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EDITORIAL

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PRE-EMPTION AND WAQF: THROUGH THE EYES OF AYN RAND AND HER THEORY OF OBJECTIVISM

By Abhinav Bhalla
From O.P Jindal Global University

This paper talks about the topics of pre-emption and waqf in Muslim family law and how they would or would not relate to the philosophy of Objectivism developed by Ayn Rand. Pre-emption and waqf are very important topics in contemporary times because they have the ability to play a role in today's economic atmosphere as these two concepts decide where and to whom the property of a Muslim gets transferred to. These topics also have a historical significance because they are being carried on from a long time and are ancient in nature. This paper explores the topics of pre-emption and waqf through the perspective of a philosopher named Ayn Rand. The aim of the paper is to realize how relevant and applicable the concepts of pre-emption and waqf are when they are looked at through the eyes of a philosopher of Objectivism. The linkage of this specific topic with the theory of objectivism reveals how un-important the institutions of pre-emption and waqf are. The crux of this paper will be towards providing analysis as to how the institutions of waqf and pre-emption are irrelevant.

Pre-emption can basically be defined as a right of substitution. It is given by a custom, statute or a contract. This topic is relevant to Muslim law of succession. A pre-emption right, right of pre-emption, or first option to buy is a contractual right to acquire certain property newly coming into existence before it can be offered to any other person or entity. The main concept of this right is that when a Muslim owner of an immovable property dies, then the property is divided among successors. If they sell to outsiders without first offering the property to other successors, it would lead to the entry of strangers into a part of joint family estate. This may result in inconvenience and difficulties. This right basically imposes a limitation on the owner of the property in regard to the fact that he cannot transfer the property to the person of his own choice because he has an obligation to sell to others.

The literal meaning of the word waqf is 'detention'. In terms of Muslim law, it means detention in the sense that a property is donated for religious and charitable purposes. A waqf is an inalienable charitable endowment under Islamic law, which typically involves donating a building, plot of land or other assets for Muslim religious or charitable purposes with no intention of reclaiming the assets. When the waqf comes to effect, the property is tied up in the name of God and then cannot be transferred to anyone. The institution of waqf is legally enforceable. A waqf is created when a Muslim person donates property in the name of Allah for charitable purposes. The ownership of the property is given to God till time immemorial and once the property has been transferred, it becomes inalienable. All the proceeds/income received from the property are used for religious and charitable purposes. The donor has no return investment or


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incentive; the donor is just supposed to do this act on behalf of his goodwill with the hopes of becoming a ‘good’ Muslim.

The topics explained above are going to be analyzed with the theory of objectivism. Objectivism is a philosophical school of thought created by the writer and philosopher, Ayn Rand. Ayn Rand was a Russian-American philosopher and writer. She is most well-known for developing the system named objectivism and her two best-selling novels, *The Fountainhead* and *Atlas Shrugged*. Leonard Peikoff, a professional philosopher and Rand’s designated intellectual heir, later gave it a more formal structure. Peikoff characterizes Objectivism as a "closed system" that is not subject to change. Ayn Rand introduced the concept of objectivism in her book, *The Fountainhead* and gave it an organized structure in *Atlas Shrugged*. Rand advocated reason as the only means of acquiring knowledge and rejected faith and religion. She supported rational and ethical egoism and rejected altruism. In politics, she condemned the initiation of force as immoral and opposed collectivism and statism as well as anarchism, instead supporting *laissez-faire* capitalism, which she defined as the system based on recognizing individual rights, including property rights.

Rand described Objectivism as "the concept of man as a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity, and reason as his only absolute". She believes in the idea that human values and knowledge are objective. Rand characterized Objectivism as "a philosophy for living on earth", grounded in reality, and aimed at defining human nature and the nature of the world in which we live. The main concept behind this school of thought is that every person should work for his own interests. A person’s only moral goal should be his/her own happiness. Rand also argues that all of this can only be achieved through a full sense of individual rights which can only be brought about by a system of laissez-faire capitalism. She believes that individual freedom can only be completely achieved in a free market economy. This theory also rejects the concepts of faith and religion. One of the most major principles of this school of thought is that of rational egoism. This concept states that it is completely rational for a person to maximise his own self-interests and not work for the benefit of anyone else. The view is a normative form of egoism. According to Rand, it is irrational to act against one's self-interests. A person’s own happiness should be the final goal of his/her life. She believes that an ideal person can only function in a system which is free, rational and productive. Rand believes that human beings possess a unique ability of consciousness which enables them to choose and think for themselves. Therefore, an individual’s reasoning power is directed.

