need a more strategic training programmer to handle this problem. Children are the future of India and they must be saved. Child labour is destroying the future of India. The children don't get opportunities to educate and reduce the job opportunities. The social life of tribes of Rajasthan will not be developed in case the children of them will not be educated for the future. Child trafficking is a big issue of Southern Rajasthan for the tribes of some districts. The State government and different NGO have come forward to counter the issues.

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**CHAPTER 28**

# ARE HATE CRIMES POSING A THREAT TO FUNDAMENTAL VALUES ENSHRINED IN THE INDIAN CONSTITUTION?

**Shivam Aggarwal**

**LLM (International Law)**

**Lovely Professional University, Phagwara**

**Dr. Showkat Ahmed Wani**

**Assistant Professor of Law**

**Lovely Professional University, Phagwara**

## ABSTRACT

Hate crimes also known as bias crimes have become a hot topic of discussion in India as a result of the recent surge in incidents of hate crimes. These hate crimes are committed because of the prevailing bias against the victim or his community and effect not only the victim but also his community. It is a well-known fact that hate crimes tear away the sensitive bonds that are shared by members of different religious, ethnic, or linguistic communities. A question that has arisen at present is that, whether or not the epidemic of hate crimes that India is currently experiencing is posing a threat to fundamental values like; secularism, equality, freedom, and justice that have been enshrined in the preamble to the Constitution of India and in the Constitution itself.

In this research paper, the author has tried to prove that a surge in the incidents of hate crimes is posing a threat to the aforementioned values by discussing the recent incidents, reports, and news stories related to various aspects of hate crimes in India.

## INTRODUCTION

A recent surge in the incidents of hate crimes in India is comparable to an epidemic. Just like an epidemic spreads quickly and affects a large section of society within no time, similarly hate crimes are also spreading quickly and are affecting bonds of tolerance between various communities and the values which act as the bedrock of modern-day India. The fact that the sensitive bonds between communities are getting weakened owing to hate crimes has been mentioned in various news stories and other reports.

Albeit, a lot is said both in favor and in support of hate crime perpetrators, a little is said regarding the impact of these hate crimes on the fundamental values enshrined in the Indian Constitution.

This research paper tries to analyze the detrimental impact of hate crimes on these fundamental values and on the dream of making a country as envisioned by the founding fathers of our nation. This paper first discusses the meaning and causes of hate crimes and the need to pay attention to them. Then the paper goes on to discuss the impact of hate crimes on the fundamental values and the idea of a dream India of founding fathers by analyzing certain recent incidents, news stories, and reports.

## 1) THE MEANING OF THE TERM HATE CRIMES

The term hate crime is made up of two words; hate and crime. According to the ***Merriam Webster Dictionary***, hate means disliking or disgust or aversion. This disliking or aversion usually arises out of fear or anger. This dictionary further adds that hate may also mean an extreme feeling of enmity or hostility towards someone or something.[ccxcvi] The word crime has been described in the ***Merriam Webster Dictionary*** as an act that can be punished by the government as that act is illegal.[ccxcvii]

Therefore, hate crimes can be defined as those illegal acts which are committed because of enmity, hostility or disgust towards someone or something.

Authors, lawyers, criminologists and various international organizations have defined the term "hate crimes" in several ways. But one of the most widely accepted definitions of hate crimes has been given by the ***Federal Bureau of Investigation (F.B.I.).***

The FBI describes the term hate crime as a criminal offense that is committed against a person, property, or society. This definition further makes it clear that the bias that an offender has against a particular race, religion, disability, sexual orientation, ethnicity or national origin acts as the motivating factor behind the commission of hate crimes. Howbeit, it must be noted that the bias of the offender may be wholly or partly responsible for enraging him to commit a hate crime.[ccxcviii]

Hate Crimes are comprised of two elements; the first element is a criminal offense and the second element is the presence of a bias motive.[ccxcix] Offence or crime as mentioned earlier is an illegal act for which punishment may be awarded by the authorities and prejudice is a preconceived idea or attitude. To categorize a crime as a hate crime, both these elements must be present. Thus, it is only when a criminal offense is committed with a biased motive, that it is categorized as a hate crime.

For example: If A commits murder of B, as he marries C who is his girlfriend, then it is not a hate crime. But if A commits murder of B for marrying C as he is prejudiced against B as B is a lower caste person, then this is a hate crime.

It must be noted that hate crimes are not a category of crimes that have come up recently. They have a rich history. The existence of hate crimes can be traced back to the Roman Empire where Christians faced the brunt of hate crimes. They were stoned, lashed and were even termed as harbingers of diseases.[ccc]

In India too, owing to the prevalence of the caste system many people belonging to the community of Dalit faced and continue to face several atrocities on a routine basis. The people who belonged to the category of Dalit were considered untouchables and polluting and were compelled to do menial jobs like cleaning latrines or working as sweepers.[ccci]

## 2) NEED FOR PAYING ATTENTION TO HATE CRIMES

In recent years, there has been a surge in the incidents of hate crimes has been recorded in India. As a result of this surge, it is today argued by many lawyers, think tanks, international organizations and non-government organizations that, there is a need to pay attention to hate crimes at the level of urgency because of the dire consequences that these crimes can have on the victim, his community and the society at large. It is also stated that hate crimes are graver than ordinary crimes.

The need for paying attention to hate crimes may be analyzed from the fact that the trauma which is experienced by the victims of hate crimes is more damaging than that the one experienced by victims of non-hate crimes.[cccii] The victim of these crimes experienced psychological injury increased feelings of vulnerability and in some cases may also experience depression and heightened anxiety.[ccciii]

It is not only because of the trauma experienced by the hate crime victims, that they require more attention. These crimes require more attention because their repercussions are not only confined to the victim, but are even felt by the members of the victim's community. The members of the community of the victim become doubtful regarding their safety as they share certain characteristics such as their; skin color, ethnicity, religion, etc. with the victim.[ccciv]

If in the past the community of the victim has been subjected to discrimination on any of the grounds then the repercussions of hate crimes become more deleterious.[cccv] The vulnerability of being the victim of hate crimes is more if a person belongs to a marginalized community.[cccvi]

Hate crimes also impact security and public order and emphasize existing social tensions. These crimes can have an explosive impact especially when the relations between ethnic, national or religious groups are already quite sensitive.[cccvii]

India is a diverse country as it is multi-ethnic, multi-cultural and multi-religious. Because of the prevalence of the caste system in ancient times and also owing to the bloodshed of partition and existing tensions amongst members of different religions and ethnicities, hate crimes can have a detrimental impact on the very existence of India.

Hate crimes may lead to retaliatory crimes and these retaliatory crimes, in turn, may lead to widespread communal violence. The resultant bloodshed and violence will not only pose a threat to the ideas of tolerance and peaceful coexistence, but will also erode the values which act as the foundation of modern-day India. These values are; secularism, equality, freedom and justice.

Thus, it is imperative to pay attention to these hate crimes in the backdrop of a recent surge in the incidents of these crimes.

## 3) THE CAUSES OF HATE CRIMES

As discussed earlier, there are two elements in a hate crime; crime and the bias motive or prejudice. It won't be wrong to remark that it is the bias or prejudice which infuriates an individual to commit hate crimes. Before understanding the causes of hate crimes in the Indian context, it is of utmost importance that the meaning of the term prejudice is analyzed.

According to the ***American Psychological Association's Dictionary of Psychology***, prejudice is a favorable or unfavorable attitude or view. This view or attitude is mostly pre-conceived and is resistant to change.[cccviii]

Prejudice is a complicated concept. The prejudices can be good or bad. In case prejudices are good, then they are harmless. An example of such prejudice can be the preference for slim people over fat ones. In case prejudices are bad, then they may be harmful and may even lead to socio-political tensions. An example of such prejudice can be the belief that people belonging to lower caste communities are dirty and polluting.

As mentioned earlier, bias is the reason for the commission of hate crimes. But it must also be understood that biases can take various forms and are also quite complex. Thus to decide whether owing to a particular bias individual can be punished for a crime or not, it is necessary to check whether or not that bias is an officially designated bias.

The ***United States Department of Justice*** has given various categories of bias that can lead to hate crimes. These biases can be related to; color, disability, ethnicity, gender, gender identity, race, religion, and sexual orientation**.** Any kind of bias related to these categories is regarded as officially designated bias in the United States of America[cccix]

In India too, owing to these prejudices many hate crimes are committed regularly. Some of the main reasons which infuriate individuals to commit hate crimes are; Inter-caste marriages, religious fanaticism, racism, sexual orientations, propaganda, rumors, etc. These reasons add fuel to the already existing aversion that an offender has towards certain religious communities, castes, and sexual orientations. When these incidents happen, the offender gets infuriated to

such an extent that he commits hate crimes in the form of cold-blooded murders, rapes, lynching, mischief, etc.

## 4) CURRENT TRENDS RELATED TO HATE CRIMES IN INDIA

There has been an exponential increase in the incidents of hate crimes in India in recent years. In a report published by ***Amnesty International***, some staggering figures have been revealed about the growing menace of hate-induced crimes in India. According to this report, in the first half of 2019 around 181 incidents of hate crimes were recorded in India, and in the first half of 2018, 100 such cases were reported. It has also been mentioned in this report that in 2019, the steepest rise in incidents of hate crime was recorded since 2015.[cccx]

Many incidents, which have taken place recently, can be analyzed to understand the current trends related to hate crimes in India:

- **Continuous Targeting of Minority Religious Communities**

  India is a multi-religious country. Hinduism is a religion that is followed by the majority of people in India. But at the same time, there are also some minority religious communities. In ***Section 2(c)*** of the National Commission for Minorities Act 1992, the minority religious communities of India have been enumerated. As per this section, minority religious communities of India are the; Muslims, Sikhs, Christians, Buddhists, Jains and Zoroastrians.[cccxi]

  According to the Census 2011, minority religious communities account for around 19.3% of the total population of India. Out of this 19.3 %, Muslims account for 14.2%, Christians account for 2.3%, Sikhs account for 1.7%, Buddhists account for 0.7% and Parsis account for 0.006% of the total population of the minority religious communities in India.[cccxii] Out of the aforementioned religious communities, two communities that are currently experiencing the brunt of hate crimes are; Muslims and Christians.

  One can get an idea of the extent of hate crimes against Muslims in India by analyzing the report titled ***"Halt the Hate"*** published by ***Amnesty International***. This report was published based on a study that was conducted between September 2015 and June 2019. In this report it is mentioned that; 619 hate crimes were committed against Muslims in this period and out of 91 people who were killed due to hate crimes based on religion, 79 were Muslims. In six months, between January 2019 and June 2019 hate crimes increased against Muslims by 45% mainly due to cow vigilantism and hatred which existed in the backdrop of the Pulwama Attack.[cccxiii]

In the judgment of, *Tehseen Poonawala* v. *Union of India*, it was observed by the Honorable Supreme Court of India that, cow vigilantism violates the rule of law and tolerance. It was further observed by the court, that cow vigilantism may even lead to the breakdown of law and transgression of civility and humanity.[cccxiv]

Calls for the economic boycott of Muslims have also been given in the recent past. An economic boycott implies a refusal to purchase goods from members of other religions or not allowing them to carry out their economic activities. Such calls against the Muslim community have been given by Kranti Sena, Vishwa Hindu Parishad and other such outfits. These calls have been given against what is termed by these outfits as; *mehendi jihad, bangle jihad, fruit jihad, juice jihad etc*. In a way, these calls ask people to refrain from purchasing mehendi, fruits, juice and bangles from Muslims. During the festival season,Hindutva propaganda demanded that the Hindus should purchase their festival requirements only from Hindus.[cccxv]

A recent example of the economic boycott of Muslims is the banning of Muslim shopkeepers from participating in the annual local temple fairs in the state of Karnataka which take place in April and May. Earlier in the state of Karnataka, the issue related to the wearing of the Hijab in educational institutions gave a blow to the weakening ties between the Hindus and Muslims. This action may further deepen the fault lines between these two communities.[cccxvi]

In 2021, calls for genocide of Muslims were given during the Dharma Sansad (Religious Parliament) in Haridwar by the participants.[cccxvii] The terms like "Love Jihad" are used to display anger and resentment at marriages in which one party is a Hindu and the other is Muslim. Many cases have been reported, in which protests were organized outside the marriage venues or on social media against such marriages. In some cases, the vigilantes even go to the extent of committing honor crimes against couples who perform interfaith marriages.

At the time of the Anti-CAA protests, secretarian color was given to protests by the leaders of BJP, many Muslim students from Jamia Millia Islamia were targeted by police officials, and it was remarked by the PM of India that, those who were protesting against CAA can be identified from their clothes. This was an indirect reference to the Muslims, given the skull caps and scarfs worn by them.[cccxviii]

In the report titled “Christians under attack in India” it has been mentioned that in the first nine months of 2021, 300 instances of atrocities against Christians in the northern states of India were reported out of which 288 were related to mob violence.[cccxix] As a mark of protest towards Christians on the grounds of alleged forced or induced religious conversions a number of acts have been committed by Bajrang Dal, Vishwa Hindu Parishad and other organizations.

On Christmas Eve, members of rightist groups chanted, “Santa Claus Murdabad” and burnt an effigy of Santa Claus in the middle of a road in the city of Agra.[cccxx] Just before Christmas, a campaign by the name of “Conversion by Santa” was launched by right-wing groups in the state of Haryana. The underlying concept of this campaign was to register cases against those schools which made students dress like Santa Claus without permission of the families of students.[cccxxi]

- **Rampant Racism**

  Racism is also quite prevalent in India. Because of the cross-border or inter-state migrations in search of better education and job opportunities people from Uttar Pradesh, Bihar and the North-Eastern states of India fall prey to racism and hate crimes.

  In its judgment on the issue of racial discrimination faced by the people from North-East India, in ***Karma Dorjee and Others* v. *Union of India and Others***, the Honorable Supreme Court of India observed that, for dealing with the issue of racial discrimination, laws are themselves not sufficient; people need to be sensitized and their mindset has to be changed.[cccxxii] This implies that even the Apex Court of India has recognized that, it is the mindset of perpetrators which leads to the commission of race-based crimes and other atrocities.

  People from the north-eastern states of India are soft targets for committing hate crimes. Certain reports suggest that around 81% of women from the North-Eastern states of India have witnessed some kind of harassment in the capital city of Delhi. The gravity of the situation can be understood from the fact that the Ministry of Home Affairs of India had come up with measures to deal with growing incidents of racism against North-East Indians in Delhi.[cccxxiii]

After the outbreak of the Covid-19 pandemic, many people from the north-eastern states of India faced the heat of hate crimes. In one such incident, a Manipuri woman was spat upon by a middle-aged woman. In addition to this, that middle-aged woman also called that Manipuri woman corona.[cccxxiv] Such crimes were committed against the North- East Indians because of the similarities which exist between the physical appearances of North-East Indians and the Chinese people.

A large number of migrant workers from Uttar Pradesh and Bihar have been lynched and forced to flee away in states like Gujarat and Maharashtra in the past.[cccxxv] Racist slurs are used on regular basis against such migrant workers and they are also looked down on by the natives of states where these workers go to work as laborers.

- **Prevalence of Caste Based Hatred**

Even after the constitutional guarantee of equality and abolition of untouchability, many hate crimes are committed against Dalits due to the prejudices prevailing against them. This highlights that the constitutional provisions and other legislative provisions have proved to be a dead letter.

Hate crimes against Dalits are quite prevalent in India. Many hate crimes are still committed against Dalits because of the prevailing mindset of upper caste people that, the lower caste people are impure and polluting.[cccxxvi]

The atrocities which are faced by Dalit women owing to caste-based prejudice are enough to send chills down the spine and in no way meet the standards of dignity and human rights as upheld by the modern day society. According to a report published by ***Equality Now***- a network of activists, lawyers and social workers working in the field of women's rights, Dalit women are subjected to sexual assaults and rapes. In this report, it has been mentioned that to reinforce caste hierarchy and to oppress Dalit women men of upper caste communities systematically use violence, rape, gang rapes etc.[cccxxvii]

According to ***Amnesty International,*** 65% of hate crimes which were committed in India in 2019 were committed against the Dalits.[cccxxviii] In an abhorring incident, a Dalit

man was compelled by his upper-caste employer to eat human excreta as that Dalit man challenged his upper-caste employer.[cccxxix]

- **Targeting of Sexual Minorities:**

  Sexual minorities are also quite a vulnerable group in India, as far as the commission of hate crimes is concerned. Sexual minorities are usually subjected to mockery and harassments.

  After the judgment in ***NALSA* v. *Union of India***, the transgender community was recognized as the third gender in India and their fundamental rights were also upheld.[cccxxx] By the virtue of judgment in ***Navtej Singh Johar* v. *Union of India***, same-sex carnal intercourse was legalized and Section 377 of IPC, which criminalized same sex-carnal intercourse, was declared partially unconstitutional.[cccxxxi]

  But even after both these judgments, not much change has been observed in the general attitude of people towards the sexual minorities in India. In the ***CPIN titled "India: Sexual Orientation and Gender Identity and Expression"***, published by the Visa and Immigration Department of the UK it has been mentioned that homosexuals and transgender in India are subjected to degrading treatment and are stigmatized.[cccxxxii]

  What is more worrisome is that many homosexuals have reported that they have been subjected to harassment by the law enforcement authorities. Even today, homosexuality is considered to be a mental disorder and conversion therapy is used for treating homosexuals.

  In addition to this, many homosexuals have reported that they still fear expressing their sexual identity and sexual orientation as they fear that doing so would invite mockery, ridicule, social boycott, harassment etc. to mention a few.

- **Nexus Between Hate Crime Perpetrators and Political Outfits**

  There also exists a nexus between hate crime perpetrators and many political outfits in India.

  Many times, political leaders, following the policy of divide and rule, sow seeds of hatred amongst members of different communities. The political leaders and their

agents do not shy away from making hate speeches or religiously colored remarks every then and now. The irresponsible statements having the color of hatred may even lead to widespread riots and tear apart the sensitive relations which exist between members of various communities.

Reporting in the incidents of hate crimes is also connected to the political motives. According to a news story published in ***The New York Times,*** in India data related to the commission of hate crimes depends on who the perpetrator is. In this news story, it is further mentioned that the officials under the PM Modis' administration have selectively released results of hate crimes by sharing figures regarding those attacks which were committed by left-wing extremists. It has been alleged in this report that, the administration did not release figures related to religion-based crimes or regarding violence against the journalists. Revealing the data regarding hate crimes is itself a quite sensitive topic in India, nowadays. [cccxxxiii]

Therefore, owing to political agendas and motives first of all real figures are not revealed and secondly, it becomes extremely difficult to take action against the perpetrators.

## 5) THREAT TO THE FUNDAMENTAL VALUES

In the preamble to the Constitution of India 1950, it has been mentioned that India is a secular country and seeks to secure; justice, liberty and equality for all its citizens.[cccxxxiv] But the hate crime epidemic that India is currently experiencing is posing a threat to these values which are the bedrock of our nation. Currently, this hate crime epidemic is also acting as an impediment to the creation of India, which was envisioned by the founding fathers of our nation.

Incidents of hate crimes against religious minorities in India, the rise of Hindutva ideologies, a surge in Islamophobia, the spread of religion-based propaganda etc. are all posing an ugly shadow on the value of secularism. Hate speeches by leaders of ruling parties against Muslims, targeting of Muslims by law enforcement agencies and heckling the Christians and Muslims from observing their religious practices by members of the organizations which have direct or indirect link with the BJP and its affiliated bodies, is an attack on the values of ; secularism, freedom and equality.

According to the Constitution, all citizens are equal before law.[cccxxxv] Discrimination based on religion, race, caste, sex or place of birth is prohibited in India.[cccxxxvi] By the virtue of

Article 17 of the constitution, untouchability has been abolished from India.[cccxxxvii] Certain fundamental rights are given to all the people such as; the right to freedom of speech and expression[cccxxxviii], right to practice any profession, trade or occupation[cccxxxix], right to freedom of religion[cccxl], right to life and personal liberty[cccxli], etc. But the ground reality is far from the perfect picture which has been painted by the Constitution. Hate crimes reveal the dark reality of India.

Atrocities committed against Dalits are a violation of the right to equality and right to life. In addition to this, these atrocities also violate basic human rights such as; equality and dignity[cccxlii], non-discrimination[cccxliii], protection from cruel and degrading treatment[cccxliv] etc.

Hate crimes against sexual minorities not only violate the fundamental and human rights as mentioned earlier, but also violate the freedom of speech and expression, which is both; a fundamental[cccxlv] as well as a human right[cccxlvi].

Calls for economic boycotts of minority religious communities and heckling them from performing their religious activities or celebrating festivals is a violation of the right to practice any profession, trade or occupation, right to life, right to equality as well as the right to freedom of religion.

Racist attacks against people from North-Eastern states of India and migrant labor from states of Uttar Pradesh and Bihar, not only violate fundamental rights but also the human rights of these people.

Thus, as a result of all these hate crimes, basic values of equality and freedom are being threatened.

Due to the close nexus between political outfits and perpetrators of hate crimes, it is becoming increasingly difficult for the authorities to take required actions against the perpetrators of hate crimes so that justice can be served to the victim as well as to his family members and his community.

Owing to the political nexus, it is already a cumbersome task to take action against perpetrators of hate crimes, lackadaisical attitude of the law enforcement agencies further makes it difficult to take action against these perpetrators.

Inability to take requisite actions not only acts as an impediment in delivering justice to the victims but also threatens the core value of justice.

## 6) CONCLUSION

Thus, it won't be wrong to conclude that, as a result of hate crimes core values of secularism, equality, freedom and justice which act as the bedrock of modern day Indian society are being threatened.

Members of different religious, racial and ethnic communities and caste are spewing venom against each other on a regular basis. Social media platforms have provided a platform to the anti- secular, anti-democratic, anti-equality and intolerant outfits to spread hatred amongst communities.

The unity in diversity is the binding agent that keeps together the citizens of the second most populous country and the largest democracy of the world. But today, the hate crimes on the grounds of religion, race, caste, sex, sexual orientation, etc. are directly attacking this idea of unity in diversity.

It seems that in India; the rule of law has been replaced by the rule of the mob, democracy has been replaced by mobocracy and tolerance has been replaced by hatred. So to protect these core values and most importantly the values of secularism, equality, freedom and justice, and also to build India as envisioned by the founding fathers of our nation, steps must be taken to contain the epidemic of hate crimes at the level of urgency.

People need to understand that diversity is the strength of India. By committing hate crimes and by making hate speeches, people are not doing anything good in the name of protecting their culture, religion or nation. What people are doing is irreparable damage to the bedrock and core values of Indian society which will ultimately unleash a catastrophe sooner or later.

## 7) SUGGESTIONS

To prevent further damage to the core values as enshrined in the Constitution, the researcher suggests the following measures:

- The perpetrators of hate crimes should be condemned by the entire society for the offenses that they commit after being blinded by their hatred and prejudices.
- Strict laws shall be enacted and existing legal provisions shall be implemented properly so that the grievances of victims and their families can be redressed more effectively.
- The media shall make people aware of the deleterious effects of hate crimes on society.
- People need to be sensitized on topics such as; racism, homosexuality, communalism, etc. so that they can free themselves from their preconceived notions.
- All stakeholders must join their hands to defeat the epidemic of hate crimes from infecting the core values mentioned in the Constitution.

- Above all, people need to understand that all human beings are equal by virtue of nature and it is high time that the ideas of equality and tolerance are accepted so that a nation as envisioned by the founding fathers of our nation can be built.