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7 "About the Author" in Rand 1992, pp. 1170–71
9 Baier (1990), p. 201
by the basic means of survival. Each individual should find out what is good for them and must maintain a right course of action to continue existing. All of a person’s actions should be directed towards his/her final goal.

Having deeply explained the relevant concepts, the paper will now analyse the institutions of pre-emption and waqf through the eyes of Ayn Rand and her theory of objectivism. The first topic that will be taken into consideration will be that of waqf. Rand and her school of thought of objectivism clearly negate religion and therefore, the concept of donating land in the name of religion and god is completely rejected by her theory. Rand has also advocated a full sense of individual rights and laissez faire capitalism. This means that the ownership of property should be private to achieve the most efficient and beneficial results from the property. The concept of efficient use of land is largely based on return investments which the owner might receive through proper use of the land. If this is looked at through the lens of objectivism, then donating land in the name of god and expecting nothing in return would lead to inefficient and ineffective use of the land. Rand’s theory also states that people would not seek to improve the condition of the land/property unless they themselves have a stake involved in it. This can also be used to tackle the institution of waqf in the sense that no one person privately owns the property and hence no one has an obligation to maintain the property in its entirety or make improvements to the property for better incentives and return investments.

One of the theories most relevant to waqf is the theory of rational egoism used by Rand in explaining objectivism. The principles of rational egoism are completely against the institution of waqf because rational egoism pushes a person to work only for his self-interests, whereas, all the principles of waqf revolve around a person wilfully and voluntarily transferring his/her property in the name of god, to be used for religious and charitable purposes only. This way, donation for religious purposes does not give any signal about a person working for his/her self-interests. The institution of waqf can also be critiqued by comparing it to the morals and principles of the protagonist of the novel The Fountainhead written by Ayn Rand. The name of the protagonist is Howard Roarke. According to Rand, he is the portrayal of an ‘ideal’ man. He had egoistic moral values, especially when it came to the topic of integrity and independence. An ‘ideal’ person like Howard Roarke would never give his property for charitable purposes because there is no personal benefit involved in that process. Another aspect of objectivism which can be used to tackle the institution of waqf is individualism. Rand considered individualism to be better than collectivism and the theory of waqf is completely related to collectivism i.e. everyone working for each other. The creation of waqf results in one person donating their property in the name of religion, so that the property or the proceeds from the property can be used for charitable purposes. The theory of individualism completely rejects this idea and propagates the principles of rational egoism which state that individuals should always maximise their self-interests and prioritise themselves over others. Rand indicated that the primary theme of The Fountainhead was “individualism versus
collectivism, not in politics but within a man’s soul”\(^{10}\).

The theory of objectivism can also be used to show how the right of pre-emption is violative of individual rights. If an owner of an immovable property wants to alienate the property, then the right of pre-emption forces the owner to first offer the property for sale to his co-heirs or neighbours for example. This whole concept goes against Ayn Rand’s philosophy of objectivism. The right of pre-emption takes away the owner’s individual choice of selling the property to whomsoever he/she wants. This restricts the personal liberty of a person and hence it is detrimental to his/her interests. The theory of rational egoism also applies here; if a person is forced to sell to a specific person then that person will not be able to sell according to his/her own choice and interests. If the person is not selling according to his interests, then it will not be for his best-interests. This also does not sit well with the principle of individual rights.

A person should always be looking out for his/her own interests and their priority should be their own happiness and this cannot be achieved through a system which forces people to sell property only to specific people. The idea behind pre-emption is to restrict the entry of strangers but this is against the principles of capitalism which requires free movement of property. Another aspect that can be considered is the non-monetary favours that owners might receive by alienating property to buyers of their choice. For example, a seller may receive some extra benefits and incentives by selling a property to a very rich and famous person, compared to selling the property to a farmer. If a person is forcefully restricted from receiving those benefits by way of the right of pre-emption, then that person would not be able to maximise his self-interests and this would also harm his/her individual rights. This, according to objectivism would not result in proper functioning of a person or the society. If the right of pre-emption if forced on the protagonist of the novel The Fountainhead, then he would not be able to function properly and his identity of an ‘ideal’ man would be lost. All these above mentioned reasons show how pre-emption would not be a good institution if looked at with the theory of Objectivism.

Therefore, this paper has proved how the institutions of pre-emption and waqf are un-important and can bring deterioration and ruin to the economic atmosphere and also to the overall lives of people because they are restricted from exercising their individual choices. Individual choices are very important if a society has to function properly. Although it is true that the issues in contention might have some advantages, but the theory of objectivism will critique these issues because they go against the basic principle and the core values of that doctrine.

\(^{10}\) Rand 1997, p. 223
RETHINKING OF THE NEED OF CAPITAL PUNISHMENT IN INDIA

By Abhishek Priyadarshi and Isha Tiwari
From Symbiosis Law school

Abstract
Ever since the evolution of civilization, there have been shreds of evidence of methods of punishment used to inflict the pain in human body, but that pain is really reformative is still in question, way back in 1981 in the case of Bachan Singh Vs. State Of Punjab, the apex court of India upheld the constitutionality of the death penalty, however it is has to pass the test of “rarest of the rare case”. Whether it is article 21 of the constitution of India or article 6 of the ICCPR should not be in favour of death penalty. This paper tries to testify the fact of entwines of need of capital punishment and social harmony and integrity. This paper brings out the effect of capital punishment and tries to critically analyse the concept of capital punishment in Indian context and globally as well.

KEY WORDS:
Article 21 of the constitution of India, Article 6 of the ICCPR, social harmony and integrity, execution of capital punishment.

1. Introduction
If we talk about the notion capital punishment so it hasn’t been defined under Indian penal code, however IPC provides for some specific form of punishments. In general sense punishment means infliction of pain by judicial authority through due process of law for anything wrong done by the offender. Capital punishment refers to the sentence of death for a serious crime and is often called the Death Penalty. All of these Punishments are imposed, by judicial authority, to try and deter individuals from committing crimes for the first time or for repeating them. The notion of capital punishment is very old concept, it was also recognized in ancient India. Basically, there were four major kind of punishments prevailed in ancient India which were capital punishment, corporal punishment, social punishment and financial punishment. if we go through the execution methods of capital punishment (death penalty) so it was unlike modern method. Mainly there were four methods to execute death penalty, which are following: throw under the leg of elephants, construct into wall pillory and stoning. It may be said that punishing offender with death penalty is not only purpose of capital punishment but also to maintain the peace and social harmony.

According to the NCB report Acquittal rate with respect to death penalty in India is more than 93% and since last decade 1304 people were convicted for the offences punishable with death penalty, but only four have been executed. Now question arises whether the goal of eradicating heinous crime through imposition of death penalty is a unachievable goal, if it is then death penalty makes no sense. Sometimes, out of political pressure some major legislation are introduced to deal with heinous crime, but they never achieve the desired goal reason lack of rationality and strategy for its implementation for instance, POCSO Act, 2012, which couldn’t be implemented in a expected manner. doesn’t it seem, for the state, imposing death penalty is easier than reforming a rapist because reformation is an exhaustive process requires time and

11 Black law dictionary
12 https://shodhganga.inflibnet.ac.in/bitstream

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patience. We are the part of a civilized society where punishment is designed to prevent the crime, and if they are failed to do so, should be ceased to function.

2. Legal provisions regarding capital punishment

Since we know that country like India packed with diversity, and still struggling for development in such developing phase; complete suppression on criminal activities are mandatory. In keeping mind such thing India has retained capital punishment for some heinous crime.\(^{13}\) Under the Indian penal code, there are following offence in which death penalty may be awarded:

- Under section 121, waging war against the government of India.
- Under the section 132, abetment of mutiny.
- Under the section 194, for giving or fabrication false evidence upon which an innocent person suffers death.
- Murder under section 302.
- If someone is murder convict under the section 303, which has been declared as unconstitutional in the case of Mithu v/s state of Punjab.\(^{14}\)
- Under section 305 for abetment of suicide of a minor or an insane or an intoxicated person.
- If the hurt is caused under section 307, a person who is under sentence of life imprisonment attempt to murder.
- Under section 364A for kidnapping for ransom etc.
- Under section 396, In the case of dacoity with murder.

- In the situation, where abetter or conspirator of any such offences punishable with death penalty and that offence is actually committed in consequences of that abetment.\(^{15}\)

The criminal law (Amendment) Act, 2013 brought about the following offences under Indian penal code in which death penalty may be awarded by the court:

- Under section 376A, punishment for rape resulting in death or permanent vegetative state.
- Under section 376E, punishment for repeat offenders of rape.