**CHAPTER 29**

# WOMEN EMPOWERMENT AND ROLE REVITALIZATION: A WAY FORWARD TOWARDS INCLUSIVE AND RESPONSIVE INITIATIVES FOR SUPPORTING THE WELL-BEING OF ALL WOMEN

**Sampurna Guha**

**Research Scholar, Lovely Professional University, Punjab & Assistant Professor, Amity University, Uttar Pradesh, Email: sampurnaguha@gmail.com**

**Dr. Nimisha Beri**

**Professor, Department of Education, Lovely Professional University, Punjab, Email: nimisha.16084@lpu.co.in**

## Abstract

India is a land of sages, where women are worshipped as Goddesses and motherhood is celebrated and revered. However, despite the fast-growing economy and several steps being taken in the positive direction of governance, women continue to face discrimination, violence, and lack of opportunities for participation which adversely impacts their well-being. The present study aims at exploring the way forward towards achieving women empowerment and addressing issues concerning equity and equality in the 21st century through a Focused Group Discussion carried out with seven participants: women achievers belonging to diverse fields of action. The study findings reveal that focus needs to be on the identification of factors towards promoting skill development and entrepreneurial support for women thereby, fostering good mental health, resilience, coping ability and addressing the lack of awareness towards government schemes, policies, and platforms available for supporting women today. The study concludes the need to have a positive outlook toward women entrepreneurs, their struggle, and their achievements, reduction of negative stereotypes, and creation of a supportive, healthy, positive, inclusive socio-economic environment that will support girls and women to thrive, and gain success.

***Keywords:*** *Coping, Inclusive initiatives, Resilience, Role revitalization, Way-forward, Well-being, Women empowerment*

# I. INTRODUCTION

Historically women have always been discriminated against which has made them fight for their rights and dignity. Md. Rahman (2013) traced the origin of the term empowerment through the works of various scholars dating back to the late 90s. Zimmerman (2000) states empowerment as a theory that revolves around power distribution as a value orientation and acts as a model which allows one to control and exert influence within the community over decisions, functioning, and quality of life. Wallerstein & Bernstein (1988) further state that empowerment education supports personal and social change, an inspiration from the empowering ideas of Paul Freire who defined empowerment as a formal term for the first time. Rawland's view of empowerment as a form of controlling power, productive power, powerful being, and the power from within, which arises due to increased consciousness and an enhanced sense of self-acceptance (cited in Upaghyay, 2022). Women are said to be empowered when they enjoy the right to participate in political decision making (political empowerment), the ability to earn equal wages as their male counterparts (economic empowerment), receive equal opportunities and social respect (social empowerment) thereby, indicating individuals rising to power and also the ability to maximize opportunities available. Traditionally Women with Disabilities (WWDs) are said to have twin disabilities as a result of double discrimination faced by them. These women having some form of impairment, face increased marginalization due to various societal misconceptions, negative attitudes, and lack of awareness about their capabilities and potential. The data by the United Nations estimates the presence of disability in 1 out of every 5 women which approximate nearly 19.2 percent of women (above 18 years of age) compared to 12 percent of men ("The empowerment of women and girls with disabilities", 2018). These women face:

- **Marginalization**: Women with Disabilities face exclusion and marginalization which may arise due to societal misconceptions, attitudinal barriers, and lack of recognition. They are cornered and marginalized as a result of significant bodily or cognitive limitations, gender-based stereotypes, and historical neglect, making them more vulnerable to abuse, divorce and violence (Addis and Mesele, 2020).
- **Economic deprivation:** WWDs face poorer economic prospects compared to men with disabilities as they are not viewed with equality and they face heightened discrimination based on gender. Basic rights deprivation is still visible and in stark contrast to rights-based society and calls for inclusive practices (Addis and Mesele, 2020).
- **Abuse and violence:** WWDs are vulnerable to greater incidence of abuse, which can be of emotional, physical, social, and domestic nature. The nature, type and severity level oof the disability along with complete or partial dependence on caregivers, is considered as a major causal factor. Their inability to take decisions, poor judgement, lack of self confidence and low coping ability are contributive factors (Alldis et.al., 2008; Addis and Mesele, 2020).

- **Gender-based discrimination:** Gender-based disparities are highly visible in the field of disability, especially WWDs. Gender and accessibility issues are being raised constantly as seen in the sphere of public spaces and political rights. They are sometimes referred to as genderless creatures. (Addis and Mesele, 2020; ILO, 2003)
- **Poor political and economic participation:** Lack of participation in political and economic decision-making systems is seen to be more prevalent among WWDs (Addis and Mesele, 2020)
- **Lack of justice and equal opportunities:** WWDs are highly marginalized owing to their disability and presence of gender specific challenges **(**Emmel, 2014)**.** Such marginalization results in lack of equal opportunities to justice, education, employment and even healthcare (Addis and Mesele, 2020).

Women's empowerment is the key tool for strengthening the position of women in society, especially in the 21st century, when women still suffer from discrimination, inequality, and violence. In India, women have traditionally been unempowered and vulnerable class in the face of disproportionate gender ratio and poor treatment. In Hinduism, women are worshipped as goddesses, a manifestation of divinity, Shakti (Goddess Durga) herself, an all-powerful embodiment of the tri-shakti who can assume various forms such as a loving mother and all-destroying force ("Devi-The great Goddess", 2000). Despite its fast-growing economy, modern India still witnesses the daily struggle of women to lead a dignified life and gain full participation in all spheres (Nagindrappa and Radhika, 2013).

## II. II. METHODS AND MATERIALS

The study utilized a Focus Group Discussion (FGD) involving seven participants-women belonging to different fields and areas of expertise such as disability management, entrepreneurship, banking, para-athletics, self-advocacy, and special education as shown in Table 1. The focus group discussion can be understood as a gathering where persons from similar backgrounds, educational experiences and expertise meet and discuss topics of interest and relevance. It supports sharing of attitudes, beliefs, expertise, and opinion through focused and purposeful, moderator-led discussion to form in-depth knowledge of the topic of interest (Edmunds, 1999).

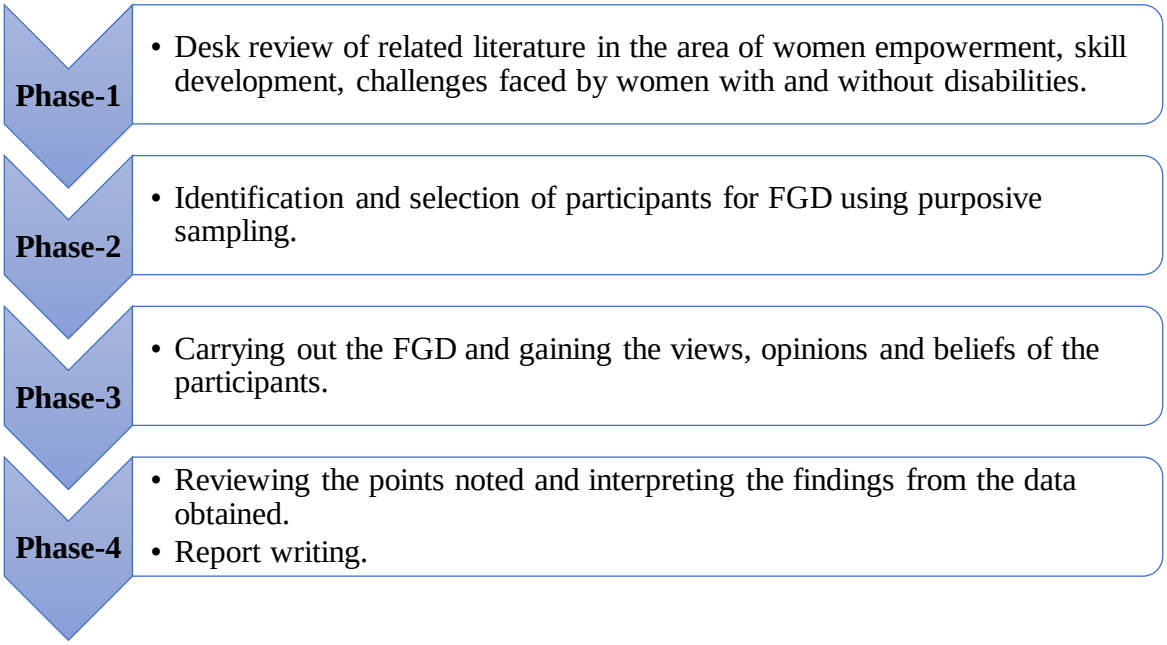


Figure 2.1. Phases involved in the study methodology

The Figure 2.1. indicates the various phases in which the research study was carried out. Phase-1 was focused on a desk review of existing literature in the area of interest. Phase-2 involved the identification and selection of participants for FGD using purposive sampling. Phase 3 was concerned with carrying out the FGD and phase - 4 ended with the report writing process.

**Table 2.1** Sample description for the Focused Group Discussion

| S.N. | Gender | Area of expertise | Age (in years) |
|---|---|---|---|
| 1 | Women | Entrepreneur | 50 |
| 2 | Women | Banker | 45 |
| 3 | Women | Para-athlete | 38 |
| 4 | Women | Entrepreneur and self-advocate | 27 |
| 5 | Women | Special Educator | 47 |
| 6 | Women | Curriculum developer and designer | 39 |
| 7 | Women | Employer and Inclusion drive agent | 48 |

Table 2.1 shows the sample description of the participants selected for the FGD. It is visible that the age range of the participants is 27-50 years with a mean age of 40.66 years. The expertise areas of the participants are diverse and this provides insights into target areas for women empowerment from various viewpoints. It also helps in understanding the challenges faced by women in different fields and those belonging to different backgrounds.

**Question for Focus Group Discussion:** Please share your thoughts and opinion regarding women's empowerment. Being experts and successful career women, please highlight the factors responsible for promoting, supporting, and advancing equity and equality for today's women, creating a way forward, towards positive well-being and success.

## III. FINDINGS

**Responses obtained from Focus Group Discussion:**

**Participant-1: "**Entrepreneurship is the starting of your ventures and can support women in realizing their dream of social, and financial independence. It will help women with and without disabilities to realize their true potential, as they can act as leaders, and career women and feel empowered by creating job opportunities for themselves and others. Nowadays, women can become social entrepreneurs whereby they focus not on profits but on creating a difference in, and within the society. This gives an immense sense of satisfaction and positivity. Presently, there are many schemes and platforms to support women to start their entrepreneurial ventures. This includes support for Start-ups, funding and training support by skill development councils, organizations like national Handicapped Finance Development Corporation (NHFDC) which support those with disabilities, Non-Governmental Organizations (NGOs) and other philanthropists who can help women and women self-help groups to become successful entrepreneurs"

**Participant-2: "**Employment provides women with a sense of control. It allows them to gain self-dependence which is highly liberating and positively defining for every woman. Engaging in productive work enables them to feel empowered and increases self-confidence and self-belief. It helps women to realize their true potential, as they earn for themselves and their families. Creating employment opportunities for women is the need of the hour to make women of today feel independent and happy."

**Participant-3:** "Paralympics offers a platform to showcase talent, skill, and one's limitless potential. Engaging in sports helps one to grow physically and mentally, and develop sportsmanship, discipline, and routine in one's life. It provides those with physical disabilities and impairments to participate and express themselves. It creates self-belief and develops the ability to accept challenges and move forward in life. It gives us a real voice and helps us to express our inner feelings with a positive sense of pride. It makes us feel useful and productive. Women amputees or those with any form of physical limitations should participate in such sporting events, as it creates a raised sense of self-worth, and helps you to gain societal acceptance. I am a hero to my family and this gives me a sense of driving force every day, but not many women know about such sporting events, eligibility, training opportunities, government

support schemes, and self-competencies involved, thereby creating a dire need to spread awareness about the same."

**Participant-4:** "I am a self-advocate for persons with disabilities and I take pride in supporting women with disabilities. I have received several awards which have raised my self-belief and made people consider me as their role model. I feel all women, with or without disabilities should receive support from their families and caregivers, as the first step to progress and feel empowered. My parents have always supported me immensely and helped me to see my true potential and realize my strengths, instead of focusing on my weaknesses. Being a self-advocate, I stand up for my rights, speak for myself and show the world what I am capable of. I don't let my disability stop me or my participation and I wish to carry the same message to all women and girls with disabilities. Do not stop, keep moving on, even if life pulls you back and deals with you harshly, you keep on moving on with the support of your parents and teachers and trainers, who must provide a sense of secure attachment"

**Participant-5:** "Being a special educator, I can support and provide training to Children with Special Educational Needs (CwSEN), and their families. My work helps me create a positive change in the lives of girls and women with disabilities and I feel that such individuals can gain a sense of empowerment through need-based support, provision of reasonable accommodations, ability-centric vocational training, and skill development. Being a trained special educator, I would like to state that training in the following key areas is essential to make WWDs feel independent and secure: a) self-help skills, b) functional curriculum, c) vocational skills, d) social skills and e) community orientation."

**Participant-6:** "The curriculum sets out the direction and reveals the path one has to run to achieve the goals and objectives. It is essential to include topics related to women entrepreneurs, women achievers, and success stories of women with and without disabilities in the school level curriculum as it will motivate other girls and women to select a path of self-enrichment and growth. It is truly essential to support girls and women on the path of self-development by designing the right curriculum. Several Indian philosophers and great leaders have dedicated their lives to the upliftment of women in our country. Removal of social prejudices and stereotypical thoughts can go a long way in changing negative social attitudes towards women."

**Participant-7:** "I am working as an employer which gives me the power to drive inclusion for all women irrespective of their abilities, skills, economic backgrounds. Working in the capacity of lead trainer and employment officer, I must identify factors that lead to the successful selection and retention of women employees. It is found that having digital skills, possessing good communication and social skills is the key to gaining lucrative career paths in today's times. The presence of such skills raises the coping ability of women and increases their resilience to societal stressors"

## IV. DISCUSSION AND CONCLUSION

From the FGD, certain strategies to promote empowerment and equality of women can be understood as: A) Empowerment through skill development: It is essential to support women's skill development through upskilling and reskilling ventures. It is essential to identify market requirements, and current trends and support women in becoming industry-ready. B) Engaging in Entrepreneurial ventures: It is also essential to support women in starting their entrepreneurial ventures, through capital investment, skill training, and providing support in developing managerial skills. C) Empowerment through Employment: Employment supports empowerment. It is very essential to help women develop their position and place in society, earning respect and increasing their self-worth. From this study, it can be clearly understood that women undergo various struggles and face discrimination, inequality, and numerous other challenges. D) Role revitalization through secure attachments with family/caregivers, peers and other members: It is seen that having the support of family, peers, society and community members increases the resilience, and coping skills of individuals. Secure emotional bonds provide a sense of security, positivity and stress bearing capacity, which allows better decision making and coping. Attachment is essential to form secure relationships and develop self- confidence. Attachment with peers, friends, family (parents), teachers and school all play an important role on shaping a child's emotional and social bonds with others. Perceived lack of empathy, difficulty in understanding, slow or poor perception and other difficulties owing to the disability result in lack of strong and secure bonding with attachment figures. Thus, it is seen that PwDs lack secure attachments which may cause poor self-concept, display of problem behaviors in public, poor understanding of self and others. Also, it is seen that though attachment between parents and children can be observed from the beginning of the prenatal period and or the postnatal period. However, in case of children with disabilities attachment is also based on the perceived parenting challenges which leads to poor attachment and loss of attachment especially among fathers while mothers adopt caregiving roles for the child (MilosVeleminsky et al, 2019). It is seen that formation of secure attachments improves caregiving system (Gilliath, Shaver and Mikulincer, 2005). Thus, it can be seen that positive attitudinal changes need to be brought about for PWDs, as it is seen to impact attachment orientations, which in turn impact their self-image, self-concept and perceived self-ability. Thus this study highlights possible strategies that one can adopt to promote holistic development such as empowerment through vocational training in desired jobs, access to full and equal opportunities in society, empowerment through skill development for employment, access to opportunities for entrepreneurial ventures and the role of attachment theory as a precursor for positive conceptualization, acceptance and role revitalization of WWDs.

## ACKNOWLEDGEMENTS

The researchers acknowledge the participation of all women entrepreneurs in the FGD.

## FIGURES AND TABLES CAPTION LIST

Figure 2.1. Phases involved in the study methodology

**Table 2.1** Sample description for the Focused Group Discussion

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**CHAPTER 30**

# UNCONSCIOUS GENDER BIAS IN THE POLARISED WORLD: AN ATTEMPT AT EVOLVING GENDER EQUALITY AS A HUMAN RIGHT

**Dr. Rupam Jagota**

**Associate Professor & HOD, Department of Laws, GNDU Regional Campus Jalandhar, Punjab**

**Anmoljeet Kaur**

**Research Scholar (JRF), Department of Laws, GNDU Regional Campus Jalandhar, Punjab.**

## ABSTRACT

Gender denotes to the socially produced qualities of women and men, whereas sex refers to biologically established features. People are born female or male, but they must learn to be girls and boys before they may mature into women and men. Gender equality refers to all men, women, trans people, and genders having equal access to rights, opportunities, and justice. Achieving gender equality is a challenging endeavour and the world's most significant human rights problem in the current situation. Physical, sexual, and emotional injury, threats, coercion, and arbitrary loss of personal liberty are all examples of gender-based violence. The activities are not just directed at women but also the transgender population. Many initiatives have been done across the world to address the issue of gender inequality. It has been acknowledged as a critical problem by the highest international agency, the United Nations Organization, which states that it is a fundamental right that should be universally safeguarded. Gender equality is a basic right guaranteed by the Indian Constitution, and the Honorable Supreme Court has issued historic rulings granting equal status to everyone and protection against violence and gender exploitation from time to time. This study is a modest attempt to examine the function of several international and national organizations in reducing gender disparity and their success rate.

## INTRODUCTION

Equality between men and women is a fundamental human right. Gender justice refers to a world envisioned by all men and women, boys and girls, who are weighed equally and equitably in the power structure. The knowledge and the resources are procured equitably but distributed unequally. Gender equality is not only a fundamental human right, but it is also necessary for a peaceful society, full human potential, and long-term progress.

"True equality requires that everyone be held to the same standards, regardless of colour, gender, creed, nationality, or political viewpoint."

By - Monica Crowley.

Article 2 of the Universal Declaration of Human Rights emphasizes towards everyone's rights and freedoms, regardless of race, colour, sex, language, religion, political or other opinions, national or social origin, property, or birth. The right to life and liberty, freedom from slavery and torture, freedom of thought and speech, the right to employment and education, etc., are all protected by human rights.[cccxlvii] These rights are available to everyone, irrespective of race or gender. These rights are extremely important for people's social and moral well-being and all persons since they provide them with freedom and dignity.

These fundamental rights are widely recognized as essential for men and women alike. Human rights are based on the principle of treating people with respect and treating them equally. Human rights offer significance to life since they are necessary for an individual's whole growth. Gender bias is a tendency to prefer one gender over the other. It is also the preferential treatment men receive, especially white men and heterosexual males. It is also labelled as 'sexist' as it describes the prejudice indeed based on her being a woman. It is visible in every segment of society, particularly within the process settings.

**WOMEN INEQUALITY**

Certain groups of people have always been vulnerable and denied their basic human rights. 'Women' is one such group. Half of the world's population is made up of women and girls, representing half of the world's potential. Women have essential fundamental rights, yet the dominant segment of society has always violated these rights. Women are discriminated against from the moment they are born. They experience prejudice in the form of abortions and subsequently female infanticide from the minute they are created. Gender boundaries are created at a young age and persist throughout a person's life.

"Discrimination against women, which denies or limits their equality of rights to those of males, is inherently unfair and an affront to human dignity." Discrimination against women is prevalent in all societies. The irony is that man's creator has always been exploited. Women are treated as second-class citizens all across the world. They are barred from participating in various activities due to their gender. Women's and girls' human rights are violated by gender inequality. The pay

disparity still exists. Women are paid less than males. Hence they earn less. In 2017, the salary difference between men and women for full-time workers was 19.5 percent. If the yearly earnings ratio continues to change at the same rate as it has since 1960, men and women will not achieve parity for another 41 years until 2059.

Discrimination against women exists in all aspects of life, public and private. In many nations, women are barred from participating in athletics and sports. Saudi Arabia recently granted women voting rights in 2015, and women were only permitted to drive a vehicle in 2017. These women are harassed in person, but they are also harassed online. According to research issued by the Broadband Commission, about 75% of women online have experienced harassment and threats of violence. They are regarded to be their husbands' property. Their spouses torment them for the rest of their lives. Even after their spouses' deaths, women are subjected to various ills, such as Sati, which was most prominent in India's early years. Widows are also seen as unclean and degrading. Gender justice appears to be a utopian concept in our environment. Mr. António Guterres, the UN Secretary-General, has remarked that achieving equality among gender and empowering females is the on-going business of our time and the world's most significant human rights concern. These reflect a clear demarcation between theory & practice, the reality of a world equating the females as alike appears to be far-fetched.

Despite significant advances, women's rights remain a primary concern worldwide, particularly in North Africa and the Middle East. Women face a systematic denial of rights, with legal discrimination putting them at a disadvantage to their male counterparts. As a result, women worldwide are unable to fully exercise their fundamental human rights. Learning more about this issue illustrates how vital gender equality is for long-term growth. These are only a few examples of gender disparity in today's world.[cccxlviii]

i. Inability to move

Despite several protests, women in Saudi Arabia are prohibited from driving and must rely on their dads or husbands to go about. Husbands have the right to prevent their wives from leaving Egypt and Bahrain, but other countries require formal permission from a husband to travel.

ii. Marriage Liberty

According to the United Nations, by the age of 18, 40% of young women in South Asia and Sub-Saharan Africa are married. Child marriage not only raises the risk of difficulties during childbirth, which can be deadly, but it also violates the fundamental human right to choose one's mate. In Pakistan, women are expected to accept arranged marriages, and refusing to do so can result in "honour murders," which the government usually ignores.

iii. Divorce Rights That Discriminate

Most nations in the Middle East are controlled by religious beliefs, and gender discrimination is widespread. Because males are often thought to be better, they may divorce their spouses quite readily, even if it is only via vocal renunciation. Women, on the other hand, suffer a more significant number of difficulties. Abusive women in Lebanon are not even allowed to seek divorce unless an eyewitness is ready to testify.

iv. Nationality

Women in the Middle East do not have the right to pass citizenship on to their children, except in Israel, Iran, Tunisia, and portions of Egypt. Men, on the other hand, have the power to pass citizenship on not only to their children but also to their non-national spouses.

v. Combat on the Front Line

Women are still not allowed to serve in frontline combat in Turkey and Slovakia, despite being allowed to join the army. Gender disparity remained in the United Kingdom as recently as 2016.

vi. Parental Custody Rights

In certain nations, courts automatically give fathers custody rights, leaving women without any means of financial assistance. In Bahrain, for example, family rules are not uniform, allowing courts to deny women custody of their children.

vii. Terrorism

Women are increasingly susceptible to violence due to unequal legal rights. Spousal rape is one of the most visible kinds of abuse against women in today's world. The recent Indian judgment that rape laws do not apply to married couples exemplifies the sexual oppression and violence to which women are still subjected.

viii. Obstacles in the Workplace

Women are still at a disadvantage in terms of earning power, even in industrialized countries. Males continue to dominate the highest-paying sectors, with women earning just 77 percent of what men earn for the same amount of work. At this rate, gender disparity may not be eliminated for another 45 years.

ix. Land Ownership Restrictions

Even though their Constitution asserts equal rights, customary or religious law effectively forbids females from owning land in several nations. Land ownership and governance tend to go to the male head of the household in several nations, such as North Sudan, Tanzania, and Lesotho. Women and males are both able to get a recorded land title in Zambia, although customary land tenure is also recognized, making it unlikely that a woman will be assigned property without her husband's consent.

x. Educational Opportunity

Women account for more than two-thirds of the world's illiterate adults, and access to education is particularly difficult in Afghanistan, where anti-feminist militias destroy numerous institutions. Female rights are also jeopardized owing to a lack of understanding of what they should be entitled to, which can only be addressed through more educational opportunities.

## INTERNATIONAL LAWS TO ERADICATE GENDER INEQUALITY

### 1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a watershed moment in human rights history. For the first time, it establishes universal protection for fundamental human rights. In the declaration's preamble, governments and their citizens pledge to take steps to protect the documented human rights.