Apart from Indian penal code, there are some other special statute for instance Armed forces Act, NDPS Act, 1985, Arms Act, 1959, Commission of Sati Act, 1987 and under the Terrorist Acts, etc.\(^{16}\)

If we talk about the number of people, who have been executed since independence seems to be matter of disputes; official government statics claiming that only 52 people have been executed, however, research by the people’s union for civil liberties(PUCL) shows that actual execution is much higher, which near about 1422 in the decade from 1953 to 1963 alone.\(^{17}\) A study submitted by national law university, Delhi on death row convicts since 2000 has found that 1617 convicts sentenced for death penalty by the trial courts in India in which capital punishment was confirmed in only 71 cases.\(^{18}\)

In December 2007, united nation general assembly calling for a moratorium on the capital punishment( death penalty), but

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\(^{14}\) AIR 1983 SC 473

\(^{15}\) Indian Penal Code,1860.

\(^{16}\) Ibid 3.

\(^{17}\) "Number of executions much higher than 52."

Times of India. 10 March 2005.

\(^{18}\) "Number of executions much higher than 52."

Times of India. 10 March 2005.
India voted against the resolution. In November 2012, once again India voted against the draft resolution seeking ban on death penalty.  

3. Historical Relevance
If we go through the colonial era, death was recognised as the capital punishment in Indian penal code, 1860, which listed number of heinous crime. After independence in 1947, India retained death penalty. If we talk about the first hanging in independent India so it was of Nathuram Godse and Narayan Apte in the mahatma Gandhi assassination case on 15 November 1949.

Under the article 21 of the constitution of India, no person shall be deprived of his life except procedure established by law.

Bachan Singh Vs. State Of Punjab(1980)
In Bachan Singh Vs. State Of Punjab the constitutional bench finding of supreme court of india made it very clear that death penalty can be imposed in The Rarest Of Rare Case. Judgment in this case was in row with previous verdicts in Jagmohan Singh Vs. State Of Uttar Pradesh(1973) and then in Rajendra Prashad Vs. State Of Uttar Pradesh(1979). The supreme court of India reached conclusion that death penalty should be imposed in the rarest of rare cases. while putting honour killing in the category of rarest of rare case, the court has suggested that death penalty extended to those found of committing crime of honour killing, which deserve to be a capital crime. The apex court also recommended death sentence to be imposed on police official, who commit cruelty in the name of encounter killing.

4. Clemency In The Indian Constitution
Death sentence awarded by the session court must be confirmed by a high court to make it final. If it gets confirmed, the condemned convict has the option to appeal to the supreme court of India, and if the appeal petition is refused by the apex court then condemned person can submit mercy petition to the president of India and the governor of the state.

5. Execution Of Death Sentence
The code of criminal procedure (1973) prescribe that the execution of death sentence is carried out by hanging by the neck till death or shooting under Arms Act.

6. Critical Analysis
If we go through the India’s history of death penalty in the last decade so we find Indian Judiciary sentenced 1303 people to death, but only four have been executed till now, those were:

- Dhananjay Chatterjee (date of execution: august 14, 2014), was accused


ANNEX XIII. Retrieved 30 July 2013.


21 1973 AIR 947, 1973 SCR (2) 541

22 1979 AIR 916, 1979 SCR (3) 78

23 “Hang cops involved in fake encounters: Supreme Court”.


24 Article 72 and 161 of the constitution of India

of raping and then murdering of 14 year old girl.

- **Mohammad Ajmal Amir Kasab** (date of execution: November 21, 2012), was accused of 26/11 attacks in Mumbai.
- **Afzal Guru** (date of execution: February 9, 2013), was responsible for the attack on Indian parliament.
- **Yakub Memon** (July 30, 2015), was responsible for 13 blasts in Mumbai in 1993.

### 6.1 Why capital Punishment for rape should be abolished in India

Capital Punishment is one of the extreme forms of punishment which ultimately takes the life of offender. But when it comes to the case of rape, the scenario is different. Since the punishment to rape is very likely to be death sentence. Thus, it creates the distress to the life of victim in the following manner;

1. Firstly, the in India, in majority of the cases victims have to undergo the most brutal form of death. Whether it be [Nirbhaya case](https://www.supremoamicus.org), or be latest Unnao case where she was burnt alive, all the victims suffer to the extremist. This happens since the offender is aware that if they leave her, then she will complain, thus leading to offender’s death execution, so it does no good to the life and integrity of the women who is being raped. As even if the person who committed rape is given capital punishment cannot compels us to preterm the fact the victim is dead and any further will do no good to her anymore.

2. Secondly, India being a nation who follows the preventive and reformative theory of law offers multiple chances to the offender to run away from his dues by majorly giving him multiple chances to convert capital punishment to life time imprisonment. As according to the data in India nearly only minimum percent of convicts get executed to death punishment as supported in above mentioned data and others get it converted to life imprisonment. So, it actually appears like the black letter of law bracing the a mirage of hope to the victim’s family for justice.

3. Thirdly, the punishment fails to serve the purpose of deterrence and also deferred from the concept of retributive theory, which is also supported in 262rd Law commission report as;
   
   “the notion of ‘an eye for an eye, tooth for a tooth’ has no place in our constitutionally mediated criminal justice system. Capital punishment fails to achieve any constitutionally valid penological”

4. Power of the State & Union government further delays the process and in most of the cases are politicised and thus making it a cold-blooded death of the criminal justice system in the nation.

As crime committed in India in most of the cases, the victims are being raped by their known family member and in patriarchal society like India, it often provokes the accused to kill the victim since keeping her alive might leave him in distress with the societal pressure.

So by the virtue of all the real life and practical problems faced by the victims, we would support the favour of discarding the concept of Capital Punishment in India.

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27 Article 72 and Article 161 of the Constitution of India p
29 Ibid 12.
6.2 Critical interpretation of theories of punishment:
There are certain theories of punishment under which legitimacy of punishment is recognised, these theories are following:

i. Retributive theory of punishment
ii. Deterrent theory of punishment
iii. Utility theory of punishment
iv. Reformative theory of punishment
v. Preventive theory of punishment

However in India the following theories have been considered:
- Reformative theory
- Preventive theory

REFORMATIVE THEORY
As Gandhi said, “an eye for an eye turns the whole world blind.” These words are the gist of reformative theory of punishment. All theories of punishment are concerned with reformatory process of offender. The very objective of all these theories is nothing but the reformation of the convict through individual treatment. As the name suggest, reformative theory is intended to reform or educate the culprit by himself/herself. A culprit is punished for his own interest. Various sides and approaches have supported this theory. In eyes of criminology, crime is seen as diseased. Reformative theory tune with the principle of criminology. Whether it is criminal anthropology or criminal sociology or psychoanalysis, they all support reformative theory. This theory tends to change the criminal mentality and give an opportunity to the culprit to lead a life as civilized person. This theory throws critical light on all kind of corporal punishment.

PREVENTIVE THEORY
As universally recognised, “prevention is always better than cure”. This theory is interested in keeping the culprit away from a civilized society. according to this theory punishment is intended to send a message to the society at large that whatever has been done (a criminal act) should not be happened again. This theory also recognises death penalty and life imprisonment. This theory has been supported by many law thinkers and reformers because it has viewed penal law in humanized manner. utilitarian mentality has also advocated the preventive remedies, which are intended to prevent crime. Preventive methodology is suitable form of punishment, reason being it has effective deterrent parameters. This theory supports the idea of capital punishment. In the context of India preventive theory is well recognised and under the operation as well.

7. Law Commission of India and Death Penalty
On 31st of August 2015, the law commission of India chaired by justice A P Shah submitted its 262nd report on the issue of death penalty in India. The issue regarding death penalty was referred to the Law Commission by the apex court in Santosh Kumar Satishbushan Bariyar v. Maharashtra, and Shankar Kisanrao Khade V. Maharashtra. The Commission recommended abolition of death penalty and concluded after studying the issue extensively that the death penalty does not serve the penological goal of deterrence any more than life imprisonment. In fact it fails to achieve any significant result. The report also recommended the death penalty should not be imposed except in the case of repeat offenders or in cases where the life of the victim was lost in cases of serial murder. The Commission also recommended the abolition of capital punishment in cases of juvenile offenders and offenders over the age of 70 years.

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30 sue Rex & Michel Trony, "Reform and Punishment" Willan Publishing
31 Bachan Singh v State Of Punjab; AIR 1980 SC 898
33 (2009) 6 SCC 498
34 (2013) 5 SCC 546
constitutionally valid penological goals. However, it was law commission, in 1967 recommended that death penalty should be retained.

8. Comprehensive 2019 Annual Statistics Report Regarding Capital Punishment In India Can Be Seen Here:
As of 31st December, 2018, total number of prisoners on death row were 426, and as on 31st December, 2019 they reduced to 378.