### 2. Sustainable Development Goals (SDGs) 2030

Many initiatives have been done across the world to eradicate all types of violence against female gender, including sexual violence. Transforming our world: the 2030 Agenda for Sustainable Development ("Agenda 2030") was accepted by the United Nations General Assembly in 2015. It calls for eradicating gender discrimination and empowering women, as well as efforts to "eliminate all forms of violence against all women and girls in the public and private spheres" and "ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies, and practices."

### 3. Declaration on The Elimination of Violence Against Women, 1993

Article 3 of the 1993 Declaration states that women have the right to equal enjoyment and preservation of their basic as well as human rights in every field of the society. Some of the rights are:

(a) The right to life.
(b) The right to equality.
(c) The right to personal liberty and security.
(d) The entitlement to an equal level of legal protection.
(e) The right to be free of discrimination of any kind.
(f) The right to the best physical and mental health that one may achieve.
(g) The right to reasonable and favourable working circumstances.

(h) The right to be torture free.

In addition, states were required by this proclamation to take measures and policies to eliminate violence against women.

#### 4. Convention on The Elimination of All Forms of Discrimination Against Women

The convention was passed by the United Nations General Assembly in 1979. It specifies what constitutes gender discrimination and establishes a national action plan to combat it. The Convention ensures that men and women have identical access to resources and equal opportunities in public and political domain, comprising the right to vote, education, health, and work. It makes states responsible for taking all necessary steps, including legislation and temporary exceptional measures, to ensure that women have access to all of their human rights and basic freedoms.

## INDIA'S EFFORTS TO COMBAT GENDER INEQUALITY

Women have constantly been subjected to horrors throughout history, and India is no different. Women in India are revered as Durga, Shakti, Laxmi, and Saraswati on the one hand, yet viewed as sexual objects on the other. They have the position of Devi or goddess in theory, but in fact, she is treated as the property of men, with no rights. This is the country's brutal reality. Women are primarily reliant on their male counterparts in terms of opportunities and resources. Women's rights and opinions are not respected even though they work hard and support their families. They are subjected to gender prejudice. Even for the same amount of effort, they get paid less than men. They confront not just prejudice but also oppression and violence. Traditions are one of the factors that contribute to such circumstances.

Due to social constraints, women are denied opportunities. Women are constantly treated as second-class citizens in today's patriarchal culture, which stifles their development. Women's position, on the other hand, has improved in recent decades. Women are leaving their homes and joining other platforms. They are gaining access to their rights. Poverty and a lack of information are severe hurdles to women's freedom and empowerment in rural communities. How ironic that, after bestowing Saraswati status to women, we refuse to allow them to read.

The majority of Indian women are illiterate. Even though the country's Constitution states that women have equal rights to men, women are nevertheless powerless and abused both within and outside their homes. In India, there is a significant disparity between male and female literacy rates. According to the 2011 census,[cccxlix] males and females had a literacy rate of 82.14 percent and 65.46 percent, respectively. Women are supposed to be dependent from the time they are a kid, first as a daughter, then as a wife, and finally as a mother.

In general, families do not invest in their daughters' education because they believe a girl's appearance is more significant than her education. She is relegated to household duties. In India, the number of people who have been raped has increased dramatically. Registered rape cases in India have surged by 900 percent in the last forty years, according to the National Crimes Record Bureau. In 2006-2007, crimes of cruelty and violence committed by the husband and his family against the wife (for dowry or otherwise) accounted for more than 3% of all crimes against women. The lawmakers adopted effective measures to stop the current crimes against women. The Indian Constitution's drafters made every effort to make the document women-friendly. Article 14 of the Indian Constitution states that no one should be denied equality before the law or equal protection under the law within India's borders.[cccl] Article 15(1) forbids the State from discriminating against any person solely based on religion, race, caste, sex, place of birth, or any combination of these factors. The State is allowed to provide specific accommodations for women and children under Article 15(3). Article 16 guarantees equal opportunity in public employment regardless of religion, race, caste, sex, descent, place of birth, residency, or any combination of these factors. Article 39 lays forth some policy guidelines for the State to follow, with Article 39(a) stating that the State shall direct its policy toward ensuring that all citizens, men and women alike, have a sufficient means of subsistence. Article 39(e) of the Constitution ensures that employees' health and strength and children's delicate age are not exploited and that people are not forced to engage in occupations that are unsuitable for their age or strength due to economic necessity. According to Article 51(A)(e) of the Constitution, it is the responsibility of every citizen to oppose behaviours that are demeaning to women's dignity.

Apart from these, several other Acts and Provisions ensure women's equality and protection, including provisions in the IPC and CrPC, as well as Acts such as the Maternity Benefit Act of 1961, the Minimum Wages Act of 1948, the Pensions Act of 1987, and the Sexual Harassment Act of 2013. In India, the Dowry Prohibition Act of 1961 and the Protection of Women from Domestic Violence Act of 2005 were passed to prevent and address dowry and domestic violence in the country. The Indian judiciary has taken attempts to address the injustices that women face regularly. Some of the magnificent instances were the recent judgments on Triple Talaq[ccli] and the Sabrimala Temple.[cclii] However, these legal provisions have not been very effective since women are either unaware of or unwilling to employ the State's measures for their upliftment due to the persistence of old societal obstacles. Women in India are being exploited in the guise of societal barriers, customs, and traditions, despite the country's 71-year independence.

**TRANSGENDERS**

Despite significant progress achieved by governments, one group of individuals, transgender people, continues to be denied human rights or even fundamental rights. Every human being has

the right to equality, freedom from discrimination, life, liberty, and personal security; freedom from torture and humiliating treatment; to be recognised as a person before the law; equality before the law; and the right to marry and have a family, according to Articles 1, 2, 3, 5, 6, 7, and 16 of the Universal Declaration of Human Rights, but Transgender people have always denied these rights. Discrimination against transgender persons occurs in many sectors of life, including work, housing, and public facilities. Because of their gender identification, the community has long suffered prejudice and violence. They are beaten and, in some cases, executed. They are not provided with equal employment possibilities.

Even though they are people, they are not accorded this status. Because they are distinct from the mass of the people, they are regarded as malevolent and are not readily accepted in society. In the United States, violence against transgender people continues. In 2018, more than 20 transgender persons were slain. Between 2008 and 2016, about 2,500 trans persons were killed in dozens of nations, according to Transgender Europe. According to a poll of transgender persons, 47 percent have suffered discrimination in employment, promotion, or job retention, and 78 percent had been harassed or mistreated at work because of their gender identification. Transgender students endure harassment from their classmates in school as well. Because they are "different," transgender adolescents are three times more likely to be ostracised by their classmates.

In the landmark case of the National Legal Service Authority of India v. Union of India,[ccliii] the Honorable Supreme Court of India held that transgender people should be classified as the third gender and that they should have the same fundamental rights as males and females. The Transgender Persons (Protection of Rights) Act, 2019 was also passed to protect transgender people's rights.

**UNCONSCIOUS GENDER BIAS**

The human mind is constrained to perceive that woman are subordinate to men, and the behaviour is tuned naturally if you are groomed in that fashion. Men are believed for the field and women for the home. The question of evolving a zero-tolerance discriminatory policy may not prove outrightly to be effective since it is difficult to change the attitude overnight. This behaviour or transformation is usually inaccessible and therefore requires a systematic, multiple, and diversified approach supposed by a sincere cultural change to evolve a more neutral workplace culture. This positive change to perceive a society without gender prejudice focuses on evolving diversified self-awareness progress where rather than being judgemental, there is a need to create an internal self-motivation to transform their negative attitude and behaviour towards positive thinking so that the behaviour of the people is reflected in the new transformed environment. This undoubtedly would bring about a positive change in viewing the issue of gender inequality and

ensuring a better representation, participation, and more systematic approach toward the existing gender bias in the society.

Women's participation is usually restricted by the barrier she encounters in their professional and personal advancement. It is undoubtedly a challenge for women since workplaces are associated with unconscious gender biases emerging from the deep-rooted traditions and customary biases. The development of women as an independent workforce excelling in every field was traditionally designated as the exclusive domain of men. Her performance and evaluation predict her leadership skill, management criteria, and competency resulting in her growth and development even though she is restricted in her mobility due to her domestic obligations. These factors have failed to impose restrictions on her work performance, deliverance of projects assigned to her, achieving excellence in her decision, and ensuring accountability. Women as a class have attempted to rise above the stereotyped image created for them to prove their mirth.

## SUGGESTIONS

The researcher has laid down few suggestions to restrict gender discrimination on all platforms and to ameliorate the sufferings of the fairer gender.

1. The process should focus on both sides, learning as well as training. Training should be diversified both for unconscious and conscious bias.
2. Sensitization and encouraging women to be representatives should be the goal so that there is significant progress towards attaining gender parity.
3. There is a need for a systematic, unified understanding of the demands of the weaker gender to address them with a moderate synchronized approach between her identification and recognition as an individual.
4. NGOs and social organisations should be encouraged to participate in gender informative programmes at the grassroot level to educate women and weaker segments of their rights guaranteed under the Constitution and various legislations, so that they can actively participate along with the learning process to strike a balance between the individual interest and protection of the community as a whole.

## CONCLUSION

We are all born with the same rights and freedoms. The meanings of these lines are only found in writings. It has not been put into practice. Steps have been taken from time to time to guarantee that women and LGBTQ people are treated equally. Despite all of the efforts, women, transgender people, gays, lesbians, and members of the Gender-Queer community continue to be mistreated. They continue to experience prejudice and violence, which is on the rise. Despite several acts,

agreements, and regulations, violence continues to be one of the most common kinds of human rights breaches. We have gone a long way, but there is still a long way to go. Gender equality is a fundamental right that helps a healthy society characterized by respectful interpersonal relationships. Like any other human being, women have every right in the world to do whatever they choose, but society constantly stands in the way. We are all people, and we must recognize the importance of empowering, supporting, and loving one another. Without it, we will not be able to progress as a civilization. We must all strive for gender equality. Over the previous decade, more than one person has died each month due to transgender-based discrimination or hatred. In work culture, there is a gender difference between males and females. However, there are such aspects of human behaviour, particularly related to caste difference, colour, lingual, and geographical division, of which the person may be ignorant. Usually, there is an involuntary reaction from others at the workplace resulting in unpleasant experiences or past experiences. As a result, there are limiting beliefs and the fear of exposure to various environmental influences in the workplace. The goal to be achieved is not distant.

**CHAPTER 31**

# Justice and Legal Aid

Mausam
Research Scholar, School of Law, Lovely Professional University, Punjab, India.
Email Id- msmgtm011@gmail.com

## 18. ABSTRACT

Among the various types of poor and marginalized masses in India, Juveniles are the most vulnerable, they follow the track of crime due to lack of proper parental care. Juvenile delinquency is especially widespread among the socio-economically disadvantaged people of the country. In the early stages, juvenile delinquents are in desperate need of legal assistance to help them deal with their legal issues. Even in the states like Haryana Juveniles do not have access to free legal aid. Those who are denied free legal assistance are left helpless and forced to hire private legal counsel. In many cases, children in conflict with law are not informed of such legal knowledge by juvenile justice authorities or child welfare commissions. Therefore, action by the state is required to develop a proper system that includes quality legal education and awareness programs to aid and make justice within the reach of such needy sections of society concerning legal aid incorporated under the Directive principles of state policy.

**Keywords:** Children, Legal, Lawyer, Juvenile justice, Protection

**Abbreviations:**

| | |
|---|---|
| CILAS | Committee for the Implementation of Legal Aid Services |
| PIL | Public Interest Litigation |
| NALSA | National Legal Services Authority |
| JJB | Juvenile Justice Board |

## INTRODUCTION

One of the most notable features of the Constitution of India, 1950 is that it obligates the judiciary to hold a dignified and substantial role. The primary goal of every judicial process in a country is to provide justice to the people, and the concept of access to justice includes both free legal aid and legal empowerment. When one considers the scenario in a nation like India, diligent people are below the poverty line and unaware of their rights, and is unable to arrange or pay lawyers to access various courts of law. As certain weaker and underprivileged groups of society are deliberately denied access to justice, legal aid services will play a vital role in formulating an appropriate justice delivery system for all social and economic backward strata. Article 39A

of our Constitution establishes the right to free legal assistance as a fundamental right. Article 14 guarantees equality before the law for all people, regardless of caste, creed, or economic background. In addition, the National Legal Service Authority of India (NALSA) was established in 1995 under the Legal Services Authority Act, 1987, with the objective of providing free legal services to the economically weaker sections, and State Legal Services Authorities were formed to hold out the policies of the National Legal Services Authority. Legal aid has contributed significantly in past few decades, though there are numerous major loopholes that weaken the dynamic nature of legal aid. The Juvenile Justice Board's function, according to Section 8 (3)(b) of the Juvenile Justice Act 2015, is to ensure the availability of legal aid for children through legal service institutions. There is strong evidence that free legal aid is extremely difficult to get by for those who really need most -juveniles in conflict with law.

## LEGAL AID IN INDIA

After Independence NH Bhagwati J, then of the Bombay High Court, and Trevor Harris J, then of the Calcutta High Court, launched legal assistance programmes.[1] The issue of legal assistance was also brought to the law commission, which was charged with offering suggestions on how to make the legal aid programme a more effective tool for achieving social justice. Under the guidance of eminent jurist M.C Setalvad, the panel made recommendations in its XIV report, stating that free legal aid is a service that the state should give to the poor. The Commission also proposed that the word "pauper" be replaced with "poor persons"[2] in Order XXXIII CPC. In 1960, the Government of India created a comprehensive programme of legal aid in all courts, including tribunals, based on the recommendations of the Law Commission. It called for the formation of state, district, and tehsil-level committees. However, the system did not survive due to governments' incapacity to execute the scheme due to a shortage of funds.

In 1973, the Indian government formed the Krishna Iyer Committee, an expert committee charged with determining how the states could develop and implement a legal aid programme. The Committee recommended that legal aid committees be established in each district, state, and central levels. Law clinics in universities and lawyers should be enlisted to assist in the formation of autonomous corporations. To successfully execute the Legal Aid Scheme, the Government of India constituted a commission, chaired by PN Bhagwati J. In rural regions, it promoted the idea of Legal Aid Camps and Nyaylayas. The Committee suggested that the principle of legal aid be included into the constitution. As a result, Article 31-A was added to the State Policy Directive Principles.[3]

The Central Government formed the Committee for the Implementation of Legal Aid Services

(CILAS) in 1980, and it continues to exist today. It still funds and supports many committees at various levels. It established the Supreme Court Legal Aid Committee and provides legal aid to state legal aid and advice boards as well as paralegal institutions. In addition, CILAS was obligated to undertake a study on the impact of PIL on Legal Aid Schemes.[4] The court said "it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek liberation through the court's process that he should have legal services available to him……Free Legal services to the poor and the needy is an essential element of any "reasonable, fair and just procedure"[5]

Section 304 of the Code of Criminal Procedure, 1973 states that it is the Constitutional responsibility to give legal aid (at state expenditure) to the accused in the beginning when he is initially brought before the Magistrate and continues whenever he is brought before the Magistrate for remand.

According to Article 14 (3) of the International Covenant on Civil and Political Rights "The right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interest of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it."[6]

The Legal Services Authorities Act of 1987 was created to provide a legislative framework for legal aid programmes across the country. After the Amendment Act of 1994 made certain changes to the Act, it was eventually put into effect on November 9th, 1995. The Legal Services Authorities Act, 1987, clearly fulfils the state mandate set forth in Articles 39 and 39A of the Constitution of India, 1950 stating that legal services authorities are established to provide free legal services to the poorer sections of society in order to ensure that no citizen is denied justice due to economic or other disabilities.

[1]Rajeev Dhawan (Ed). Justice Nh Bhagwati (1334) and Justice Trevor Harris of Calcutta," Law as Struggle: Public Interest Litigation in India" (1994) 36 JILI 325.

[2] Roma Mukherjee; Women, Law and Free Legal Aid (Deep & Deep, New Delhi 1998).

## Legal Services Authorities Act 1987[7]

Section 12 of Legal Services Authorities Act 1987, laid down the list of persons who are entitled to legal services; it includes:

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the

Constitution;

(c) a woman or a child;

(d) a mentally ill or otherwise disabled person

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956(104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987); or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

[3] Rajeev Dhawan," Law as Struggle: Public Interest Litigation in India" (1994) 36 JILI 302.
[4] Government of India, "Report on National Judicare: Equal Justice Social justice" (1778) (Bhagwati Krishna Iyer Report)

[5] John Rawls, A Theory of Justice

[6] Article 14 (3) the International Covenant on Civil and Political Rights

## LEGAL AID IN JUVENILE JUSTICE SYSTEM

Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any Court, Tribunal or Authority.[8] Only some classes of society are eligible for free legal aid under the provisions of the Legal Service Authority Act, such as lower castes, women, children, human trafficking victims, people with disabilities, and some economically marginalised groups. Children seem to be the most vulnerable of these categories, having a considerably great difficulty seeking justice. As a result, this vulnerable section

represents major challenges to our justice delivery system, demanding to take responsibility for them.

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[7] http://nalsa.gov.in/acts-rules

[8]https://nalsa.gov.in/services/legal-aid/legal-services#:~:text=Free%20legal%20aid%20is%20the,any%20Court%2C%20Tribunal%20or%20Authority.

The Juvenile Justice Act, 2015 is primarily intended to address the needs of children who are in conflict with the law and in need of care and protection by meeting their basic needs through proper care, protection, development, treatment, and social reintegration through a "child-friendly approach" in resolving cases that are in the best interests of children and promoting their rehabilitation through institutions and bodies established under the Act.

The Juvenile Justice Board's function, according to Section 8 (3)(b) of the Juvenile Justice Act 2015, is to guarantee that legal aid for children is available through legal service institutions.

The Child Welfare Committee's powers and obligations, according to Section 30 (xvii), include providing children with access to adequate legal assistance.

Institutions authorized under the Act for providing rehabilitation and reintegration services may incorporate legal aid if essential, as per Section 53(1) (viii).

Guidelines issued by the National Legal Services Authority (NALSA) for Legal Services in Juvenile Justice Institutions in relation with the implementation of the Hon'ble Supreme Court of India's judgement[9] dated 19.08.2011 in the matter of the establishment of legal aid centers attached to JJBs.

a. When a child is brought before the Board by the police, the Board should call the legal aid lawyer in front of it, introduce the juvenile/parents to the lawyer, and explain to the juvenile and his/her family/parents that it is their right to have a legal aid lawyer and that they do not have to pay any fees for it.

b. Before holding a hearing, the JJB should allow time for a legal aid lawyer to meet with the juvenile and his or her parents.

c. The Juvenile Justice Board shall indicate in its order that a legal aid counsel has been appointed, and also the name and presence of the legal aid counsel.

d. The board shall ensure that a child and his parents have enough time to become acquainted with legal aid lawyers and to discuss the matter before the hearing.

e. The Juvenile Justice Board should ensure that no juvenile case goes unrepresented by legal counsel.

[9] Sampurna Behrua V. Union of India & Ors. W.P. No. (C) No. 473/2005

f. At the end of each month, the Juvenile Justice Board shall give a certificate of attendance to legal aid lawyers and review their work done reports.

g. In the event of a lapse or misdeed by legal aid counsels, the Board should notify the State Legal Services Authority and take corrective action.

h. The Juvenile Justice Board and legal aid lawyers should collaborate in an amicable manner, with solidarity, and cooperation. It has the potential to improve everything.

i. By reading and participating in workshops/trainings on Juvenile Justice, Legal Aid Lawyers can have a better understanding of Juvenile Justice Law and Juvenile Delinquency.

j. A Legal Aid Lawyer should keep a diary at the office where dates of cases are entered on a regular basis.

k. If a legal aid lawyer is on leave or unable to attend Board on any given day, he or she shall ensure that cases are handled by a colleague legal aid lawyer in his or her absence and that no cases are overlooked.

l. A legal aid practitioner should not view legal aid job as a kind of generosity and should strive to provide the best service possible.

m. At the monthly meeting with the District Legal Services Authority, the Legal Aid Lawyer should discuss questions, concerns, and problems.

n. A legal aid lawyer should keep track of each case's progress and write daily entries.

o. A Legal Aid lawyer should not wait to be called by JJB before taking on a case. By meeting families that come to JJB, he or she should make an attempt to take up cases on his or her own.

p. Legal Aid Lawyers should build faith and confidence in the children and families whose cases they handle, and they should make every effort to provide them with the best possible assistance.

q. The terms and conditions of empanelment on the Legal Aid Panel shall be followed by legal aid lawyers.

r. Legal Aid lawyers shall submit their monthly work done report to JJB for verification within one week of the end of each month, and then submit it to the appropriate authorities with an attendance certificate for payment processing.

s. Legal Aid lawyer must tell the client of the next hearing date and provide his or her phone number so that they may contact him or her in the event of an emergency.

Juveniles are the most vulnerable members of India's poor and marginalised populations, since they follow the path of delinquency due to a lack of sufficient parental care and economic status. Juvenile delinquency is more common among the country's socioeconomically disadvantaged. Juvenile offenders in the early phases of life are in critical need of legal aid in order to deal with their legal issues.

## 19. STATEMENT OF THE PROBLEM

The proposed study aims to find out the extent of legal aid provided for the protection of the rights of children under the Juvenile Justice System.

## 20. OBJECTIVES

The following goals will guide the research:

• To determine the socioeconomic status of juveniles living in Observation homes.

• To learn about the legal aid provided to Juveniles in Observation Homes.

## 21. TOOLS OF DATA COLLECTION

The research is based on a sampling process. The primary as well as secondary data has been used. This research aims to find out the extent of Legal Aid provided to the juveniles living inside the Observation Homes. The researcher attempted to learn more about the socio-economic status of the inmates, as well as the extent of Legal Aid provided to those who are in need. This study also aims to identify government agencies and law enforcement agencies, as well as the juvenile justice system and other organisations that work in the field of child rights and provide Legal Aid to the Juveniles. The overarching goal of the study is to identify the issues and create knowledge that will assist policymakers and other authorities in implementation of legislation and taking preventative measures to provide Legal Aid to all the needy Juveniles.

## 22. METHODOLOGY

For study researcher selected two Observation Homes and one Place of Safety located in different district of Haryana. The Research asked some specific questions from all the Juveniles selected inside the Observation Homes and Place of Safety. Thus, the total sample size for the

research is 275. To estimate the socio-economic profile of juveniles, questions regarding life prior to the institutions, occupation and legal aid provided to them were asked by researcher. Simple descriptive statistics is used to analyse the results.

## 23. RESULT AND DISCUSSION

Figure 1. Status of the Juveniles and Legal Aid provided to them as on 25th September 2021.