Source: Project39A, NLU Delhi
On the basis of this figure, it may be said that those who are on death row would go through lot of mental harassment because in India rarely convicted persons are executed. This fact may be justified by seeing the last year figure of death penalty:

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36 The 35th report of law commission on capital punishment, in 1967
37 https://www.project39a.com/annual-statistics
Previous statistics report of 2016, 2017 and 2018 regarding death penalty in India can be seen in figure given above. If we go through the 2018 annual statistic report regarding death penalty in India so 2018 had seen the highest number of death sentence pronounced by trial courts of India. 12 death penalty case were heard in the supreme court in which 11 cases commuted to life imprisonment. In the case of Channulal Verma Vs. State Of Chhattisgarh, justice Kurian Joseph was of the opinion that death penalty should be reconsidered and he also shown the concern towards the constitutionality of the death penalty. Because of the high rate of crime, 2018 witnessed legislative expansion for instance, criminal law amendment Act, 2018 which came with the view that death sentence as possible punishment for rape of girls below 12 years and then amendment in the protection of children from sexual offence Act, 2012 in January 2019 which also came with death penalty in case of sexual offence in brutal manner with children below the age of 18 years. There is following figure with respect to death penalty cases in 2018 given below:

Source: Project39A , NLU Delhi

9. Imposition of death sentence by session courts under the criminal law amendment Act, 2018 in 2018:
10.2017 Annual Statistics Report Of Death Penalty In India:

Source of the statistics: Project39A, NLU Delhi
11. 2016 Annual Statistics Report Of Death Penalty In India:

Statistics in 2016

The numbers below account for death sentences awarded by sessions courts, and acquittals and convictions by appellate courts. Each number in this Report represents a person and not a case, unless otherwise specified. Statistics for the Supreme Court pertain to criminal appeals only. A more detailed analysis of the Supreme Court’s engagement with the death penalty in 2016 is reflected later in this Report.

PRISONERS ON DEATH ROW AS ON 31ST DECEMBER 2016: 397

PERSONS SENTENCED TO DEATH BY SESSIONS COURTS: 136

HIGH COURT ACQUITALS: 014
HIGH COURT CONVICTIONS: 044
HIGH COURT CONFIRMATIONS: 015
SUPREME COURT ACQUITALS*: 003
SUPREME COURT CONVICTIONS*: 007
SUPREME COURT CONFIRMATIONS*: 000

*This refers to persons acquitted of charges attracting the death penalty. However, two of these appeals were convicted on other charges.
**These pertain to criminal appeals only. While the Supreme Court did not confirm any death sentence at the criminal appeal stage, there was one confirmation (BA Umesh vs. State of Karnataka) at the review petition stage.

Source of the statistics: Project39A, NLU, Delhi

If we talk about the death penalty on international forum so it is not prohibited by the international covenant on civil and political rights (ICCPR), which has also been ratified by India or any other international treaty, however more than 140 nation have already abolished the practice of death penalty. Article 6 of ICCPR states:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Even though Article 6 of the ICCPR permits the use of the death penalty in some circumstances, but under article 6(6) of ICCPR it is directed that “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”

So it can be seen under the article that there are number of strict limitation on the process of imposition of death penalty, include the following:

- Right to fair trial.
- Death penalty is limited to only the most heinous crime.
- If ICCPR’s rights have been violated then there is prohibition on death penalty.
- No execution of pregnant women.
- No execution if convicted person was below the age 18 at the time of commencement of crime.

In the case of Soering V United Kingdom And Germany the European court of human right had found that death row situation in the united state constituted cruel or inhuman and ill treatment.

12.1 Statistical Data On Death Penalty By Country:

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38 262nd Law commission report, 2015
39 Article 6 of ICCPR
40 https://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIndex.aspx
41 7 July 1989 Series A Vol 1611 EHRR 439
On the basis of above statistics, it is quite clear that the trend towards the death penalty or any other kind of capital punishment is becoming unacceptable in majority of the nations. The numbers show here that the abolition of death penalty is clear throughout the world. After viewing these data, it is clear that 67.5% of countries are abolitionist in which 45% are abolitionist for all crimes.42

13. Comments And Suggestions:
- If we go through the human history, whether it is ancient time or middle age or modern time, capital punishments have always been there, but the fundamental purpose of imposing capital punishment hasn’t been fulfilled yet, which is to deter people from committing crime. So it may be suggested that psychological and reformatory methods should be used rather than imposing capital punishment.
- Since we know that execution is irrevocable punishment so it is very difficult to eliminate the risk of executing some innocent person. This reason also suggest that abolition of death penalty is in favour of humanity.
- Sometimes it is used to eliminate political opponents for instance, in Figure 8, the authorities use it for the same.
- We know that human rights are guaranteed for human beings not for demons or felony, so they should be punished, but death penalty can’t be solution to any violence if it would have been then crime from society would have vanished till now.
- Capital punishment can’t be permanent solution of controlling crime if it had been then the convicted person in “Nirbhaya Rape Case” would not have said that “A decent girl won’t roam around at 9 o’clock at night”.43 So I am of the opinion that the reformation methods are far better than imposing capital punishment.