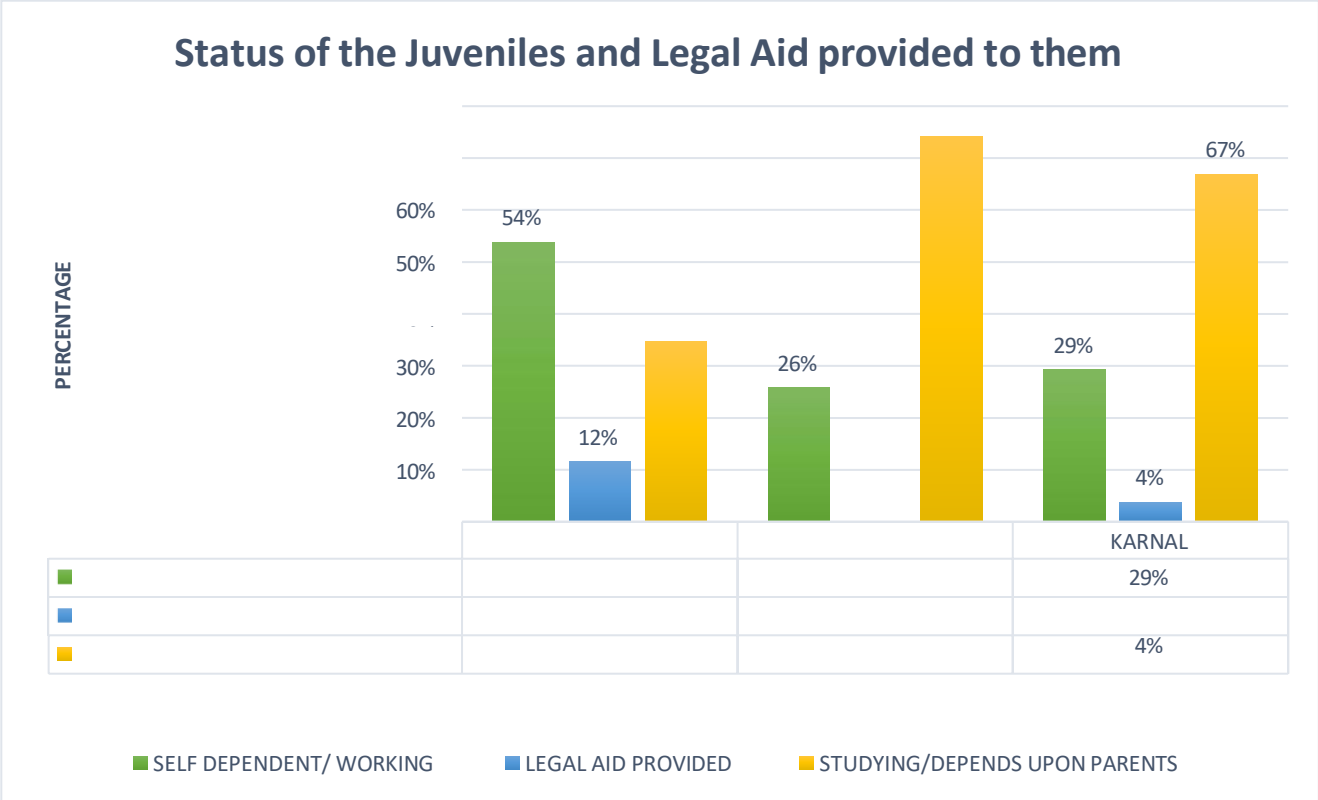


Figure 1 suggests most of the Juveniles from the different Observation Home/ Place of Safety were studying and depend upon their parents before they enter into the Observation Home/ Place of Safety. The figure also suggests that 54% of Juveniles from Observation Home Ambala were self-dependent and working at their own and only 12% of them have been provided Legal Aid by the authorities. The table represents that 26% of the total Juveniles inside Observation Home Hisar were self-dependent and working for their living. Legal Aid is not provided to any of them. Similarly, the table represents the condition of Place of Safety Karnal that 29% of the juveniles were self-dependent and only 4% were provided with Legal Aid. In the Observation Home/ Place of Safety, the situation is not found good, as Juveniles responded that they are not provided with Legal Aid and they have hired their private counsel.

There are 16 legal services clinics in the state of Haryana for Juvenile Justice Board.

Even in a wealthy state like Haryana, statistics indicates that free Legal Aid received by the Juveniles is very less. Those who do not get free legal assistance are left defenceless and forced to hire private legal counsel, which may cost a fortune and destroy their hard-earned money. Juveniles are frequently not educated on such legal expertise at Juvenile Justice Boards and Child Welfare Committees, resulting in a failure to help them. After putting in place all of its mechanisms, the State Legal Services Authorities (SLSA) focused its efforts on providing legal assistance to adults. A Probation Officer, who is both a legal and a social officer in the system, assisted Juvenile Justice. The probation officer (PO) is responsible for bringing the juvenile before the Juvenile Justice Board, presenting the case, and assisting the Child in Conflict with the Law (CCL) with all social and legal issues. The rise in the number of private legal professionals handling matters of child in conflict with law has resulted in child exploitation. It is discovered that the police and private attorneys have a connection, and that the juveniles are "directed" to choose lawyers at the police station. The police officer would also play the role of a good Samaritan by directing the child in conflict with law to certain attorneys in exchange for a commission. As a result, the state must take action to build a competent system that incorporates excellent legal education and awareness initiatives to assist and make justice accessible to such needy elements of society, with reference to legal assistance included under state policy directives.

## 24. CONTRIBUTION OF JUDICIARY

The highest court of justice has made numerous historic judgments addressing access to free legal aid based on the interpretation of the constitution, progressively establishing an effective judicial system that provides free legal services to the poor and marginalized in our society.

In the case of *Ramakant v. State of Madhya Pradesh*[10] the Supreme Court of India concluded that neither the Constitution nor the Legal Service Authority Act, 1987 distinguishes between a trial and an appeal for the purpose of giving free legal help to an accused person in detention. As a result, the high court was required to offer legal help to the accused at the expense of the state. The matter was remanded to the High Court for further consideration. Even the NALSA Act of 1987, which sets the requirements for providing legal aid, does not distinguish between the trial and appeal stages.

[10] *Ramakant v. State of Madhya,(2012) 8 SCC 533.*

In *Hussainara Khatoon v. State of Bihar*,[11] it was determined that free legal assistance is an essential component of a defendant's right to a fair trial and implicitly ensures article 21, the right to a dignified life. As a result, in order to defend rights given under Article 21, article 39-A makes it necessary for the state to properly administer this fundamental right.

In *Khatri v. State of Bihar*,[12] it was held that just because an accused does not request legal assistance does not mean he will not be provided with legal assistance at no cost to the state; additionally, if free legal aid is not provided to the poor, ignorant, and illiterate, it is worthless and merely a promise on paper.

It was decided in *Suk Das v. Union Territory of Andhra Pradesh*[13] that it is now proven law that a person accused of an offence that may jeopardise his life or personal liberty has a basic right to free legal help at the expense of the state, and that this is inherent in Article 21. No indefinite confinement of a person who cannot afford it.

In *Anokhilal v. State of Madhya Pradesh*[14] the Apex Court determined that the amicus curiae in this case was not given enough time to prepare, which constituted a denial of the right to legal help since it was not genuine and meaningful. The court overturned the conviction and punishment and ordered that the matter be re-examined. The court then established rules to prevent repetition of the situation: in cases where a life sentence or death sentence is possible, only advocates with at least 10 years of experience should be appointed as legal aid counsel; Senior Advocates must first be considered for appointment as amicus curiae in the High Court during the confirmation of a death sentence; and counsel must be given sufficient time to prepare.

## 25. CONCLUSION

A core human right is to have access to affordable and speedy justice. However, in practise, all legal services have gone to the highest bidder. The best available counsels are given to wealthy individuals and major organisations. There should be a system of judicial administration that is accessible to the poorest people. Equal access to the law for the wealthy and the poor is critical to the maintenance of rule of law. Overall, the purpose remains the same, which is to provide justice to the marginalised groups that are victims of atrocities. Finally, it can be inferred from the examination of legal aid in India that thorough inspections of legal aid

[11] *Hussainara Khatoon v. State of Bihar,(1980) 1 SCC 98.*

[12] *Khatri v. State of Bihar,(1981) 1 SCC 627.*
[13] *Sukh Das v. Union Territory of Andhra Pradesh,(1986) 2 SCC 401. Bar council of India v. Union of India,(2012) 8 SCC 243.*

[14] *Anokhilal v. State of Madhya Pradesh AIR 2020 SC 232 CRIMINAL APPEAL NOS. 62-63 OF 2014*

organisations at regular intervals, as well as improving the quality of legal help by incorporating qualified legal aid counsels, are necessary to remove the stigma of incompatible free legal aid. Our justice-delivery paradigm should be able to scale up in response to changing societal requirements and expectations. As a result, an attempt must be made to replace the current rigid justice apparatus, which has limited space for improvement. By combining efforts to provide proper access to justice through paralegal aid services, effective alternate dispute resolution mechanisms, legal institutions engagement with people through legal aid cells, and proper monitoring of the current system, the state of legal aid services in the country can be revived. The joint goal of the judiciary, government, and legislature to provide justice to the last man in need might restore marginalised people's faith in the justice delivery system.

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**CHAPTER 32**

# Indian Co-operative Federalism to Competitive Federalism: An Analysis

**Dr. Geeta**
**Assistant Professor, School of Law, Lovely Professional University, Phagwara, Punjab.**
**geeta.26154@lpu.co.in**

## Abstract

With the liberalisation, privatization and globalization, the Indian federalism started shifting from co-operative federalism to competitive federalism to achieve overall inclusive development. But, being a land of diversities and uneven development and different political parties at Centre and States, some issues like GST Compensation to states, farmer issues and withdrawal of consent for co-operation to Central Bureau of Investigation and fear of threat to unity and integrity of nation have emerged with changing trend of Indian federalism. In this context there is a need to examine the concepts of competitive federalism a country like India. The present paper focuses on to examine competitive federalism and to suggest means while adopting doctorial research methodology in the furtherance to overall development and promotion of unity and integrity of India with a futuristic approach.

**Key Words**: Good & Services Tax, Farmer issue, Central Bureau of Investigation, Combative Federalism, Unity and Integrity of India, Combating Federalism

## 1. Introduction

**The term 'Federalism' is derived from the Latin world "*Foedus*" which means an 'agreement' to share powers between the States and Centre government** (Shah, 2007). **The term is defined as a " form of Government in which sovereignty or political power is divided between the Central and local Governments, so that each of them within its own sphere is independent of the others** (Paleker, 2006). Indian federalism is a combination of both federal government and

unitary government (*S.R.Bommi vs.UOI*, 1994). **Indian country witnessed the trauma of "the great divide" and "freedom at midnight" at the cost of destruction of property and thousands of lives. Therefore, it had been priority of our political leaders to bring British India and Native States together to attain the Dominion Status and to explore the possibilities for bringing the two principal communities together in a workable political system** (S.P.Aiyar and Usha Mehta, 1965)**.**

Initially, for securing the unity and integrity of country, the founding father of our Constitution accepted the need of a strong centre. Indian federalism may be address as an outcome of early history of independence, administrative work, partition, transfer of powers, food crisis, need of integration of the Indian States, partial autonomy of the Provinces and other adverse economic condition of the country (R.C.S. Sarkar, 1986).

In the words of Mr. N Gopalaswami Ayyangar-

> "*..one of the essential principles of a Federal Constitution is that it must provide for a method of dividing sovereign powers so that the government at the Centre and the government in the units are each within a defined sphere, co-ordinate and independent*…" (Constituent Assembly Debates, 38).

**Gradually, federalism found a significant place in the Constitution of India as a unique feature of the Constitution.** Dr. Ambedkar stated that-

> *"The use of the term 'Union' is deliberate. I can tell you why the Drafting Committee has used it .The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the states to join a federation and that the federation not being the result of an agreement, no state has the right to secede from it."*(Constituent Assembly Debates,43).

As per the requirement of the time, quasi- federalism with the strong centre was found to be most suitable for a country like India to create strong bound between the different units (Jain And Subhash C. Kashyap, 1972). For the purpose, Inter-state Council under Article 263, Recognisation of public acts, records and judicial proceedings under Article 262, free inter-state trade, commerce and intercourse throughout the territory of India under Article 301, adjudication of inter-state disputes involving legal rights by the Supreme Court under Article 131, exclusive legislative powers of the

Parliament in relation to matters of national interests under Article 249, implementation of foreign treaties under Article 253, common interest of states with their consent under Article 252, and exclusive powers of direction for the administration of states under Article 256, Article 257 (The Constitution of India, 1950) with financial arrangement have been arranged for promotion of Co-operation between the Centre and State and amongst states.

But, during the period, with liberalisation, privatization and globalization, Indian federalism started to shift from co-operative federalism to competitive federalism to achieve overall inclusive development. As a result thereto, being a country of diversities, notable issues pertaining to Good and Service Tax (GST) compensation to the states, farmer enactments and withdrawal of consent for co-operation to Central Bureau of Investigation giving threat to unity and integrity of nation have emerged with changing trend of Indian federalism. Therefore, present paper focused on to analysis the shift from co-operative federalism to competitive federalism in India and to suggest the suitable type of federalism for the country like India with the help of doctrinal research methodology.

## 2. The Indian Constitution & Co-operative Federalism

### 2.1. Inter-state Council

Inter-state Council came into existence on May 28, 1990 with the Presidential Ordinance of Mr. V.P. Singh, the then President (K.M Munshi, 1959). Specific functions, "to inquire and advice with regards to inter-state disputes, to investigate and discuss upon the matters of common interests of states and recommendation therewith and power to propose recommendations with regard to 'coordination of public policy or action' for better efficiency thereto have been entrusted to the council[19]. During the period, the council purposed significant recommendations. But, the council remained unsuccessful in attaining the desired objectives for lack of frequent meetings, ignorance of the states interest and none binding nature of its decisions (Government of India, 2008).

### 2.2. Zonal Councils

Five Zonal councils "to bring out national integration; to arrest the growth of acute state consciousness, regionalism, linguism and particularistic tendencies; to enable the Centre and the States to co-operate and exchange ideas and experiences; and to establish a climate of co-operation amongst the States for successful and speedy execution of development projects" established under the State Re-organization Act, 1956 (Ministry Of Home Affairs, 2022).

### 2.3. Recognisation of public acts, records and judicial proceedings

All the enactments, records and judicial proceedings are recognised throughout the territory of India ( ( Constitution of India, 1950) to minimize the inter-state disputes and to promote inter-state co-operation amongst the different units.

### 2.4. Free inter-state trade, commerce and intercourse across the nation

For promoting co-operative federalism and ensuring economic unity provisions for "free trade, commerce and intercourse throughout the territory of India" have been incorporated under Part XIII of the Indian Constitution. However**,** Parliament and State Legislatures both are restricted for making any discrimination amongst the states and preference to one state over another except in case of scarcity of goods in the states (Constitution of India, 1950).

### 2.5. Inter-state water dispute resolution mechanism

River Boards Act, 1956 and Inter-State Disputes Act, and 1956 have been enacted to resolve the water related issue amongst the states by the Parliament (1992). River Boards Act, 1956, was enacted to facilitate inter-state co-operation over the water resource development, which became a 'dead letter' due to adequate mechanism (1992). Inter-State Disputes Act, 1956, provided a mechanism through an ad hoc tribunal set up by the central government for the purpose of adjudication of water related disputes amongst the states (Inter-State Water Dispute Act, 1956).

## 3. Co-operative Federalism & Recent Trends

Cooperative federalism has been a policy mantra for the government for remarkable development of the nation. For the purpose, structural reforms viz., recommendation for enhancement of share of the states in divisible pool from 32 percent to 42 percent, formation of NITI Aayoge with enactment of Goods and Services Act, 2017 etc have been adopted in the furtherance to co-operative federalism by the present Government.

### 3.1. NITI Aayog

To actualize the aims of the co-operative federalism, Niti Aayog came into existence with the objectives "to foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation". The most appropriate agenda i.e., "*Sabka Saath Sabka Vikas aur Sabka Viswas*" and "*Team India*" is adopted for whole over growth of the nation by the Government (2022).

### 3.2. Good and Service Tax

Goods and Services Tax has been a step in the furtherance to co-operative federalism and for strong economic integration of the country with a hallmark of 'Unity in Diversity' (GST Promotes Cooperative Federalism, 2017).

Mr. Narendera Modi, Prime Minister accepted GST as a tool to bring the states closer and an example of strength of Team India. He stated that "it is not a success of any party or any government. It is the result of everyone's effort. The scope of the GST is unlimited to financial system. Now, India will move in a new direction. With the launch of the GST, we are ensuring the progress of the country. The launch of the GST is not the achievement of a particular party or a particular government; it's a collective achievement" (ANI, 2017).

### 3.3. Covid-19

Recently, the entire world comes under the garb of pandemic i.e., "Covid 19". India joined the battle in January, 2020, As a result thereto; a nationwide lockdown was imposed on March 25, 2020 by invoking Disaster Management Act, 2005 for ensuring "consistency in the application and implementation of various measures across the country" along with Epidemic Diseases Act (Prajwal, n.d.).During the period, co-operative federalism started to shift from co-operative federalism to competitive federalism for all over development of the nation. Hon'ble Prime Minister highlighted the significance of comparative federalism for the growth of entire nation (*Cooperative Federalism*, n.d.).

## 4. Competitive Federalism: A Picture

Concept of competitive federalism attracted the attention of all the stockholders. The trend of competitive federalism considered to be a device for economic and social development of the states and country as well. Most of the states of the union of India started a way to attract Foreign Direct Investments for economic well-being thereto.

### 4.1. Business Reforms Action Plan

States have been found engaged in organising "Investor' Summits" for attracting the foreign Investors. Most of the States like, Uttar Pradesh (*UP Investors Summit 2018*, n.d.), Madhya Pradesh (*Department of Industry Policy and Investment Promotion*, n.d.), Punjab (Tagra, 2019) , Haryana, (*Second Haryana Investor Summit in 2018: Khattar | Business Standard News*, 2016) and Himachal Pradesh (*Rising Himachal 2019*, 2019),Karnataka (*Karnataka's Global Investors' Meet in February 2022 | Deccan Herald*, 2021 )Bengal, (*5th Bengal Global Business Summit Generates Proposals of Rs 2.84 Trillion | Business Standard News*, 2019), Rajasthan (*Re-Design Business @ Rajasthan Virtual Global Investment Summit on 22 -23 January 2020*, n.d.), Orissa (Bureau, 2018)), Gujarat, (*Welcome Vibrant Gujarat: 10th Vibrant Gujarat Global Summit 2022 - Vibrant Gujarat Global Summit 2022*, n.d.), Andhra Pradesh (*Out of 327 MoUs Signed as Part of Andhra Pradesh Investment Meet from 2016 to 2018, Only 45 Projects- The New Indian Express*, n.d.), Hyderabad (*TiE Hyderabad to Host Global Summit 2020 in December - The Hindu*, 2020 ) and Maharashtra etc took initiatives on the similar lines (*Maharashtra to Hold Its First Global Investors Summit next Month*, 2018). Business Reforms Action Plan (BRAP) started by most of the states to improve delivery of Union Government's regulatory functions and delivering of services to the population in

a transparent, effective and efficient manner. As per the 'State-wise Ease to Doing Business Ranking' by World Bank and Department of Industrial Policy and Promotion, states of Haryana, Andhra Pradesh and Telangana ranked tope , Jharkhand fourth and Gujarat fifth for economic reforms and policies capable to attract the investors (*Ease of Doing Business Ranking': Andhra Pradesh Tops "ease of Doing Business" Ranking, Telangana Comes 2nd - Times of India*, 2018).

### 4.2. Populist Policies

A Trend to ensure reservation for local population in private sector to attract investors has been started by the state governments after the pandemic. States of Haryana (*Second Haryana Investor Summit in 2018: Khattar | Business Standard News*, 2016) Jharkhand (*Explained: The Jharkhand Bill That Reserves 75% Jobs in Private Sector for Locals | Explained News, The Indian Express*, 2021) Madhya Pradesh (Anshuman, 2020), Tamil Nadu and Andhra Pradesh took initiative for their population. However, decision of Andhra Pradesh for reserving jobs in private sector for locals under Andhra Pradesh Employment of Local Candidates in Industries / Factories Act, 2019 challenged before the SC for violation of Article 16(2) and (3), the Indian Constitution (*75 per Cent Quota for Locals May Be Unconstitutional*, 2020). Moreover, competitive federalism brought a new opportunity for the states to understand their competitiveness and capacity to bring new economic reforms and to improve tools therefore; states are in the race to attain the same.

## 5. Competitive Federalism to Combative Federalism

No doubt competitive federalism brought economic reforms for the overall development of the country, but also attracted other issues like GST compensation to States, Withdrawal of states co-operation with Crime Investigating Bureau (CBI), Farmers Laws and other tensions shifting competitive federalism to combative federalism.

### 5.1. Issue of GST Compensation

Centre Government passed a legislation i.e., The GST (Compensation to States) Act, 2017 to compensate the states for the period of five years (2017-22) for the loss of revenue due to implementation of Goods and Service Act. On July 15, 2021 Nirmala Sitharaman, Finance Minister, stated about the release of Rs. 75,000 Crores in lieu of Goods and Service Tax (GST ) to the states as first instalment for entire year. States are still waiting for the balance i.e., second half of year 2021-22 (*Centre Releases Rs 75,000 Crore to States as GST Compensation Shortfall*, 2021). Moreover,

about 27 states and UTs have been in the row for their dues i.e., a sum of Rs. 81,179 crore for 2020-21 (Rs 81,179 Crore Due to States as GST Compensation for FY21, 2021).

### 5.2 Withdrawal of Co-operation for CBI

Central Bureau of Investigation (CBI) authorised to investigate a case within the jurisdiction of the state with the consent of concerned state (Delhi Special Police Establishment Act, 1946). As per CBI manual, "the central government can authorize CBI to investigate such a crime in a state but only with the consent of the concerned state government, The Supreme Court and High Court, however can order CBI to investigate such a crime anywhere in the country without the consent of the State" (CBI Crime Manual, 2020).

During the period, States viz., West Bengal, Chhattisgarh, Rajasthan, Kerala, Maharashtra, Jharkhand, Andhra Pradesh and Mizoram withdrew their general consent for authorising CBI to investigate matter connected with the states. However, Punjab withdrew its consent in relation to specific cases (November 6 et al., 2020).

Supreme Court observed that "not obtaining prior consent of the state Government under section 6 of the Delhi Special Establishment Act, 1946 (DSEP ACT) would not vitiate the investigation unless the illegality in the investigation can be shown to have brought about the miscarriage of justice or caused prejudice to the accused"(State Government's Consent Mandatory for CBI Investigation in Its Jurisdiction, 2020).

### 5.2. Battle on Farms Legislation

In September, 2020, farms laws i.e., (i) Farmer's Produce Trade and Commerce ( Promotion and Facilitation ) Act, 2020 (ii) Farmers ( Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 , (iii) Essential Commodities ( Amendment ) Act,2020 have been passed as a reform in forms. Some of the states, Punjab, Rajasthan and Jharkhand showed their disagreement for the same (*Farm Laws 2020 Explained*, 2021). States of Chhattisgarh (*From Competitive to Combative Federalism*, 2020) and Punjab enacted their own legislation to counter the Centre legislations (Vasudeva, 2020). However, the issue was resolved by the Central Government thereafter.

## 6. Conclusion

It is not denied that a unique federalism with strong centre was adopted for the country by the constitutional framers as per the demand of that time. Inter-state Council, Zonal Councils, Recognisation of public acts, records and judicial proceedings, free inter-state trade, commerce and

intercourse, adjudication of inter-state disputes and exclusive authority of Parliament pertaining to the matters of national interests, implementation of foreign treaties, common interest of states, direction for the administration of states and financial arrangement have been arranged for promotion of co-operation. But, with liberalisation, privatization and globalization co-operative federalism started to shift to competitive federalism to achieve overall inclusive development while inviting other issues i.e., GST compensations to states, farmer enactments and withdrawal of consent for Central Bureau of Investigation becoming a threat to unity and integrity of nation.

Supreme Court observed "that the states do not possess political sovereignty for making them co-ordinate with each other and independent of the Union, and the concept of superiority of the Union over the states in manifold aspects negatives idea of the political sovereignty of the states" (*State Of West Bengal v. Union of India*, 1963).

It is submitted that co-operative federalism is basic element for maintaining unity and integrity of India. But, competitive federalism is equally required for overall development of the country. Therefore, a balance approach is required for maintaining unity and integrity and economic development of the country. Hon'ble Prime Minister stated that, "co-operative federalism is the foundation of India's progress. Cooperation and competitive federalism should be made more effective and taken to the district level. The country has succeeded in managing the challenges posed by the Covid-19 pandemic only because the Centre and the States have worked together in a spirit of partnership" (*Meetings Of Governing Council | NITI Aayog*, n.d.).

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**CHAPTER 33**

# An Analysis of the Indian Laws and Policies addressing Historical Injustice with Local Communities and Deforestation for Sustainable Forestry

**Jayanta Boruah**

**Research Scholar**

**North-Eastern Hill University, Shillong**

**Email: Jayanta.boruah94@gmail.com**

**Abstract**

Forests were managed by the local communities in India and forests possess the characteristics of substractability and non-excludability making them common property resources. However, with the Britishers denied the local communities with access to forest lands due to the doctrine of *Terra Nullius.* It was assumed that state-control will reduce degradation but it continued. Subsequently, many scholars debated for community management of forests to achieve sustainable forestry. Based on such ideology, regulations were adopted in many countries and in India too, laws for addressing historical injustice with the local communities and improving the forest health were adopted. However, issues of determination of local people and their rights could not be solved adequately. Therefore, study of such regulations becomes important. This paper thus analyzes those Indian legislations to understand the gap between the allocation of rights to the local forest dwellers and the achievement of sustainable forestry.

**Keywords**

Community Rights; Eminent Domain; Forest Dwellers; Historical Injustice; Sustainable Forestry

## 1. Introduction

Forests are humanity's most important source of subsistence, and the relationship between forests and local people can be better understood when they are viewed as Common Property Resources (CPR, hereinafter). CPRs are natural resources that are owned by a community or a group as a whole for common use rather than by a single individual. (Gurung 2005) As a result, there is little doubt that such resources play an important role in a country's economy, particularly where the proportion of poor people who cannot afford private property ownership to support their livelihood is high. (Regmi 2011) India is a developing nation and also a majority of the population still resides in rural areas that are dependent on agricultural sources of income. (Trending Economics 2020) Although

urbanization, (The World Bank 2018) industrialization, (IBEF 2019) rural-urban migration, (Singh 2016) etc. are all taking place in India at a rapid speed, the dependence of the rural poor on forests is not decreasing. (D. Singh 1952) At the same time population explosion, (Jodha 1989) over-encroachment, (Jodha 1986) environmental pollution, and degradation (Sahoo and Swain 2013) have all resulted in decreasing the area of existing CPR including forests as well as their quality. These challenges have prompted many questions in the minds of scholars and academicians, who have debated the management of these CPRs from many perspectives to find a solution to these problems. Some have campaigned for the state to regulate these CPRs to prevent their degradation, while others have advocated for collective efforts, and still, others have advocated for local communities to have authority over their own CPRs. (Ostrom 1990) However, all these arguments hold good in their sphere but again are not that good in different critical situations. (Wade 1987)

At the moment, humanity is seeking to accomplish the Sustainable Development Goals (SDGs) by 2030, (UN General Assembly 2015) however fulfilling those goals would be a distant dream unless CPRs improve. It is vital to use CPRs, including forests, sustainably not just to conserve them but also to eradicate poverty. Both conservation of Natural Resources for securing the benefits to the future generation and eradication of poverty to solve present environmental degradation, since the environment cannot be protected without eliminating poverty, is the essence of these SDGs. (UN SDG Knowledge Platform 2015)

Although most natural resources in India were under common ownership of villagers before British rule, such ownerships were limited by various legislations after the British colonial rule, and only a limited set of legal rights were granted to a large section of the population who were historically known for holding property in common for their common welfare, and their traditional knowledge was accounted for managing such commonly owned properties. (Chaithanya 2012) However, as a result of concepts such as *Terra Nullius*, *Eminent Domain*, and *Parens Patriae*, the local people began to lose control over such resources. However, as the importance of local communities in the long-term management of natural resources has become more widely recognized, the legal framework for their active engagement has been broadened. As a result, India began to recognize the rights of local people in domestic legislation as part of its commitment to global sustainable development norms. However, such legislation did not achieve the desired level of satisfaction, and several issues arose during implementation, resulting in conflicts between various segments of society, with even the judiciary encountering difficulties in resolving issues relating to local community rights to forests and forest resources. This paper will therefore attempt to understand the gap between the laws in theory and the issues in practice.

## 2. Status of Common Property Resources in India

After the publication of Hardin's Theory of Tragedy of Commons in 1968, the term "Common Property Resources" gained prominence. (D. Singh 1952) But the same principle has been used in human culture from the dawn of time. (Basu, Jongerden and Ruivenkamp 2017) However, numerous scholars with unique and diverse intentions for application through their ideologies have presented varying interpretations of this notion from time to time. CPR can be defined as natural resources that are claimed solely by a group of people, have the property of being indivisible, similar to public goods, and are used in a subtractive manner. (Kadekodi 2004) CPR, may or may not grant ownership rights, and they are not open to everybody. This CPRs differ from Open Access Resources (OAR) in that OAR have no rules or regulations governing their use, and the possibility of misuse or improper use is open, whereas in the case of CPRs, there are norms governing access to such CPRs in the form of either Customary Laws or State Legislations, and the possibility of misuse is always a concern. CPRs can thus be defined as resources that are used by a group of individuals living in a community who have certain shared requirements that can be met from such resources for the common good. This aspect of common good may be considered unique from other types of Natural Resource Property Ownerships.

CPR is a word used in India to describe resources that are accessible to and collectively owned, possessed, or managed by a community that can be identified, and on which no individual can claim exclusive property rights. It covers assets held or managed by Co-operative Societies whose members were co-users of those assets. So, it includes Village Panchayat Grazing Land or Posture Land; Village forest and woodlots not under the control of the Forest Revenue Department; Village sites and threshing floors used for economic activities by the villagers, such as processing agricultural products, storing grains, and other household purposes; common water resources; and all other such resources, even if they are owned by the government but are used in common by a particular community for cohesion. (NSSO 1999) CPR has been proven to be very relevant and important for securing livelihood for the poor in India, (Mahanta and Das 2017) where there are roughly 17,000 villages in the forest areas with a population of approximately 147 million people. (Chitkara 2020) According to the World Bank, CPR provides a living for around 1.1 billion of the world's impoverished. (Wilusz 2010) It is also said that the CPR provides poor people with far greater economic revenue than most government measures in India aimed at eradicating poverty. (Wade 1987) It is estimated that the poor in India earns around the US $ 5 billion from CPR. (Wilusz 2010) It has been discovered that regions with high CPR have higher economic growth than those with low

CPR. Furthermore, CPR benefits poor families that are landless the most. (Prakash 2019) As a result, there is little doubt that CPR can provide a community with long-term development.

However, it has been shown that there has been a significant decline in these CPRs, both in terms of geographical extent and quality. (Mahanta and Das 2017) India's CPRs are said to have degraded as a result of population growth, (Hardin 1968) industrialization, privatization, (Chaithanya 2012) and even state management through legislative frameworks. (Wade 1987) The policy frameworks and laws are said to be insufficient to manage these CPRs because laws have failed to recognize the rights of communities over the CPRs that these communities have been managing for centuries in India, and it is assumed that these communities are more capable of efficiently managing these CPRs. (Menon and Vadivelu 2006)

## 3. Understanding Forests as Common Property Resources

Forests are the second-largest stock of natural resources after the ocean. It provides almost all the resources essential and very basic for human civilization. (WWF 2020) It is even assumed that humanity first survived within the vicinities of the forests and many contemporary civilized nations were established from within the forests. However, humanity evolved in society and within their prescribed territorial boundaries they managed to regulate their natural resources through customary regulations and this led to the development of traditional knowledge. This traditional knowledge has become very vital for the sustainable utilization of forest resources. This also indicates that forests were owned in common in many civilizations. (Murphree 2009)

Further, human civilization is so heavily dependent on forests that it is almost impossible to exclude human settlements absolutely from the forest's vicinities. Thus, forests possess the attributes of high non-excludability. It is often held by conservationists that forests do not require human intervention for their protection since forests can protect themselves, only humans shall not destroy them and leave them free from human intervention. But a human cannot survive independently from forests. Although forests are not dependent on humans, humans are dependent on forests for which forests are non-excludable. Moreover, overutilization of particular forest resources will lead to the diminishing of such resources. If one individual utilizes one particular forest resource then such resource will become scarce for others to utilize. This makes forests highly substractable in nature. (Tewathia 2015)

Thus, from the above observation, it can be stated that forests share the attributes of common property resources since they possess the qualities of substractability and excludability.

## 4. Sustainable Forestry and the Role of Local People

From the above discussion, it becomes clear that CPRs are very much essential for the maintenance of the livelihood of the poor and forests are the major source of CPR. Thus, forests have a major role to play in reducing poverty. In the speech of Smt. Indira Gandhi, the then Prime Minister of India during the Stockholm Conference explained the importance of reducing poverty for environmental protection. (Mathiesen 2019) Thus, contemporary goals of sustainable development cannot be achieved with more than half of the population surviving with a hungry stomach. Sustainable forestry is thereby essential for the reduction of poverty which again cannot be achieved without the participation of the local people in and around such forests.

Participation of local communities is also essential for safeguarding the forests since they possess their traditional knowledge over management of such resources and this allows them to sustainably utilize such resources. On the other hand, it is also true that if they are allowed to manage the resources which they were owing historically then they will manage them more efficiently for their own interests compared to any other stakeholders. Ensuring the participation of local communities in the management of forests will also ensure greater justice in the distribution of resources. Since their ancestors managed those forests therefore, they shall have the legacies of such rights and rights are corollary to duties which will make such local people liable for their actions against the forest health. (Maggio 1987)

The local people can also enhance the self-sufficiency of the communities concerned if allowed to build up a healthy and sustainable trade ecosystem. Such developments will not only resolve communal clashes between insiders and outsiders but will also increase the self-sufficiency of the economy in the longer run. All these developments in total are also expected to build a sense of responsibility within the local forest dwellers for sustainably utilizing their forest resources. Thus, empowering the local communities for the management of forests will not only serve the local communities but is also expected to reduce the rate of deforestation during the phase of capitalist expansion. (Shelton 1999)

## 5. Management and Ownership of Forests under the Indian Legal System

Forests include a diverse range of natural resources with great economic value. At the same time, a large portion of the population relies on the forest's resources for survival, whether directly or indirectly. (Sharma and Sarma 2014) Because forests are recognized as properties of national importance in most government policy documents in India, this makes ownership rights over forests for their management extremely important. This affirms state authority and ownership over them.

In the case of *Olga Tellis,* the Supreme Court (SC) held that the Right to Livelihood is a Fundamental Right under Article 21 of the Indian Constitution. (Olga Tellis v. Bombay Municipal Corporation,

1985) Thus, it becomes clear that all those who are poor and are landless have a Right to livelihood in India. Similarly, the Right to a Clean Environment (M.C. Mehta v. Union of India 1987) and Right to Shelter (UP. Avas Evam Vikas Parishad v. Friends Cooperative Housing Society Ltd 1985) ( State of Karnataka v. Narsimhamurthy 1995) (Chameli Singh v. State of UP. 1996) (Ahmedabad Municipal Corpn. V. Nawab Khan Gulab Khan 1997) have also been given Fundamental Right status in India. Furthermore, the Democratic Nature of our Constitution is based on the two most important concepts, - *Eminent Domain* and *Parens Patriae*, where Eminent Domain means that the State has the ultimate authority to decide over the ownership of its resources (Umamaheswari and Latha 2018) and Parens Patriae means that the State is the mother and father of all of its citizens. , (Verma 2014) In such a setting, one could wonder if the Indian poor are truly exercising their fundamental rights. Before the arrival of British rule in India, the local people had full access to all Natural Resources, but if we look at the evolution of the legal framework in India, we can easily see that during the Colonial Rule, the Imperial government enacted several laws such as the Forest Acts, Land Acquisition Laws, and even the Societies Registration Acts, which introduced Government Authorities such as the Forest Departments and others, which made ownership of Natural Resources to be regulated. (Roy 2002)

Surprisingly, these regulations remained in effect after independence, indicating that natural resource ownership was directly under the control of the state. However, laws for the protection of the rights of marginalized groups were adopted in the following years, such as the Civil Rights Act, the Protection of Scheduled Castes and Scheduled Tribes Act, and several more laws for women and other Backward Classes, but these laws remained in principle. Even while the Panchayat Act of 1986, also known as the Panchayat Extension to Scheduled Areas (PESA), and the Forest Act of 2006 stated a wish to restore the rights of those communities who had lost their ancestral rights over CPRs, they were never fully implemented. (Balooni and Inoue 2009)

Civil societies were transformed into self-help organizations that did not represent any political parties and were not answerable to anybody save the sponsors who provided funding for their operation. As a result, they represented the funders' aspirations rather than the requirements of their target demographic. Following the advent of globalization, resource privatization increased, and several development projects financed by large sums of Foreign Deposit Investments (FDIs) resulted in the eviction of a large local population, who were given land for rehabilitation, mostly in the common land of the villages. (Jain 2002) Furthermore, the legal definition of landless people previously covered those with less than 2 decimals of land, but this has recently been changed to specify that claimants must not have any male family member with more than 2 decimals of land.

Many landless persons are now unable to claim a piece of the land. (Roy, Sarin and Ramanathan 2002)

The Chipko Movement was a remarkable example of how local people had to battle to protect forests from natural resource exploitation. (Chipkoppn 2005) Not only that but there are other examples where natural resources have been commodified for economic benefit, denying local populations access to those resources based on public interest. (Chaithanya 2012) For example, the state of Chhattisgarh recently sold a 22-kilometer length of the river *Shaonath* to a private individual. (Thakkar 2002)

Conflicts arising during the installation of hydroelectric projects are another example of LCs being denied access to CPRs. (Chaithanya 2012) Although *Gram Sabhas* and *Village Panchayats* have been established to manage several CPRs in village areas, they are required to report to different government servants who are in charge of different departments separately, such as Forest Departments, Fisheries Departments, Agricultural Departments, and so on, making it extremely difficult for local people to bring up common issues that affect more than one of these departments. Furthermore, the public servants are protected while on duty by state laws, making it illegal to refuse their orders. (Bhai 2002)

This demonstrates that, although the notion of CPR is mentioned in government papers, no community has exclusive control over the management of such CPRs. Furthermore, the government has an inherent power to acquire these CPRs for public interests under *Eminent Domain* and *Parens Patriae*; for example, the public has a very limited right to question land acquisitions made under the National Highways Act, 1056, (Act 48 of 1956), but what constitutes such public interests is a crucial question.

Such acquisitions cannot be justified because they are required for the conservation and sustainable use of CPRs based on the theory of the Tragedy of the Commons, Prisoners Dilemma, or Collective Action as provided by various scholars from time to time to conserve and preserve Natural Resources, at least in India, where CPRs have decreased from 26 to 65 percent in the last three decades, (S.R.Hiremath 2010) while such CPRs as having been discussed are directly under State regulations. It will even be incorrect to argue that privatization will result in the long-term usage of such CPRs, given that around 150,000 hectares of Forest Sites are exploited for commercial industrialization in India each year. The construction of several Developmental Projects, such as hydroelectric dams and the designation of forest areas as National Parks, Wild Life Sanctuaries, Ramsar Sites, and other Biodiversity Conservation Areas, have resulted in the displacement of a large number of Tribal

People and turned them into encroachers on their own land. Members of the Tribal Communities make up roughly 55.1 percent of the displaced population in India. (Chitkara 2020)

The Access and Benefit Sharing method (ABS, hereinafter), which was recently developed, is intended to provide some benefit to Local Communities (LCs, hereinafter) in terms of managing their common resources. However, research conducted in Assam's Kamrup District indicated that the majority of Forest Department officers were unaware of Biodiversity Management Committees (BMCs, hereinafter), although members of Forest Departments were also made members of those BMCs. Those who worked in BMCs also reported that LCs were hesitant to cooperate with Biodiversity Authorities since they were mainly unaware of the benefits, and even if they were aware, they rejected because they were making more money from forest resource traffickers. The Forest Officers, on the other hand, admitted that they were not adequately equipped to protect the entire Forests, since they lacked both manpower and weaponry to fight themselves against equipped encroachers who were allegedly aided by locals who knew the Forest far better than the Forest Guards. Forest Guards have been known to become Martyrs while on duty safeguarding the forests. The formation of BMCs and the documentation of People's Biodiversity Registrars are both time-consuming processes. Furthermore, there are many additional concerns with it for which the Biological Diversity Act of 2002, which introduced this notion in India, has been submitted for change multiple times. The authorities charged with enforcing this Act have also discovered that a middle class is forming, which is acting as a link between bioproduct traders and LCs, making it impossible to bring such a middle class under the Act's monitoring to prevent unlawful bio-trading. (Boruah 2021) This Act stipulates that LCs in possession of bio-resources receive a share of the benefits. However, as previously stated, LCs have very limited ownership rights over CPRs, and those who do have them do so either under Government Regulations or as Private Owners with legal Certificates of Title. As a result, there is much skepticism about the application of this ABS mechanism to CPRs, as well as how far this mechanism will aid the actual poor who rely on CPRs for their livelihood. As a result, the definition of LCs under this Act may exclude those who do not have legal ownership of any Natural Resources, as well as CPR itself, because no individual can claim ownership of CPR, and Indian laws do not allow the public, including communities, to have exclusive ownership over the property.

During the British Colonial Administration in India, notions like forest conservation and protection got legal sanction through approved legislation. Forests were under the control of the Central Government until 1935 when the Government of India Act 1935 was passed, and they became the responsibility of state governments. The States, on the other hand, followed the same legislative

framework as the Indian Forest Act of 1878 until India's independence. Forests remained a state subject after independence and were included in Schedule VII of the Indian Constitution until 1976. The Indian Forest Act of 1927 was enacted to regulate the forests, but a few states, including Assam, had their own legislation, such as the Assam Forest Regulation of 1891. The 42nd Amendment Act of 1976, however, transferred forests from the State List to the Concurrent List 1976. This limited the states' ability to regulate the forests, which was further limited in 1980 when an Ordinance for Forest Conservation was issued, which was quickly followed by an Act. (Srivastava and Barman 2019)

Forest management in India is largely governed by national policies formulated at the national level. Since independence, India's forest management has been separated into two periods: 1947-1980, known as industrial forestry, and 1980 onwards, known as social forestry, with the active engagement of the people. During this time, three important policies may be mentioned: the Forest Policy of 1952, the National Commission on Agriculture of 1976, and the National Forest Policy of 1988, all of which played an important part in the management of India's forests. National Forests, Protected Forests, Village Forests, and Tree Lands were the four categories established by the 1952 policy. Village communities, on the other hand, were not permitted to use the forests in the name of "national interest." The National Commission on Agriculture, established in 1976, focused on commercializing forests by destroying areas with valuable mixed species and replacing them with species with higher commercial value. The commission, on the other hand, highlighted the village poor's needs for fodder, fuelwood, and small timbers. However, it was also claimed that the rural people were primarily responsible for the over-exploitation of forest resources, and thus pushed for reversing the rights to forest resources allocation. Forest policies were created to meet the needs of the five-year plans at the time, and they leaned toward forest commercialization. (R. n.d.)

As a result, massive forest loss, global pressures for forest conservation, and community resentment over the loss of traditional rights to the forests, particularly among tribal communities that rely heavily on forest products, forced the government to recognize the importance of sustainable forest utilization and conservation. Following the 1980s, policies aimed to distribute the money created by forest products among the communities living in and around forest areas and to make them an integral component of the forest management system for the protection and conservation of the forests. From here onwards the policy planning shifted towards the concept of social forestry. In 1990, the Indian Government under the National Afforestation Policy adopted the Joint Forest Management. (Upadhyay 2010) The main concept of Joint Forest Management is based on the assumption that

mere legislation cannot determine property rights over common property resources for which state-society partnership is essential. (Tamuli and Choudhury 2009)

In India, gradually there was a shift from policies of 'people-free zones' over forests to encouraging active participation of local communities in the management of forests and providing them with their traditional rights. But these policies brought confusion among the State agencies, Conservatism, and the LCs. For encouraging the role of LCs in the management of forests, the Joint Forest Management (JFM) system was initiated. But this system came in conflict with the provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). The National Forest Rights Act Committee even suggested putting an end to the entire Joint Forest Management program once the rights under Forest Rights Act, 2006 get settled. Both the Acts of 2006 and 1996 have failed to recognize the validity of Joint Forest Management which was already under process, and a lot of financial investments were also made by the State. In states like Assam, the local communities were not dependent on forests initially since there was abundant land for cultivation. Several natural calamities like floods and earthquakes coupled with socio-political conflicts have forced the local population to rehabilitate the forest areas for maintaining their livelihood. But the Forest Rights Act, of 2006 failed to recognize this situation in such States. Section 2(c) of the Act provides that Other Traditional Forest Dwellers (OTFD) shall be permanent residents in the forest for 75 years to be entitled to the rights under the Act. This provision is irrelevant in the context of such states since most of the local illiterate people do not possess any valid documents to prove their possession of forest lands for 75 years. The Gauhati High Court 2009 even ruled that there are no forest dwellers in Assam which led to serious confrontations in the State. (MoEF/MOTA Committee on Forests Rights Act 2010) The Forest Rights Act, 2006 makes a classification between Scheduled Tribes and Other Traditional Forest Dwellers. But there appears no major difference in the economic conditions between them, hence such classification failed to address the historical injustice within the local communities. The Act is therefore alleged to have discriminated against the non-tribals. The Forest Rights Act, 2006 is based on Panchayat (Extension to Scheduled Areas) Act, 1996 for its implementation, but in many States, the Panchayat (Extension to Scheduled Areas) Act itself lacks implementation. (Kumar 2016) Moreover, the Forest Rights Act lacks clarity in determining the position of the Gram Sabhas responsible for recognizing the rights under the Act in different types of villages which provided the State with the scope to violate critical provisions of the Act that were meant for ensuring a transparent, accessible and democratic system of settling the claims under the Act. (Sarin and Begnski 2010)

## 6. Conclusion and Suggestions

It can be argued that forests resemble the characteristics of common property resources that were historically managed by the local communities in common with customary rules and traditional knowledge. However, with the advent of British Colonial Rule, ownership over forests directly shifted to the States. Although from the late 1980s community participation in the management of forests was given priority, studies have shown that such initiatives are not well implemented.

It is therefore required that a uniform approach in the forest legislation is made to address the conflicts like those existing between Joint Forest Management and the provisions of the Forest Rights Act, along with clarity in the legal concepts. Special attention shall be given to the unique situations of each state in India while framing central legislation since, in states like Assam where the issue of citizenship is still unresolved, identification of Other Traditional Forest Dwellers cannot be possible. Similarly, greater autonomy is required to be provided to the local institutions, and even though such autonomy has been provided but the limits are not defined and the power to define such limits still exists in the hands of the State. Therefore, a serious amendment is required in the laws enacted to address the historical injustice done to the forest dwellers in India.

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**CHAPTER 34**

# ACCESS TO ONLINE EDUCATION DURING PANDEMIC IN JALANDHAR CITY

Hiteshi Aggarwal
LLM (International Law)
Lovely Professional University
E-mail: Hiteshiaggarwal47@gmail.com
Dr. Ramesh Kumar
Assistant Professor of Law
Lovely Professional University
Email: ramesh.26092@lpu.co.in

## ABSTRACT

These days life is quite uncertain about everything same was happened in the world, where no individual was ready with the situation that took place in the entire world and destroyed the very being of the human, corona virus, the virus that was sufficient in his nature to destroy the entire existence of the human being, it has adversely affected, almost all the areas be it humans ,be it environment and most importantly, the education of the children, the education sector from the past two years is struggling everyday to survive, similar conditions are followed in the state of Punjab in Jalandhar district where although the government provided all the online education platforms for the students during that time, but still somehow many were not aware about the same as well as many had difficulties due to the Infrastructures around them. Different impact of covid-19 on online education has been discussed, along with research conducted on thirteen candidates by way of questionnaire for establishing the truth about the access of online educationin the Jalandhar district of the Punjab state, following the Conclusion and the recommendations for the same.