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UNIFORM CIVIL CODE: A DEBATABLE ISSUE

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ABSTRACT:

“One nation one law”\textsuperscript{44}, the ideology behind Uniform Civil Code says that a country’s citizens should be governed by one uniform law irrespective of their caste, sex and religion. Uniform Civil Code acts as an umbrella in the form of personal laws such as marriage, divorce, adoption, inheritance, succession and maintenance governing the whole nation.

India being a secular country gives freedom to practice and propagate any religion of one’s choice. The implementation of the uniform civil code goes back to the British period where in the Lex Loci Report of 1840\textsuperscript{45}, it was emphasised that the criminal and contractual matters will be governed by one single codified law of the country, but the personal laws of different religious communities would be kept as and excluded from such a unified law. However, the Queen’s Proclamation of 1859 had ensured that religious matters would not be interfered into.

Through this article, we seek to throw light upon the only state in India having a uniform civil code. This article talks about whether a uniform civil code should be implemented in India, if implemented, the challenges which can be faced by the people of the country. It also discusses about the arguments for and against uniform civil code and the legal perspectives involved with it.

Keywords: One nation one law, Uniform Civil Code, personal laws, secular, challenges faced.

INTRODUCTION:

Unity in diversity is a phrase used for India as it is rich in its various culture, traditions and religions. The concept of a uniform civil code was long introduced during the British colonial era where religious matters were not interfered with and every religious community had their own set of rules and laws to govern them. With the independence of India from the clutches of the British in 1947, the need for a uniform civil code was stressed upon by the imminent personalities who played a major role in the drafting of the framework of the Constitution of India, like Pandit Jawaharlal Nehru and B.R. Ambedkar. Finally, it was inserted in Article 44 of the Constitution of India under the Directive Principles of State Policy (DPSP). It was felt by the makers of the Constitution that the uniform civil code should be kept as a part of DPSP as there were a lot of political opposition and unawareness of the people at large.

The issue of a uniform civil code has been a topic of debate since a very long time and the Bharatiya Janta Party (BJP)\textsuperscript{46} is in favour of the enactment of a UCC. They

\textsuperscript{44}Namita Bhandare, Uniform Civil Code: One nation, one law, (Feb.2, 2020, 4:07 PM), https://www.livemint.com/Opinion/5pwNnS5hmjm4iOtmsW00M/Uniform-civil-code-One-nation-one-law.html


\textsuperscript{46}C.K. Mathew, Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach, (Jan. 20, 2020, 10:44 AM), www.supremoamicus.org
strongly believe that through UCC, gender equality and issues of unequal treatment meted out to various sections of the society can be brought under control.

The verdict given by the apex court in the famous case of Shah Bano, which deals with the maintainability of divorced Muslim woman and her children was overruled by the then government in power. It was so because of the internal turbulences that took place in the country which brought immense disturbances in the Muslim community. The Muslims were of the view that by this verdict, the Indian judiciary is now trying to intervene in the Muslim religious and personal matters. They objected the judgment and hence, the then government in power was compelled to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986.

SECULARISM IN INDIA:

“We, the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic.”

The Constitution of India declares India to be a secular state. This means that India has no religion of its own. It neither intervenes nor promotes any religion. However, it does not curb the freedom to profess, practice or propagate any religion. It treats every religion equally. India intends to create a harmonious atmosphere so that the brotherhood of the nation is kept intact. This leads to the citizens of the country to live peacefully and with dignity. So, the laws applied in India are same for all the religions. It does not change on the basis of religion except in personal laws of religion. Religions have different set of personal laws when it comes down to marriage, divorce, succession and inheritance. This means that the individuals of India get governed by their own religions’ personal laws. So, the people of the same country get governed by different laws when the question is about personal laws of religions.

Thereby bringing the controversy of Uniform Civil Code, supporters of UCC are of the belief that India being a secular country should govern Indians with the same laws irrespective of their religion. According to them, India should have an UCC that would help in executing the idea of ‘one nation, one law’.