**Keywords** : Online Education, Covid-19 Situation, Jalandhar District

**I Introductory Remarks**: Everyday human faces a new challenge in his life humankind is not something that does not face challenges on regular basis some day it is the challenge of education where as an another day it is a challenge of a survival, making the interrelation between the both , they are equally important if child will study we have the capacity to take out his family

out of any kind of problems and challenges they are facing on regular ground as well as in daily routine about their survival.

Humankind is not something that is new to the challenges every single day a person is facing a challenges to overcome the situations of the life which he has not faced in the past same is like the condition of the corona virus into the world and to be more specific India and in India in district called Jalandhar.

What exactly was this corona virus who has taken away thousands and lacks of life in no time, left the families with the utmost burden of their survival, for some they have lost their parents and for some they have lost children and for some the whole family is been affected by this dangerous virus called corona virus.

Every industry has been affected by the Global Impact of pandemic covid-19 the very first case that was recorded for this particular virus was from the country, China in the region Wuhan on December 31st 2019.

What exactly was the result of this corona virus, it created a situation into the world into the countries where it was necessary to put the lockdowns on so that no people get affected from the same unthinkable virus. There were technically lot of effects of coronavirus was there.

The most major effect of this coronavirus was the death of the people of all age categories, where as there were other major impacts of coronavirus was there one such impact was on the education of the children, coronavirus in India established its root in December 2019, which led to the complete curfew situation in all the districts and the states of the country India including Jalandhar district of Punjab state. Technology facilitates education by allowing students and professors to connect remotely via online classrooms, webinars, and digital assessments, among other things. However, the sad reality is that many pupils around the country do not have access to it.[1].

Due to the lockdown situation into the district, it was a situation in front of the government of Punjab that what all things we can be done so that there will be no effect on the education of the children, but now again the question was that there are literally a lot of categories of people who are living in the Jalandhar district some are living in the rural, remote areas of the district where as some are living in the cities and have greater access to all the Technologies as well as all the internet, but what about the children who are living in villages and do not have any kind of access to such

things called internet as well as call Technology rather  for whom it is very difficult to attend the school even on regular basis what should be done so that the education can reach to every household in the country. 67 percent of the population lives in rural regions and barely half have access to the Internet; online schooling is a near-impossible step. The lack of electricity is a huge barrier to taking use of online education.[2]

Education is a very important roles in every child's life to them it is like a most important ride that can ensure their future that can ensure that even if they do not have anything tomorrow, by education they can become a person of a greater demand as well as a person who will be successful and even if you leave that person in a different country and do not give him anything or provide him with anything still he will stand straight because he has education and he is educated.

Due to the Corona, no schools, no colleges as well as no universities were allowed to open and to ask the students to come physically to join the classes it is there was a greater danger in allowing them to sit together during this Corona period as this was the disease that has lead everything down into the society from education to a basic needs of the society. Even the international instrument like World Health Organization was afraid to talk about this deadly disease that was spread for the period of almost two years into the country and it still continuous today also with lesser restrictions.

[1] Covid-19, (2022 April 3). *Impact of Covid-19 on school education in India.* https://timesofindia.indiatimes.com/readersblog/theenchantedpen/impact-of-covid-19-on-school-education-in-india-32475/.

[2] Covid-19, (2022 April 4). *Impact of Covid-19 on school education in India.*

https://www.actionaidindia.org/blog/impact-of-covid-19-on-school-education-in-india/ .

**II** **Access to online education platforms**: Keeping the same thought in mind Punjab government took much initiative for the purposes of the children to provide them with the access to online education during the covid-19 times as well; question again comes about the implementation of the same. Many initiatives were taken by the Punjab government such as DTH TV channels that provided the students of class 6th 7th 8th and 12th the daily classes for the four hours slot, where as there was another initiative that was e d u s a t YouTube channel that had more than 2000 videos as well as according to the hours there were a lot of recorded PDF'S, projects were made available for the classes 1st to grade 10, even there was the distribution of E-books on monthly basis for all the grades starting from 1 to 12 through Google drives, they were making of WhatsApp groups and other online platforms were also the initiation by the Punjab government to ensure the access of online education for all the students of Jalandhar district.

The purpose behind this research was to analyze the effect of the corona virus on the education of the children specifically the access of the online education in Jalandhar district during the corona virus, for which there there were in total 10 questions that was asked to the different individuals living in the Jalandhar city some were professors, some parents and some were students themselves. The whole purpose was to know their viewpoint that what exactly does they feel about the ongoing situation of the pandemic in the district of Jalandhar and how the state is ensuring the right to education to the children of Jalandhar city.

**III** **Impacts of corona virus:** The general scenario regarding the access to online education during the Corona time in the Jalandhar district was neutral, as it provided the students with both positive as well as negative impacts, for some it was very easy to stay at home and attend the online classes in their desired environment but for some it was extremely difficult even to access the internet on laptops or on mobile phones.

How successful would the digital education model be in a country like ours, given the digital divide in India? Will India be able to learn to adapt anywhere, at any time? Will it pave the way

for educational advancement? Will it, on the other hand, fall flat due to a lack of a more adaptable infrastructure arrangement?[3]

The situation somehow in the areas deferred like in the city almost all the people were aware about how they were supposed to use the phones for the purposes of their studies were as in the remote area where even there is lack of infrastructure how one can expect that they might know about the access to online platforms. So during the online education there were basically making of different groups for the purposes of sharing of the materials on the phones and on the emails itself was there, where some faced the lack of knowledge about the usage of the latest technologies, for some it was the fact that with the one click they get all the information together on one platform, for another it was a not a boon if they have no access to the technology how even for them a one click is possible. Although virtual teaching had certain positive impact also during the Corona times for Students all over the world online lessons have become an increasingly popular choice digital learning hasmade it possible to manage and preserve data and folders without causing any physical harm students can retrieve their notes and assignments with us English lake reducing the chance of them being displaced or poet even it has made possible to make people aware about the technology that they are us have and they can use it for making their future better students have also become more careful with the Online submission since their regular reminded at a simple for teachers to track down students who have failed to complete their tasks on time.

Whereas on the other hand, the greater effect on employment of the staffs and faculty, Teachers and students who are unprepared for online learning as well as the Global career opportunities got vanished badly. Increased parental responsibility was there due to the pandemic for children's education Due to the closing of schools, there has been a loss of nourishment. Fees forschools and colleges have been delayed as parents were not able to pay the same because of lock down and almost there all the savings were spent. This pandemic has exposed some of India's educational system's main flaws. The shutdown of schools has had a significant impact on students who are on the margins. India isn't yet ready to use digital platforms to bring education to every corner of the country. Students who aren't as fortunate as their peers would suffer as a result of the current digital platform selection[4].

[3] Covid-19, (2022 April 5). *How covid -19 will affect to the indian education system.* https://studyabroadlife.org/how-covid-19-will-affect-the-indian-education-system/ .

**IV Data Analysis** : Now when the study was conducted related to the "access of online education" during the Corona times, Researcher laid down the question, to all the 13 candidates that what is their view is the most important out of two ,virtual education or physical education, to which all the 13 candidates said that definitely physical education in better in all the terms, the significance behind this question was to know about the reason ,behind why did all of them opt about the physical education, their opinion behind selecting the physical education was that, firstly, it insured more connectedness among teachers and students and, secondly it is the most appropriate traditional way of learning, Where are some also stated that students who do not know how to use technologies are saved from virtual learning systems.

The inference that the researcher can made out of this is that somehow virtual learning affect the relations among the teachers and the students as well as it also destroys the traditional values of the learning system , similarly it also reflect about the lack of knowledge regarding the usage of Technology, as many of them are not aware about how to use the technology or the internet to attend the classes and even some are not aware about the platforms that are been provided by the government are there for the purposes of the online education.

The another question that was asked was that what in the knowledge has been most impacted by the covid-19, the purpose behind this question was to have a knowledge regarding both positive as well as negative effect of the Corona on the students and their education for which almost 38.5% treated that it has badly impacted the studies of the students and 30.8% of the people stated that it has impacted the practical approach .

[4] Covid-19, (2022 April 7). An analysis of COVID-19 Impacts on Indian Education System. https://coed.dypvp.edu.in/educational-resurgence-journal/documents/jan-2021/35-40.pdf.

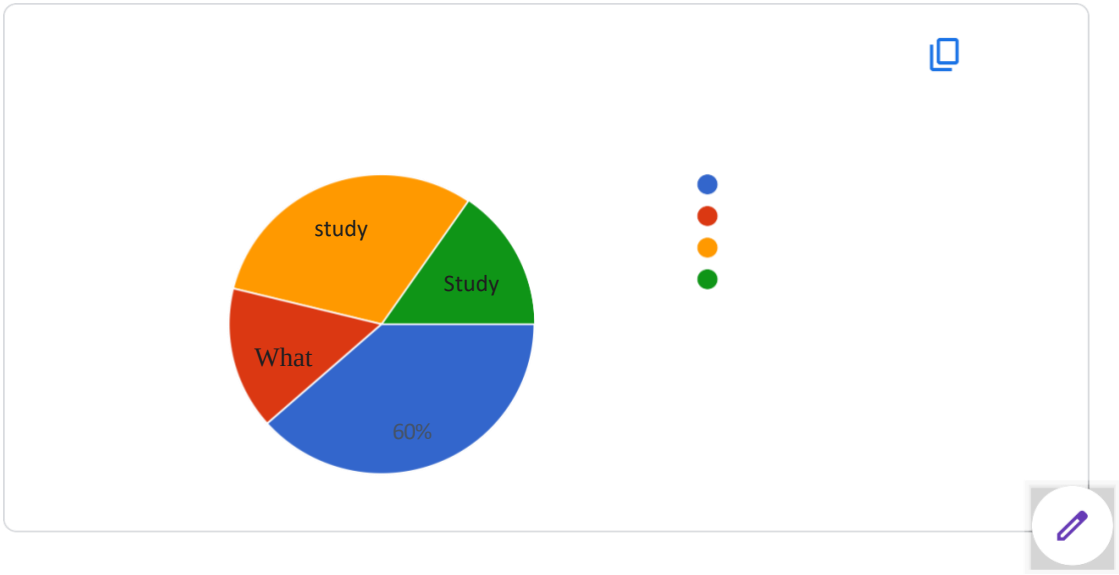


Table 1.1

The inference that the researcher can made out of the question asked is that although there were a lot of resources provided by the Punjab government to the students of Jalandhar district still majority stated that virtual learning has impacted the studies of the students as many of them are not serious about their studies, as well as lack knowledge about the government policiesrelated to the online education platforms available to the students.

Challenges faced by the students due to the virtual learning was the lack of connection by beingat home that is the students were not able to concentrate because of the environment in which they were attending their classes online and many also stated that the challenging aspect was basic infrastructure to ensure a smooth working of online classes,
the inference that the researcher can make out of this is that again even there is the policies which are been provided by the government of Punjab such as “edusat YouTube channels” but the question is have the government provided them with the technology and internet as well so that they can have no issues in excess of the internet, that means by just writing the laws, one cannot think that they have done enough it is also needed that the implementation of those laws should be must.

The researcher would say the major drawback of this combination of online education and the Corona pandemic was the effect on students as they lost the learning ability as well as the study ability among themselves, it's more like a situation where certain change in the rules can help

the same like regular test while the webcams are on can be taken, as when the same question was asked almost 92.3% percent of the people stated that they are of the view that definitely it has impacted the above written both.

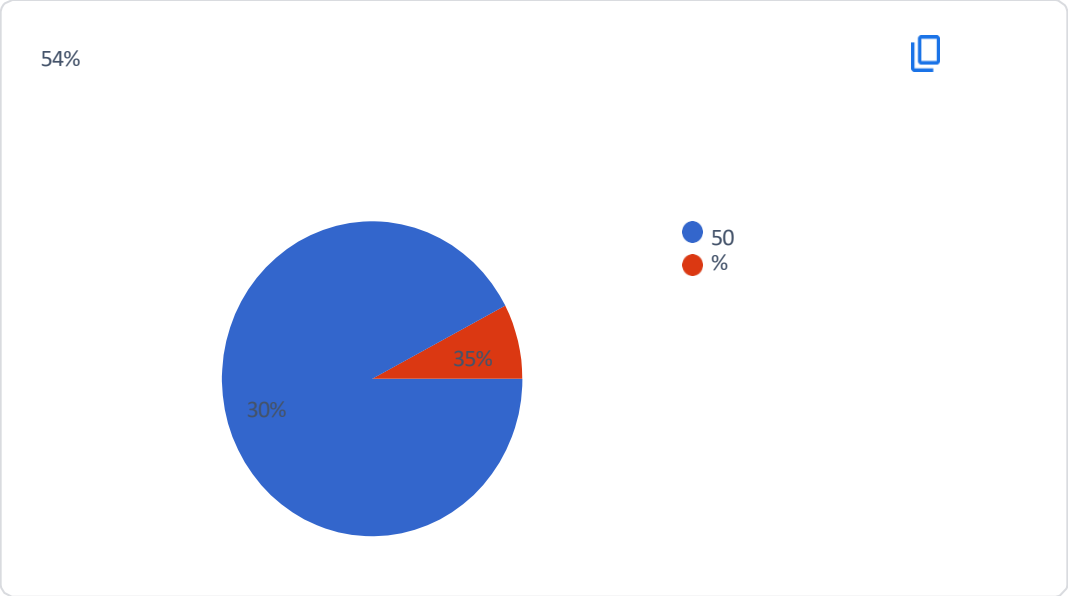


Table 1.2

For researcher it was really disheartening to know about the next question that researcher asked was that were any of the candidate was aware about any of the policies that has been given by the Punjab government for the purposes of the access to online education during the pandemic situation, 38.5% stated that they were clearly not aware about any of the online studying platforms that was available to the students during the pandemic,

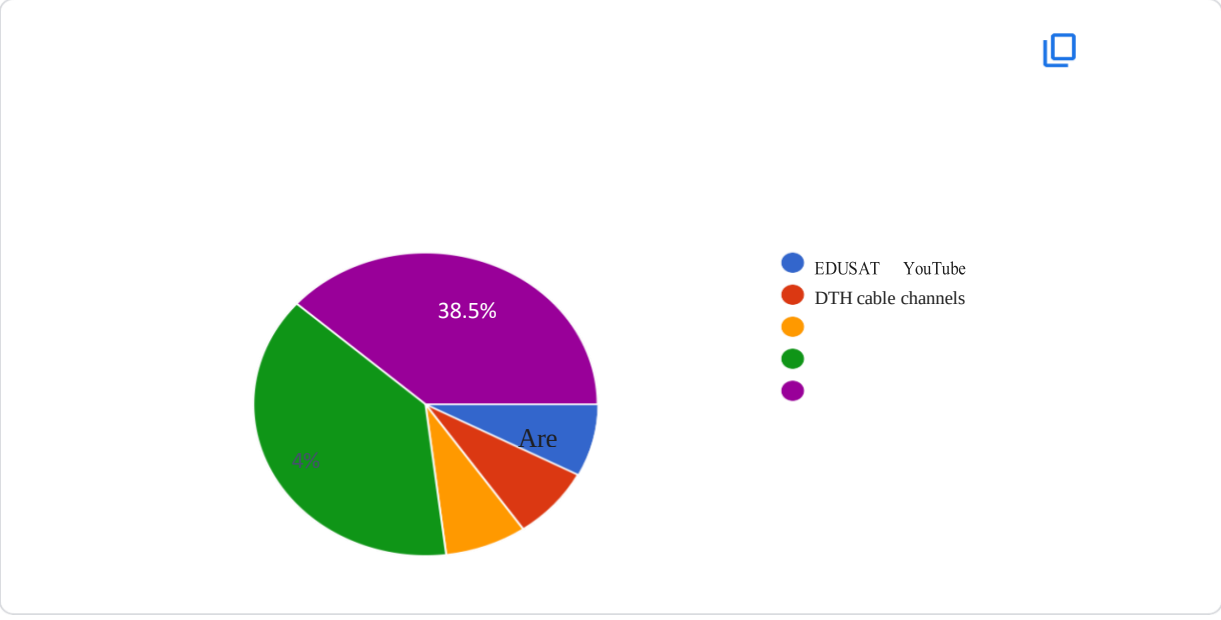

Table 1.3

inference that the researcher made out of this was that again there was a complete lack of implementation of the policies by the state government, as many of the people were not aware about the the online platforms that was been provided by the government for the children for the purposes of education.

The Other impacted areas of education system of Jalandhar district according to all the candidates were learning ability of the student, life skills of the child that is taught to him in school have been hampered, and body fitness of the children has also been affected. And further the question was the us that what do they feel that has to State of Punjab done a good job in case of making available every possible online platform for students to study during pandemic out of 13 candidates 53.8 stated yes where as 46.2 stated no,

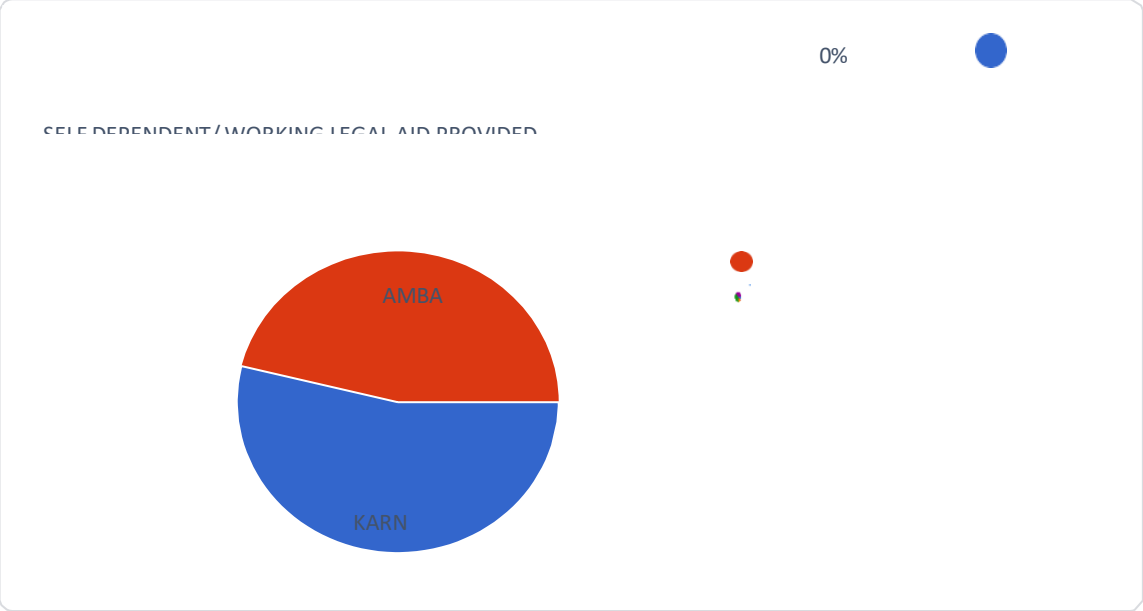


Table 1.4

although the majority says yes that they have done no wrong in providing of the online platforms but again the question remains what about the other 46.2 % of the people who think that the state of Punjab specifically the district of Jalandhar has the lacked regarding the implementation of the policies.

**V The Concluding Remarks**: The conclusion that the researcher can make out of the study is that although there were different efforts made by the government of Punjab purposely for the online education of the children was there, but still it lacked the implementation of those efforts made. If some law or some rules are made, it is important to inspect the same on a regular basis same like in this situation if lot of online platforms for the purposes of education of the children was there, why did they still lack behind in their education, it is the duty for the state to ensure that whether everyone is having the access to online education or not, for that purposes regular inspections must be done.

**VI Recommendations:** The recommendations that can be made here is the proper implementation of the policies, one must be given the duty to form a group on online platform where they can add the data of all the children that are present in a particular district , and make sure that they are aware about the policies that are being provided to them by the government of Punjab, as well as to ensure with the regular inspection ,to have knowledge about all are the children who are facing the issue with the technology, they can also be given classes for the future purposes as well if any such condition appears in the future all the children must be ready to face the challenges of the outbreak but they also know about how to fight those outbreaks and in result their education must not suffer because of such outbreaks.

## CHAPTER 35

# ANALYZING THE GAP BETWEEN PERSONAL AND PENAL LAWS CONCERNING CHILD MARRIAGES.


28. RAMANDEEP SINGH

29. AFFILIATION OF THE AUTHOR- ASSISTANT PROFESSOR, LOVELY SCHOOL OF LAW, LOVELY PROFESSIONAL UNIVERSITY

30. E-MAIL- RMN.429@GMAIL.COM

31. VANSHIKA PREMANI

32. AFFILIATION OF THE AUTHOR- ASSISTANT PROFESSOR, LOVELY SCHOOL OF LAW, LOVELY PROFESSIONAL UNIVERSITY

33. E-MAIL- PREMANIV3@GMAIL.COM

**34.**

**35.**



**36. ABSTRACT**

Child marriages have been prevalent in India since time immemorial. These marriages traumatize the children of India physically and emotionally, ultimately, affecting their right to life. The subject matter of marriage is governed by personal laws due to the absence of a uniform civil code. The age of majority for marriage is different in all religions. For Hindus, it is 18 years for a woman and 21years for a man. For Muslims, it is the age of puberty that is generally agreed upon to be 15 years. Then, the penal laws prescribe 18 years of age as the minimum age for giving consent for sexual intercourse. The author of this paper hypothesizes that there is a huge contradiction between personal laws and penal laws concerning child marriages. It shall be endeavoured, through this paper, to explore the validity of such marriages under both personal and secular laws. Also, an analysis of penal laws protecting children like Protection of Children from Sexual Offences Act, 2012 and relevant provisions of Indian Penal Code, 1860 related to children shall be expounded in light of the validity of such marriages. This issue becomes significant to be researched upon after the verdict of the Supreme Court in the case of *Independent Thought v. Union of India*, (2017) 10 SCC 800, which has criminalized sexual intercourse in child marriages. The author of this paper shall be using doctrinal methods of research to study this contemporary issue.

**Keywords:** Child Marriages, Personal Laws, Penal Laws, Legal age of marriage, Secular Laws, Hindu Marriage Act, 1955, The Dissolution of Muslim Marriage Act, 1939, Protection of Children from Sexual Offences Act, 2012, Indian Penal Code, 1860, Prevention of Child Marriage Act, 2006.

## 1. RESEARCH PROBLEM

Child marriages deprive children a safe and healthy childhood by causing physical and mental trauma. The nature of child marriages, including its legal validity is endeavoured to be determined through this paper. Also, the child marriages have civil as well as criminal consequences. Any gap between the civil (personal and secular) and criminal law concerning child marriages is sought to be deduced through this paper. Also, if such a gap actually exists, then, through this paper, an effort shall be made to bridge such a gap by providing solutions.

## 2. Objectives

- To understand the prevalent practice of Child Marriages in India.
- To enunciate socio-legal issues involved in Child Marriages.
- To study and analyse the different laws, both civil (personal and secular) and criminal (penal), that provide for legal age to marry.
- To assess cases when sexual intercourse would be an offence
- To determine the gap and differences that exist amongst these laws concerning the legal age.
- To discuss and draw attention towards the recent judicial pronouncements on this issue.
- To expound upon the relevance to have uniformity in the law concerning child marriage.
- To ascertain the role of judiciary and legislature in providing clarity on this subject area.
- To provide relevant solutions for bridging this legal gap and emphasising on the possibility of harmonious reading of the bare provisions.

## 3. RESEARCH QUESTIONS

- What are child marriages?
- Who can be a child in a child marriage?
- What is the position of child marriages under personal laws?
- What is the position of child marriages under secular laws?
- Is sexual intercourse in a child marriage an offence?
- Is there any inherent contradiction within the laws of India concerning child marriages.

## 4. RESEARCH METHODOLOGY

The library method and case study method have been adopted keeping into consideration the aim of study and the research questions. Primarily, the study is theoretical and doctrinal. Relevant data has been collected from the files, documents, reports, judicial decisions, books written on the subject and articles published in newspapers.

## 5. Marriage as an institution

The term "marriage" implies association, union, or companionship. It is an institution that has two objects. The primary object of marriage is to confer legitimacy upon children born within wedlock whereas the secondary object of marriage is the satisfaction of the primal instinct of sexual intercourse. The second object is secondary since it is possible to achieve it without being married, however, it is impossible to confer legitimacy upon children without being married. Such is the importance of the institution of marriage. A child born out of wedlock faces ignominy from the world. He is called a bastard and the blemish of illegitimacy is cast upon him without any fault on his part. This is why marriage is given a huge amount of sanctity in our society. In the early days of human civilization, when the institution of marriage was not in existence, it was difficult to ascertain the paternity or fatherhood of a child. Since, due to the non-existence of the concept of marriage and consequently due to the absence of the concept of adultery, promiscuous relationships were prevalent. (Paras Diwan, 2013)

There has never been any problem in determining the maternity of a child since it becomes apparent at the birth of the child. However, in such conditions, it was always difficult to ascertain the paternity of the child. Hence, one may deduce that eventually the institution of marriage was created to determine the fatherhood/paternity of the child. Even today, technically, the term legitimate child of a man means a child born to a woman who is married to a man with whom the nexus of legitimacy is sought to be established. Hence, the term legitimacy construes the existence of marriage between the mother of the child and a man who claims to be the father of such child. This position is also apparent from section 112 of the Indian Evidence Act which provides for a presumption of legitimacy. It postulates that where

a child is born to a woman during the existence of a marriage or within 280 days after such marriage is dissolved, the husband of such woman or to whom she was married, as the case may be, shall be deemed to be the father of the child and such child to be his legitimate child. (Indian Evidence Act, 1872)

As far as the nature of marriage is concerned, it is to be deduced in the light of the law under which it is performed. If it is the personal law under which it is being performed, nature has to be gathered from the tenants of that particular religion as in how the institution of marriage has been held in such religion. Also, the implication of any codified personal law upon such uncodified personal law is to be taken into account concerning the nature of marriage. Thus, if the age of majority concerning marriage, recognition of child marriage, and civil and criminal consequences of such marriage are required to be evaluated, the position of such marriages in codified and uncodified personal laws is required to be studied along with the penal provisions concerning such marriages, if any.

### 5.1 Position of child marriages under Hindu law.

Under the customary Hindu law, there was no specific age for marriage. Child marriage was the prevalent form of marriage among Hindus. As such the parties were married by the parents of the children though it was only after attaining puberty that the bride was meant to leave her parent's home to reside at the matrimonial home. This ceremony of leaving one's parental home after attaining majority is called *muklawa*. But there is no denial of the fact that there were cases when the groom would take away the bride even before she attained puberty. The bride was not only forced to have sexual intercourse before attaining puberty but also, she was forced to do all household chores at such a tender age. Pregnancy at such a young age compromised the reproductive health of such young brides. It took a toll on their mental health

as well. The reason why there was no specific age for marriage provided under the uncodified law could be that the Hindu marriage was always a sacramental institution. It was something that every Hindu was meant to perform to obtain complete spiritual benefit. Therefore, in society marriages among Hindus were considered indispensable. Due to this, it was no longer an optional thing as is nowadays. Hence, the parents always considered it to be their duty to perform the marriage of their children at a young age since so much sanctity was attached to it.

### 5.2 Effect of Codification of Hindu Law

The codification of Hindu laws was done in 1955 and 1956. The parliament passed the Hindu Marriage Act, 1955 regulating marriages among Hindus. The effect of this Act upon the uncodified law is provided under section 4 of the Act. Section 4(a) of the Act specifically provides that the Hindu customary law shall cease to exist or have any effect upon the matter which are being regulated by the Hindu Marriage Act. (Hindu Marriage Act, 1955)

The court in *Chandra Sen v. CWT*, though dealing with the matter of inheritance, pointed out that the Hindu Succession Act, 1956 is an amending and a codifying Act. It agreed with the decision of Andhra Pradesh High court in *CWT v. Mukundgirji* that it was the intention of the legislature to do away the old uncodified Hindu law in certain aspects. This spirit is reflected under section 4(a) of the Hindu Succession Act, 1956. This observation of the Supreme Court is relevant in subject matter of this paper since section 4(a) of Hindu Succession Act, 1956 and of Hindu Marriage Act, 1955 are in *pari materia*. Hence, the ratio of Chandra Sen's case can also be applied upon the subject matter of marriage so far, the effect of codification is concerned. (*Commissioner of Wealth Tax. Kanpur. Etc. v. Chander Sen Etc*, 1986) (*Commissioner of Wealth-Tax v. Mukundgirji*, 1983)

In other words, the matter pertaining to marriage for which provisions are made under the Act shall only be governed by the codified law and the uncodified law upon such matters shall

cease to exist. The age of majority for marriage is provided for by section 5(iii) of the Act. It implies the customary law to this extent shall be deemed to have been repealed. The Indian Majority Act which otherwise generally provides for the age of majority too provides for an exception marriage under section 2 of the Act. Section 2 of the Act is a saving clause. Clause (a) section 2 provides that the capacity of persons pertaining to marriage, dower, divorce and adoption shall not be regulated by the Act. Thus, the age of majority for marriage among Hindus is not regulated by the Indian Majority Act, 1875 but by the Hindu Marriage Act, 1955.

### 5.3 Age of majority under the Hindu Law

Section 5(iii) of the Hindu Marriage Act, 1955 provides a minimum of 18 years of age for a bride and 21 for a bridegroom. The marginal note attached to Section 5 of the Act reads as "**Conditions for a Hindu Marriage".** However, it is interesting to note that violation of all these conditions doesn't lead to the nullity of marriage. Violation of these conditions doesn't lead to the same consequence. For instance, a Hindu marriage shall become void only if the conditions mentioned in Section 5(i), 5(iv) and 5(v) are violated. This is given under Section 11 of the Act. Similarly, violation of the condition mentioned in 5(ii) renders a marriage voidable, and not void, under section 12(b) of the Act. It is pertinent to note that the violation of aforesaid conditions affects the nature of the marriage rendering such a marriage either void or voidable. However, for the violation of the condition pertaining to the age of majority mentioned under Section 5(iii) as such no consequence upon the validity of the marriage is provided for. The marriages which are void have been mentioned under section 11. Similarly, Section 12 talks about marriages which are voidable. However, none of these sections includes a child marriage i.e. a marriage performed in contravention of Section 5(iii) within its ambit. It means if a marriage is properly solemnised although Section 5(iii) remains violated yet such a marriage shall be completely valid. Hence, it can be said that under Hindu law child marriages are recognised as valid marriages. (Hindu Marriage Act, 1955)

The Karnataka High Court, while dealing with the violation of Section 5(iii), observed that the parliament has intentionally excluded Section 5(iii) from the grounds mentioned under Sections 11,12 and also under Section 13 which provides for dissolution of marriages. An obvious reason for this is the stigma which may get attached to the parties to such a child marriage if the marriage, later on, at some point of time in future is declared void just because of the fact the parties to such marriage were under-aged at the time of solemnisation of their marriage. For girls particularly such a provision will be prejudicial considering the social conditions of our country. Parties to such marriage may be living happily but because of age factor at the time of their marriage it shall be an unwarranted intrusion to adjudge their marital bond. The court further observed that in no case this means that such an interpretation shall make the provision of Section 5(iii) useless. The parliament intentionally didn't want to make child marriage void or voidable, but it also didn't want to give a license to perform child marriages. The spirit of Hindu Marriage Act, 1955 is to prohibit the child marriages without causing an unproportionate harm to the parties to such marriage and children born out of it. Section 18 of the Act still provides for punishment in case someone procures a child marriage. (*V. Mallikarjunaiah v. HC Gowramma*, 1996)

### 5.4 Consequences of a child marriage under Hindu Law

The Hindu Marriage Act provides for only two consequences for violation of Section 5(iii). Neither of these consequences affects the validity of child marriages. These two consequences are provided under section 13(2)(iv) and section 18 of the Act. These two consequences may be discussed as below. (Hindu Marriage Act, 1955)

Option of puberty under section 13(2)(iv) as a ground of divorce

Section 13(2) of the Act provides for special grounds of divorce for Hindu women. Under clause (iv) of subsection (2) of section 13 of the Act, a peculiar situation of child marriage is provided for.

It contemplates a situation where a woman was married before she attained the age of 15. Such a woman is given a right to claim divorce if she has either expressly or implied repudiated the marriage before attaining the age of 18. However, it is to be noticed she is not given a right to present a petition for annulment of such a marriage. Rather she is given a right to claim divorce

if the conditions met under Section 13(2)(iv) are met. Thus, Hindu law subtly recognizes child marriage as a valid marriage by providing for a right of divorce instead of a petition of annulment. Moreover, Section 13(2)(iv) is gender-specific from point of view of the petitioner. Hence, a Hindu boy who is married before attaining the age of 15 has no option to repudiate the marriage. He is given no remedy even of divorce under Hindu law. Such marriage is a completely valid marriage under Hindu law.

### 5.5 The penal consequence of such a marriage under Hindu law

Though child marriage is recognized as a valid marriage under Hindu law yet certain penal consequences shall follow if it is performed. Section 18(a) of the Act provides for such penal consequences. It provides that in case the condition mentioned under Section 5(iii) in performance of marriage is violated, the person who procures such marriage for himself/herself (non-child party) shall be liable to punishment. Such punishment shall be rigorous in form and may extend to two years. Besides the imprisonment, such a person may also be required to pay a fine which may extend to one lakh rupees.

Hence, it can be seen that child marriages under Hindu law are recognized as completely valid marriages.

### 5.6 Cohabitation a natural incident of marriage under Hindu law.

As observed above, child marriage is a perfectly valid marriage under Hindu law. A natural corollary to marriage is cohabitation. Section 9 of the Hindu Marriage Act, 1955 talks about the restitution of conjugal rights. Section 9 contemplates a situation where a spouse leaves the company of the other spouse without any reasonable excuse and without his consent. In such an event the other spouse can file a petition before the court requesting it to restore the conjugal rights of the parties. From Section 9 of the Act, it is apparent that cohabitation if is not the only thing in the marriage, constitutes a part and parcel of married life. Any unreasonable

deprivation of cohabitation is a violation of the right of a spouse arising out of marriage. Such a spouse is given a remedy under Section 9 to enforce such a right of cohabitation. (Hindu Marriage Act, 1955)

The Supreme Court has already upheld the constitutional validity of Section 9 of the Act. Although no arrest of a woman can be made in execution of the decree passed under Section 9 yet it does not prevent the court from executing other modes of execution of decree. (*Smt. Saroj Rani v. Sudarshan Kumar Chadha*, 1984)

Thus, Hindu law recognizes consummation as a vital aspect of marriage. This is apparent not only from Section 9 but also from other provisions of this Act. Section 12(1)(a) of the Act makes it quite clear that if a marriage is not consummated owing to impotency it can be declared as void. Also under Section 13(1)(ia) refusal to have sexual intercourse is considered cruelty to a spouse and on that basis a spouse can seek divorce from the other spouse. Similarly, under section 13B of the Act, in order to seek divorce on ground of mutual consent it is required to be proved that the parties have been living separately for at least one year. (Hindu Marriage Act, 1955)

## 5.7 Conflict of Hindu Marriage Act, 1955 with Protection of Children From Sexual Offences Act, 2012 and Indian Penal Code, 1860

The aforementioned observation leads to a major inconsistency of Hindu law with the Indian Penal Code, 1860 and Protection of Children from Sexual Offences Act, 2012. Under section 375 of the Indian Penal Code, 1860 the definition of the offence of rape is given. Exception 2 of section 375 declares that if the prosecutrix is the wife of the accused then no offence of rape is committed although all the requisites of section 375 may be fulfilled. However, the exception further provides that if the wife is below the age of 15 years then notwithstanding the existence of marriage between the accused and the prosecutrix, the offence of rape is complete. (Indian Penal Code, 1860)

The exception 2 of section 375 has, further, been read over by the Supreme Court in *Independent Thought v. Union of India*. The judgment provides that instead of 15, it has to be read as 18 in exception 2 to section 375 of Indian Penal Code, 1860. The effect of this judgment is that even if the prosecutrix is the wife of the accused, it still shall be an offence of rape if the wife is below the age of 18 years. A natural corollary from this observation is that in child marriages where wife is a child, the sexual intercourse in such marriage is an offence of rape. The consent of such a wife is immaterial as per section 375 of Indian Penal Code, 1860 since she is below the age of 18 years and is not competent to give consent for sexual intercourse. So, it can be noticed that on one hand Hindu law recognises child marriages to be completely valid marriages and it also recognises conjugal rights and cohabitation as part and parcel of married life. However, on the other hand, the Indian Penal code makes sexual intercourse in such a marriage an offence of rape. (*Independent Thought v. Union of India*, 2017)

When a husband in a child marriage files a petition under section 9 of the Hindu Marriage Act, 1955 against the child-wife for restitution of conjugal rights, the courts shall face an anomaly in the law. If the court enforces the conjugal rights in such a marriage, it shall be permitting the parties to commit an offence of rape under Indian Penal Code, 1860. Also, under Protection of Children from Sexual Offences Act, 2012, sexual intercourse with child wife shall amount to an offence of penetrative sexual assault under section 4 of the Act. Therefore, if the court enforces cohabitation in a child marriage, it shall also be inciting the parties to commit an offence under Protection of Children from Sexual Offences Act, 2012. This inconsistency has to be done away with. What is regarded as part and parcel of a married life is considered an offence under criminal law. (The Protection of Children from Sexual Offences Act, 2012)

## 6. The conflict between Muslim Law and Indian Penal Code, 1860 & Protection of Children From Sexual Offences Act, 2012 concerning child marriages

Under Muslim personal law, age of puberty is regarded as the age of majority for marriage. Unless there is evidence to contrary, it is presumed that a person acquires puberty at the age of 15 years. (Aqil Ahmed, 2016)

Hence under Muslim law too child marriages are completely valid. This can also be ascertained from the codified Muslim law. Under section 2 of The Dissolution of Muslim Marriage Act, 1939 grounds for divorce for Muslim women are given. Clause (vii) of section 2 provides for a ground where woman has been married by her guardian before she attained the age of 15 years. Such a woman has the right to seek divorce if she has repudiated the marriage before the attaining the age of 18 years. It is to be noted that such a marriage, like under Hindu law, is neither made void nor voidable. The remedy of divorce is given. Hence, such a marriage must be recognised as a valid marriage by the Act. Therefore, on the similar lines it can be said that the Muslim personal law too is inconsistent with the spirit of penal laws of India i.e. Indian Penal Code, 1860 and Protection of Children From Sexual Offences Act, 2012. (The Dissolution of Muslim Marriage Act, 1939)

## 7. Age of majority under Prohibition of Child Marriage Act.

Section 2(b) of The Prohibition of Child Marriage Act, 2006, hereinafter called Prevention of Child Marriage Act, 2006, defines child marriage. It implies a marriage to which either of the parties to the marriage is a child. The term ‘child’ too is defined under the Act. Section 2(a) of the Act defines ‘child’. It means a person who is below the age of 18 years if such a person is a female and below the age of 21 years if such a person is a male. Prevention of Child Marriage Act, 2006 makes the child marriages voidable at the instance of the child who was a party to the marriage. However, under certain circumstances like where marriage is solemnised after kidnapping the child or where marriage is solemnised in contravention of an injunction, the child marriages are made void by the Act. (The Prohibition of Child Marriage Act, 2006, 2007)

Therefore, one may notice that even under Prevention of Child Marriage Act, 2006 child marriages are not void generally. Only under some circumstances, they have been declared void. However, ordinarily, they are declared as voidable. The term voidable means valid until avoided. The option of avoiding such a marriage is given to that contracting party to the marriage who is a child. Moreover, only within two years from the date of attaining the majority, such a marriage can be avoided. Upon lapse of this period of two years, the marriage shall become permanently valid. Most of the time the child is not aware of this provision and if he is aware of it, he is not able to put up the courage to get the marriage avoided. Thus, due to the fallacy in the Prevention of Child Marriage Act, 2006 of not rendering the child marriages void *ab intio*, the child marriage ends up remaining permanently valid. The intention of the parliament to recognise the child marriages under Prevention of Child Marriage Act, 2006 can also be discerned from the fact that the Prevention of Child Marriage Act, 2006 also provides for the grant of maintenance to the female child from the other contracting party to the marriage and if such other contracting male party is minor then the parents/guardians of such minor shall be under an obligation to pay maintenance for the female child. Also, the children born out of such marriage are declared to be legitimate by the Act. Further, the court may also pass appropriate orders concerning the custody of such children. These observations cumulatively allude to the fact that though Prevention of Child Marriage Act, 2006 intends to prohibit child marriage yet it recognises such a marriage to be a valid form of marriage. This type of approach may have been suitable in the 1990s but not in modern times. The foremost requirement in modern times is to make the child marriages null and void from the very beginning. Under the garb of child marriages various offences against children and women are committed. Trafficking children and forcing women into prostitution is also done under the pretext of child marriages.

## 8. Inconsistency between personal laws and Prevention of Child Marriage Act, 2006

Further the conflict between personal laws and Prevention of Child Marriage Act, 2006 can be observed. Prevention of Child Marriage Act, 2006 is a secular law. It applies to all the persons irrespective of their religion. Under Prevention of Child Marriage Act, 2006 child marriages are either void or voidable. However, under the personal laws of Hindus and Muslims, same marriages have been regarded as valid marriages and remedy for divorce is given that too only if certain conditions are met. Further, under the codified Muslim law i.e. the Dissolution of Muslim Marriage Act the option of divorce is available only if the marriage is not consummated. Moreover, neither the codified Muslim personal law nor the uncodified Muslim personal law provides for any punishment for procuring or solemnising a child marriage. Hence, there is a huge inconsistency between personal laws and Prevention of Child Marriage Act, 2006. (The Telegraph, 2017)

For Parsis, it is the Parsi Marriage and Divorce Act, 1936 which regulates marriages among them. Section 3(1)(c) of the Act does provide for the age of majority concerning marriage. It provides that the male must be of 21 years of age at least and the female to be of 18 years of age at least. However, the act is silent as to the consequences of violation of this condition. Thus, only creating an ambiguity and possibly recognising that the child marriages are recognised as valid marriages under the Parsi Law as well. (The Parsi Marriage and Divorce Act, 1936)

### 8.1 Inconsistency between the Prevention of Child Marriage Act, 2006 and the Protection of Children from Sexual Offences Act, 2012 & Indian Penal Code, 1860.

The recognition of child marriages as voidable i.e. valid until avoided has resulted in an inconsistency between Prevention of Child Marriage Act, 2006 on one side and Indian Penal Code, 1860 and Protection Of Children from Sexual Offences Act, 2012 on the other side. There is an inherent contradiction between the Prevention of Child Marriage Act, 2006 and the penal laws concerning sexual intercourse with a child. Prevention of Child Marriage Act, 2006

does not make child marriages void and recognises them as valid marriages though an option of avoiding them is given. However, Indian Penal Code, 1860 under section 375, as is interpreted and read over in *Independent Thought v. Union of India*, and Protection of Children from Sexual Offences Act, 2012 under section 3 of the Act sexual intercourse within such marriage is a heinous offence. Prevention Of Child Marriage Act, 2006 should be consistent with the penal laws of India. Therefore, an amendment is required in Prevention of Child Marriage Act, 2006 to make it consistent with Protection of Children from Sexual Offences Act, 2012 and Indian Penal Code, 1860. The child marriage under Prevention of Child Marriage Act, 2006 should be made void so that the same spirit is reflected under the Prevention of Child Marriage Act, 2006 which is found in Indian Penal Code, 1860 and Protection of Children from Sexual Offences Act, 2012. (*Independent Thought v. Union of India*, 2017) (The Protection of Children from Sexual Offences Act, 2012) (The Prohibition of Child Marriage Act, 2006, 2007)

## 9. Conclusion/Suggestions

Therefore, one can easily observe the inherent conflict within the law concerning child marriages. Penal laws like the Protection of Children from Sexual Offences Act, 2012 and the Indian Penal Code, 1860 provide for strict liability in case of sexual intercourse within a child marriage. It shall be an offence of rape and penetrative sexual assault. However, the personal laws recognise such a marriage to be completely valid. Furthermore, these personal laws contemplate sexual intercourse to be a part and parcel of marriages. This can easily be deduced from the fact that the personal laws provide for the remedy of restitution of conjugal rights. But then these personal laws are at loggerheads with the penal laws of India. Moreover, it is not just the personal laws here which are in direct conflict with the penal laws of India. Also, the secular law Prevention of Child Marriage Act, 2006 recognises such marriages to be completely valid until avoided. Hence, it too is contradictory to the spirit of penal laws.

Thus, there is a dire need to revamp the civil law concerning child marriage. The Supreme Court in a plethora of cases has pointed out that the parliament should bridge this gap between the personal laws and the penal laws. The court has emphasised that childhood is something

that can never be restored. If an injury is caused to a person or his property, the same may be compensated and restored back to the original position. However, if childhood is filled with trauma and pain, both physical and mental, the same can never be restored. Therefore, securing a safe and healthy childhood is the first and foremost duty of the state. Only a safe childhood can ensure safe womanhood and in turn a safer motherhood. Hence, it is a dire need that the Parliament must make the child marriages void ab initio.

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**CHAPTER 36**

# Cyber Security and Indian Cyber Laws

**Animesh Kumar Sharma**
Research Scholar
Mittal School of Business
Lovely Professional University
Email:mr.animesh@gmail.com

**Dr. Rahul Sharma**
Associate Professor
Mittal School of Business
Lovely Professional University
Email:rahul.12234@lpu.co.in

**Abstract**

Security, safety, and privacy are essential for anyone who uses the internet. Cyber security refers to the methods, strategies, and processes used to prevent computers, programs, networks, and data from being hacked, damaged, or accessed without permission. India has laid strong foundations to defend its population from cyber crimes, all while keeping internet users' best interests in mind. Cybercrime is a sort of crime that uses computers or other electronic devices and involves the use of a system (computer) as a target, a tool, or a storage device for evidence of a crime. Many pieces of cyber law, such as the national cyber security policy and IT Act, have shown to be highly effective at keeping unwanted attackers out. Despite India's stringent anti-cybercrime legislation, the country's main issue is a lack of public awareness. Individuals fighting cybercrime should try to predict qualitative and quantitative changes in the underlying materials so that their strategies can be suitably planned to avoid giving hackers an advantage. This paper emphasizes the need of understanding the repercussions of cybercrime while keeping in mind recent activities and providing methods to safeguard an individual and/or an organization from them. This research paper includes a summary of Indian cyber laws, lists the various types of cyber security and cyber-attacks; sheds insight on India's current situation of cyber security.

**Keywords**: Cyber security, Cyber threats, Cyber crime, Indian cyber laws

**Introduction:**

The phrase "cyber security" has become a catch-all for the process of preventing every type of cybercrime, from identity theft to the deployment of international digital weapons. "The organization and gathering of resources, processes, and structures used to defend cyberspace and cyberspace enabled systems from events that misalign de jure from de facto property rights" is how cyber security is defined. We are more vulnerable to cyber attacks than ever due to the rising usage of digital gadgets and the Internet in both our personal and professional life. It is challenging to distinguish between cyberspace and these sectors and to pinpoint the vulnerabilities because of how deeply ingrained cyberspace is throughout all other industrial sectors that enable interconnection. Cyberspace's growing complexity has opened up new economic, social, and political opportunities [1]. Protecting sensitive data and important systems from online threats are known as cyber security. Cyber security measures also referred to as information technology (IT) security, are intended to counter attacks on networked systems and applications, whether those threats come from within or outside of an organization. Cyber security is the defense against harmful attacks by hackers, spammers, and cybercriminals against internet-connected devices and services. Companies employ the procedure to safeguard themselves against phishing scams, ransomware attacks, identity theft, data breaches, and monetary losses [2]

Cyber security is a field that deals with ways to protect systems and services from malicious online actors including spammers, hackers, and cybercriminals. While certain cyber security components are built to launch an assault right away, the majority of modern specialists are more concerned with figuring out how to safeguard all assets, from computers and cell phones to networks and databases, against attacks [3]. Cybersecurity is the process of preventing hostile assaults on internet-connected systems such as computers, servers, mobile devices, electronic systems, networks, and data. Cybersecurity can be divided into two categories: security and cyber. Technology that incorporates systems, networks, programs, and data is referred to as "cyber". The safeguarding of systems, networks, applications, and information is also a concern of security [4]. The protection of computer systems and networks against information disclosure, theft of or damage to their hardware, software, or electronic data, as well as disruption or misdirection of the services they provide, is known as computer security, cybersecurity, or information technology security[5]. The technologies, procedures, and techniques used in cyber security include those that protect networks, data, and computer

systems from intrusion [6]. We must categorize cyber security into several subdomains to best explain what it is and how it operates:

**Application security**: Application security refers to the integration of various protections against a variety of threats into the software and services of an organization. To reduce the possibility of unwanted access or manipulation of application resources, this subdomain necessitates cyber security professionals to create secure code, design secure application structures, implement robust data input validation, and more. The goal of application security is to keep software and devices safe against attacks. A hacked application could allow access to the data it was supposed to secure. Security starts throughout the design phase, long before a program or device is deployed.

**Cloud Security:** For businesses that employ cloud service providers like Amazon Web Services, Google, Azure, Rack space, etc., cloud security is concerned with developing safe cloud systems and applications.

**Identity Management and Data Security:** This sub-domain covers the procedures, protocols, and mechanisms that let the authorization and authentication of authorized users access the information systems of an organization. These procedures entail putting in place strong information storage systems that protect the data while it is in transit or stored on a server or computer. Additionally, this sub-domain employs two-factor or multi-factor authentication techniques more frequently.

**Information security**: Data integrity and privacy are protected by information security, both in storage and in transport.

**Operational security:** The processes and decisions for handling and securing data assets are included in operational security. The protocols that dictate how and where data may be kept or exchanged, as well as the permissions users, have while accessing a network, all fall under this umbrella.

**Disaster recovery**: Disaster recovery and business continuity are terms used to describe how a company reacts in the case of a cyber-security breach or any other catastrophe that results in the loss of operations or data. Disaster recovery policies define how an organization returns operations and information to the same operational capabilities as before the disaster. Business continuity is the plan that an organization uses when it is unable to operate due to a lack of resources.

**Mobile Security:** As more people rely on mobile devices, mobile security is becoming increasingly important. This subdomain guards against dangers including unauthorized access device loss or theft, malware, viruses, and more for both organizational and individual data

kept on portable devices like tablets, smartphones, and laptops. Mobile security also makes use of authentication and training to strengthen security.

**Network Security:** Hardware and software safeguards that shield the infrastructure and network from interruptions, unauthorized access, and other abuses are referred to as network security. Against a variety of dangers from both inside and outside the business, effective network security safeguards organizational assets.

Disaster Recovery and Business Continuity Planning is concerned with the procedures, monitoring, alerts, and strategies that an organization employs to deal with situations in which harmful activity threatens to disrupt operations or compromise data. Its policies provide that activities must be resumed following a disaster at the same level of efficiency as before the incident.

**End-user education address:** End-user education addresses the most unpredictably unpredictable aspect of cyber-security: people. By failing to follow appropriate security measures, anyone can unintentionally introduce a virus into an otherwise protected system. It is critical for every organization's security to teach users to delete suspicious email attachments, not plug in unrecognized USB drives, and a variety of other key teachings.

The protocols, monitoring, alarms, and plans that an organization uses to react when hostile behavior threatens to disrupt operations or compromise data are discussed. According to its policies, activities must be resumed following a disaster at the same level of efficiency as before the incident.

**Indian Cyber Laws:**

"Every activity and reaction that takes place in cyberspace has legal and cyber legal implications." The phrase "cyberlaw" refers to legal matters that arise in cyberspace [7]. It is a synthesis of many laws designed to address and overcome the concerns and challenges that humanity faces on the internet every day [8].

Because cybercrime is a subject that is still evolving toward specialization, there is currently no comprehensive regulation in place to address it anywhere around the globe (Paul & Aithal, 2018). However, the Government of India has the Information Technology Act, 2000 in place to govern dangerous acts on the internet that infringe a user's rights [9]. It is possible that provisions of the IPC and the IT Act that criminalize such conduct overlap at times [10][11]. Even with the most compassionate and liberal interpretation, India's existing laws could not be read in the light of emergency cyberspace to embrace all aspects relating to various internet activities [12]. Experience and sound judgment have revealed that interpreting existing laws in

the context of evolving cyberspace without establishing new cyber laws will not be without considerable risks and difficulties. As a result, relevant cyber laws must be enacted.

Cyberspace activities had no legal authority or authorization under any of the existing laws. A huge majority of users, for example, use the Internet for email. Even now, email is not considered "legal" in our nation. There is no law in the country that grants email legal status and consequences. In the lack of a formal statute approved by the Parliament, our courts and judges have been hesitant to provide judicial legitimacy to the legality of email. As a result, a need for Cyberlaw has evolved [13].

Laws concerning cyberspace provide legal recognition for electronic documents as well as a framework to facilitate e-filing and e-commerce transactions, as well as a legal framework to prevent and mitigate cybercrime. In a nutshell, cybercrime is any illegal activity in which a computer is used as a tool, a target, or both. Traditional criminal behaviors such as theft, fraud, forgery, defamation, and mischief, all of which are covered under the Indian Penal Code, might be included in cyber crimes. The Information Technology Act of 2000 addresses a variety of new-age offenses that have arisen as a result of computer abuse.

Utilizing a computer to attack other computers is known as using a computer as a target. Ex. Hacking, Virus/Worm attacks, DOS attacks, and so forth. Using a computer as a Weapon - Using a computer to commit crimes in the real world ex. Cyber Terrorism, IPR Violations, Credit Card fraud, EFT fraud, Pornography, and so on are only a few examples.

**Problem Identification**

**Need of the study:** Cyberstalking, bullying, trolling, morphing, and phishing are the most common types of cybercrime in India. However, our current legal system does not protect many of them. As a result, a provision in the Information Technology Act of 2000 must be introduced that contains all rules about the protection of electronic equipment, as well as a clause that focuses on legal backing so that evidence can be utilized in courts. It was discovered that no standard operating procedures have been developed to deal with cybercrime. Officers must be well trained in the development of SOPs and the implementation of created protocols. Another big issue is the absence of officers in cyber cells. As a result, capable officers with enough knowledge of various cybercrimes as well as the technical expertise of exploiting computer resources, ethical hacking, and so on must be posted.

The lack of standardization in international collaboration has been noted. When cybercrime occurs in another country, the procedure becomes more complicated and various requirements must be followed. Due to cross-border legal difficulties, Foreign Service providers are not as

forthcoming during inquiries. It is suggested that legislation governing the decoding of IP addresses for service providers be changed and that all service providers locate their servers in India to track IP addresses for a faster and more thorough investigation. There must be a cross-national probe. To successfully combat cybercrime, a transnational treaty must be inked.

**Objectives**

- What is cyber security?
- Which are the latest cyber security threats and cybercrime-related cases in India?
- What are the cyber Laws of India?
- How to improve cyber security awareness and cyber laws?

**Discussions**:

- **What is cyber security?**

Cyber security is the use of technology, processes, and policies to prevent cyber assaults on systems, networks, programs, devices, and data. Its goal is to limit the risk of cyber assaults and secure systems, networks, and technology from unauthorized use [14]. A cyber or cybersecurity threat is a harmful act that aims to harm data, steal data, or otherwise disrupt digital life. Computer viruses, data breaches, Denial of Service (DoS) attacks, and other attack vectors are examples of cyber dangers [15][16].

- **Which are the latest cyber security threats and cybercrime-related cases?**

Any illicit conduct involving a computer, device, or network is considered a cybercrime. Cybercrime can be divided into three categories: computer-assisted crimes, offenses in which computers themselves are targets, and offenses in which computers are only incidental to the crime rather than the primary focus.

**Common cyber threats:** Malware, such as ransomware, botnet software, RATs (remote access Trojans), rootkits, spyware, Trojans, viruses, and worms are examples of common cyber threats. access via remote backdoors. Formjacking is the practice of injecting harmful code into online forms. installing unauthorized bitcoin mining software, or crypto-jacking. Attacks called DDoS (distributed denial-of-service) flood networks, systems, and servers with traffic to take them offline. attacks on the DNS (domain name system), which manipulate the DNS to reroute traffic to malicious websites[17].

**Types of cyber threats:**

1. **Cybercrime**: Cybercrime refers to individuals or groups who attack systems for monetary gain or to cause disruption.
2. **Cyber-attack**: Politically motivated information collection is common in cyber-attacks.
3. **Cyber terrorism**: The goal of cyber terrorism is to generate panic or dread by undermining electronic systems.

Here are some common methods used to threaten cyber-security:

**Malware:** Malware is a term that refers to malicious software. Malware is software designed by a cybercriminal or hacker to disrupt or damage a legitimate user's computer. It is one of the most common cyber dangers [18]. Malware, which is commonly sent by an unsolicited email attachment or a legitimate-looking download, can be used by cybercriminals to gain money or in politically motivated cyber-attacks. There are some different types of malware, including:

**Virus:** A virus that attaches itself to a clean file and spreads throughout a computer system, infecting files with malicious code.

**Trojans:** A form of malware that masquerades as genuine software. Users are duped into downloading Trojans onto their computers, which then inflict damage or collect data [19].

**Spyware**: A program that covertly records everything a user performs for hackers to profit from it. Spyware, for example, could record credit card information.

**Ransomware:** Malware that encrypts a user's files and data and threatens to delete it unless a ransom is paid [20].

**Adware:** Advertising software that has the potential to propagate malware [21).

**Botnets:** Cybercriminals employ malware-infected machines on networks to do tasks online without the user's permission [22][23].

**SQL injection:** An SQL (structured language query) injection is a type of cyber-attack that allows a hacker to take control of a database and steal information from it. Using a malicious SQL query, cybercriminals exploit vulnerabilities in data-driven systems to install malicious code into a database [24]. This provides them with access to the database's sensitive information.

**Phishing:** When fraudsters send emails that look to be from a reputable company and ask for sensitive information, this is known as phishing [25]. Phishing attacks are frequently used to trick people into divulging personal information such as credit card numbers and passwords [26].

**Man-in-the-middle attack:** A man-in-the-middle attack is a type of cyber threat in which a hacker intercepts communication between two people to obtain information [27]. On an unsecured WiFi network, for example, an attacker could intercept data passing between the victim's device and the network [28].

**Denial-of-service attack**

A denial-of-service attack occurs when thieves flood a computer system's networks and servers with traffic, preventing it from fulfilling legitimate requests [29]. This makes the system unworkable, prohibiting an organization from doing essential tasks [30].

**Cases related to cyber security and cybercrime in India:**

According to the National Crime Records Bureau (NCRB), India reported 50,035 cybercrimes in 2020, 44,546 in 2019, and 27,248 in 2018, according to NCRB. 4,047 cases of internet banking fraud, 2,160 cases of ATM fraud, 1,194 cases of credit/debit card fraud, and 1,093 cases of OTP fraud were reported in 2020. According to NCRB data, there were also 578 instances of fake news on social media and 972 occurrences of cyberbullying and stalking of women and children [31].

**Cyber-crimes reported across India**

| Year | Number of cyber-crimes reported across India |
|---|---|
| 2018 | 27,248 |
| 2019 | 44,546 |
| 2020 | 50,035 |

**1) SONY.SAMBANDH.COM CASE**

This case is considered the first cybercrime case in India. In this instance, Sony India Private Limited, which operates the NRI-targeting website www.sony-sambandh.com, filed a complaint. After making an online purchase, the service enables NRIs to mail Sony products to their friends and relatives in India. The business agrees to deliver the goods to the designated beneficiaries [32].

In May 2002, someone used Barbara Campa's login information to access the website and place an order for a Sony color television and a cordless phone. She provided the information of her credit card for payment and asked that the item be sent to Arif Azim in Noida. The transaction

was completed after the credit card company cleared the payment. The company delivered the materials to Arif Azim following the necessary due diligence and verifying procedures. The business used digital photos to show that Arif Azim had approved the delivery of the product when it was made. The sale was completed at that point, but after an additional 1.5 months, the credit card company notified the business that the transaction had been done without authorization because the true owner had denied making the purchase. The business had complained to the CBI about internet cheating, and the CBI had filed a case under Sections 418, 419, and 420 of the IPC (Indian Penal Code). Following an investigation, Arif Azim was taken into custody. Investigations revealed that Arif Azim had access to the credit card details of an American citizen while working at a call center in Noida, which he then used fraudulently on the business' website. The color television and cordless phone were retrieved by the CBI.
Because the CBI had evidence to support its claims, in this case, the accused confessed to being guilty. Arif Azim had been found guilty by the court under Sections 418, 419, and 420 of the IPC; this was the first instance in which a cybercrime conviction had been made. The court believed that a compassionate approach was necessary because the defendant was a 24-year-old lad and a first-time offender. As a result, the defendant was released by the court after serving a year on probation. Sections 67 and 70 of the IT Act are also used in some cases. In this instance, hackers break into a website and change the home page to a pornographic or offensive one.

**2) Andhra Pradesh Tax Case**

After detaining the proprietor of the plastics company in Andhra Pradesh, the Vigilance Department found cash totaling Rs. 22 in his home. They requested his evidence of undeclared money. The suspect provided 6,000 vouchers as proof of the deal's validity, however, it was discovered following a meticulous study of the vouchers and the data on his computers that each one had been produced after raids. The suspect had been utilizing phony digital vouchers to display sales data and evade taxes while operating five businesses under the cover of a single corporation. As a result, when department personnel gained access to the suspect's computers, the state's businessman's dubious business practices were exposed.

**3) Bazee.com case**

The CEO of Bazee.com was imprisoned in December 2004 for simultaneously selling a CD that included obscene material on the internet and in a market in Delhi. Following an intervention by the Mumbai Police and Delhi Police, the CEO was later released on bail.

**4) Extortion case experienced at Greater Hyderabad Municipal Corporation (GHMC)**

A data entry worker with the GHMC in Hyderabad was apprehended by cybercrime police, along with his sibling, for dishonestly issuing a Property Tax Identification Number (PTIN) for a parcel in Rajendra Nagar. The GHMS website was previously accessed by an outsourcing worker named Jay Chand Velaga, who fraudulently altered the data and provided door numbers and PTINs for property to benefit himself and his brother [33].

**5) Mobile Banking Fraud Cases**

Mobile banking entails that the bank will have a website via which it may offer its clients practically all of its services [34]. Customers can use bank services including money transfers, recharges, and payments while sitting at a distance using a smartphone or laptop. The usage of this program is growing as a result of how user-friendly it is. Recently, banks that offer mobile banking have had a lot of trouble with their online services due to rising concerns about digital privacy and security [35]. Banks must therefore offer safer and more secure online banking services. Hackers, money-launderers, and identity thieves are concentrating on other routes and developing novel attack types so they can avoid being easily caught by conventional fraud detection systems. Due to the rise in fraud, bank customers are now using online banking services less frequently [36].

**6) Digital Fraud instances**

A so-called entrepreneur who defrauded over 7 lakh individuals online under the guise of "Social Trade" was charged with fraud totaling Rs 3700 crore. Aadhar scam of Rs. 1.3 lakh was reported at ICICI Bank as a result of the concern over integrating radar with a bank account. An unauthorized person impersonated a bank employee and tricked bank clients by obtaining their OTP. Aadhar scam warnings had been given to LIC. To deceive LIC customers and steal their money, some con artists create bogus websites [37].

- **What are the cyber Laws of India?**

Cyber laws refer to the legal issues surrounding the use of communications technology, particularly "cyberspace," i.e. the Internet [38]. It is an intersection of numerous legal topics, including intellectual property, privacy, freedom of expression, and jurisdiction, rather than a unique field of law like property or contract. In essence, cyber law seeks to reconcile the issues

posed by human behavior on the Internet with the historical legal framework that governs the physical world.

The Information Technology Act, 2000 (hence referred to as the "IT Act") and the Rules established their makeup of India's legal foundation for cyber law. The primary legislation that addresses numerous Cyber Crimes, associated penalties, intermediary compliance requirements, etc. is the IT Act.

**Information Technology Act, 2000**

The monitoring, decryption, and information gathering related to digital communications in India are heavily regulated by the Information Technology Act, 2000 (the "IT Act"). The Central Government and the State Governments may give directives for the monitoring, interception, or decryption of any information communicated, received, or stored through a computer resource, according to section 69 of the IT Act. In comparison to the Telegraph Act, Section 69 of the IT Act broadens the grounds for which interception may occur.

Therefore, Section 69 interception of communications is done in the interest of • The sovereignty or integrity of India;

- Defense of India;
- Security of India;
- Friendly relations with foreign States;
- Public order;
- Preventing incitement to the commission of any cognizable offense relating to the above; and
- For the investigation of any offense.

The Information Technology Act, 2000 ("IT Act"), which went into effect on October 17, 2000, contains cyber legislation in India. The main purpose of the Act is to provide legal recognition to electronic commerce and to facilitate the filing of electronic records with the Government.

The following Act, Rules, and Regulations are covered under cyber laws:

1. Information Technology Act, 2000
2. Information Technology (Certifying Authorities) Rules, 2000
3. Information Technology (Security Procedure) Rules, 2004
4. Information Technology (Certifying Authority) Regulations, 2001

The IT Act is the salient one, guiding the entire Indian legislation to govern cyber crimes rigorously [39].

Section 43 – (Damage to computer, computer system, etc) Applicable to people who damage the computer systems without permission from the owner. The owner can fully claim compensation for the entire damage in such cases.

Section 43A – (Body corporate failure to protect data)

Section 44(a) – (Failure to furnish document, return or report to the Controller or the Certifying Authority)

Section 44(b) – (Failure to file any return or furnish any information, books, or other documents within the time specified)

Section 44(c) – (Failure to maintain books of account or records)

Section 45 – (Where no penalty has been separately provided)

Section 46 – (Tampering with Computer source documents)

Section 66 - Applicable in case a person is found to dishonestly or fraudulently commit any act referred to in section 43. The imprisonment term in such instances can mount up to three years or a fine of up to Rs. 5 lakh.

Section 66 A- Hacking with Computer systems, Data alteration, etc

Section 66B - Incorporates the punishments for fraudulently receiving stolen communication devices or computers, which confirms a probable three years imprisonment. This term can also be topped by an Rs. 1 lakh fine, depending upon the severity.

Section 66C - This section scrutinizes the identity thefts related to imposter digital signatures, hacking passwords, or other distinctive identification features. If proven guilty, imprisonment of three years might also be backed by Rs.1 lakh fine.

Section 66 D - This section was inserted on-demand, focusing on punishing cheaters doing impersonation using computer resources.

Section 66 E-Publishing obscene images

Section 66 F - Cyber terrorism

Section 67 - Publishes or transmits unwanted material

Section 67 A - Publishes or transmits sexually explicit

Section 67 B – Abusing Children Online

Section 67 C - Preservation of information by the intermediary

Section 70 - Unauthorized access to the protected system

Section 71 - Misrepresentation to the Controller or the Certifying Authority for obtaining a license or Electronic Signature Certificate

Section 72 - Breach of Confidentiality and Privacy

Section 73 & 74 - Publishing false digital signature certificates

- **How to improve cyber security and cyber laws awareness among the people?**

The advancement of information and communication technologies is increasing rapidly. As a result, the number of Internet users has skyrocketed. Most users, on the other hand, are unaware of how critical it is to maintain personal data privacy on the Internet, especially as technology advances. Furthermore, consumers have come across a variety of risks related to the Internet, but they may not be aware of them. As a result, determining the risk associated with user behavior is critical [40].

Government agencies and the commercial sector have both committed substantial resources to ensure data security [41]. However, technology alone will not be enough to fix the problem because humans are the primary target of cyberattacks, and this is frequently overlooked. As a result, an information security policy must be established to ensure the security of information and assets by providing an operational framework in addition to laws, regulations, and best practices for the proper use of information technology [42]. There are still cyber incidents even when training programs are in place; that is, training programs may not be effective enough to tackle the problem of cyberattacks [43].

**Recommendations:**

For a solid cyber security policy to be successful, every corporation needs to train its employees about cyber security, corporate regulations, and incident reporting. The finest technology measures may be breached by staff members who engage in negligent or malevolent behavior, costing a lot of money in security breaches. To decrease security infractions, it is helpful to provide workers with security training and awareness through seminars, lectures, and online courses. Update your operating system and software to take advantage of the most recent security patches. This is the most common safety precaution. Using antivirus software to identify and get rid of undesirable threats from your device is also helpful. To ensure the highest level of safety, this software is constantly updated. To identify security issues early in a secure environment, every firm makes sure to conduct regular security inspections of all software and networks. Application and network penetration testing, source code reviews, architecture design reviews, and red team evaluations are a few common types of security reviews. Furthermore, enterprises should prioritize and address security vulnerabilities as soon as they are found.

It is advised to always use lengthy passwords with numerous letter and symbol combinations. It ensures that the passwords are difficult to guess. Cyber security professionals always warn against opening or clicking email attachments from unknown senders or unfamiliar websites

because they could be malware-infected. Additionally, you should be cautioned against using unsecured networks because they put you at risk for man-in-the-middle assaults. Every firm needs to regularly back up its data to prevent sensitive information from being lost or recovered after a security breach. Backups can also assist in preserving data integrity during cyber attacks like SQL injections, phishing, and ransomware.

To summarize, while a crime-free society is ideal and merely a dream, there should be a continuing effort to keep criminalities at a minimum by the application of rules. Crime based on electronic law-breaking is expected to increase, especially in a society that is becoming increasingly reliant on technology, and lawmakers will have to go the extra mile to keep impostors at bay. Technology is always a two-edged sword that may be utilized for both good and evil purposes. Steganography, Trojan Horses, Scavenging (and even Dos or DDos) are all technologies that are not crimes in and of themselves, but when they fall into the wrong hands with the purpose to exploit or misuse them, they fall under the category of cyber-crime and become serious offenses.

Now, this is the time for governments around the world, including India, to understand that both emerging and developed countries would benefit from a secure cyberspace. Governments urgently need to implement well-developed cyber security policies in light of the fast expanding risks to national security in cyberspace. The national cyber security policy should include education, research and development, and training in cyber security.

**Conclusion:**

In recent years, numerous cyber security challenges have been exacerbated by the growth and spread of new technology. The human race now faces serious challenges from cyber security. Cybercrime prevention is essential for a nation's social, cultural, and security aspects. In this essay, in-depth the characteristics of cyberspace and defined cyber security in terms of its global requirements have been discussed. According to important data, India ranks third in the world for internet usage and also faces a cyber security issue. The best defense against cyber risks is a combination of cyber security measures and educated and informed users. Starting small and concentrating on the most important assets is always an option. As the Cyber Security program develops, scaling the efforts is then possible. The only way to combat harmful threats and attacks is to allow security programs to develop so they can take on the most recent and emerging dangers head-on or, at the very least, stop them from succeeding in the first place.

Cybercrime is punished in India under vague or obsolete rules, owing to the country's fragmented legal landscape. Due to its ambiguous character, entities are frequently unable to

derive normative guidance from the often bewildering tapestry of regulations, resulting in inefficient implementation.

For the growth of India's cyber security regime, a comprehensive and instructive cyber security law, backed by specialist regulation on an as-needed basis, is critical. Otherwise, judges, enforcement agencies, and regulators will continue to try to reshape old legislation in unforeseen ways while attempting to address many of the constantly emerging cyber security challenges.

As a result, rulers and lawmakers must work hard to guarantee that technology grows healthily and is used for legal and ethical economic progress rather than illegal behavior. The three stakeholders, namely the rulers, regulators, lawmakers, and agents, should be responsible for it.

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