GOA CIVIL CODE:

Goa is the only state in India having a uniform civil code also known as the Goa family law. It is a uniform law made for all the residents of Goa irrespective of their religion and ethnicity. The Goa civil code came from the Portugal civil code. Before 1961, Goa was governed by the Portuguese and hence the Portugal civil code came into existence in Goa. In 1961, Goa became a part of the union territory and the Parliament authorized the Portugal civil code of 1867. It was also authorized to be amended and repealed by the competent legislature.

In Goa, marriages are a contract like in Islam. So, if two people who are of different sex come together with a purpose of living and constituting a family has to register their marriage before the office of Civil Registrar. The rules that are made should be

https://www.thehinducentre.com/publications/issue-brief/article29796731.ece
accepted and followed by both the parties. If the rules are accepted by both the parties then the couple can start to live as husband and wife. This rule is very different from rest of the laws in India, thus making Goa different from others in the matters of marriage, divorce and succession.  

REFORMS BROUGHT ABOUT DURING THE POST COLONIAL PERIOD:

With the independence of India in 1947, the Hindu Code Bills were introduced and passed which aimed to reform the Hindu personal laws in India. There was a lot of opposition from the Hindu masses that their laws needed a reform which was finally implemented through the B.N. Rau Committee set up in 1941. This committee suggested a codified Hindu law which would cater to each and every section of the society, including giving equal rights to women. Jawaharlal Nehru and his government understood the need for such codification and hence, came up with four Hindu Code Bills which became acts, aiming to unify the Hindu community and also the nation as a whole. The four acts are the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956.

1. **The Hindu Marriage Act, 1955:**
   This Act was enacted with a view to codify the law relating to marriage among Hindus and also among the Sikhs, Jains and Buddhists. It amended the previously existing Sastrik law, bringing about new provisions relating to separation and divorce. This Act applies to a Hindu in any form, which also includes a Virashaiva, Lingayat or a follower of the Brahma Prarthana or Arya Samaj. It also applies to any person who is a Buddhist, Sikh or Jain by religion. This Act excludes from its purview any person who is a Muslim, Christian, Parsi or Jew by religion. This Act provides for various provisions relating to solemnisation of marriage, judicial separation, registration and many more.  

2. **The Hindu Succession Act, 1956:**
   This Act was enacted to codify the law relating to succession, intestate or unwilling among the Hindus, Buddhists, Jains and Sikhs. This act provides for a uniform law of succession and inheritance for all Hindus. This Act gave absolute rights to a Hindu female to acquire and possess property and also to dispose of it at her own will. Further, subsequent amendments gave daughters and sons equal rights and liabilities to the property of a deceased person and brought about equality in the rights of Hindu males and females.  

3. **The Hindu Minority and Guardianship Act, 1956:**
   This Act talks about the relationship between minors and their guardians and defines various terms of their relationship. A minor is defined as a person who has not attained the age of eighteen years and a guardian is a person who is in charge of taking care of the minor or his property or both, a guardian includes:

(a) A natural guardian,
(b) A guardian appointed by will by the minor’s father or mother,
(c) A guardian appointed by the Court,
(d) Any person empowered to act relating to any Court of Wards.52

This Act also applies to all Hindus, including Buddhists, Jains and Sikhs. For a legitimate minor, the father acts as the primary guardian and the mother is the secondary guardian, but for all children below the age of five years, the mother is the primary guardian. For an illegitimate child, the mother acts as the primary guardian and the father acts as the secondary guardian. For a married woman, the husband is the guardian and in case, a parent ceases to be a Hindu, he or she shall lose out on his or her guardianship rights.

4. The Hindu Adoption and Maintenance Act, 1956:
This Act deals with the procedure of adopting53 children by a Hindu adult and also the provisions of maintenance by a Hindu for the various members of the family like the parent-in-law, wife, children, etc. This Act also applies to all Hindus, along with Buddhists, Jains and Sikhs. Muslims, Christians, Jews or Parsi are not entitled under this Act. Also, if the wife is not a Hindu, she is not entitled for maintenance under this Act.

With the discussion on the four Acts of the Hindu Code Bill, the Special Marriage Act of 1954 also needs to be enlightened. This Act provides for a civil marriage among all citizens irrespective of their religion, thus allowing people to marry outside their communities and boundaries. There are four conditions for a marriage under this Act to be solemnised:54
(a) The parties must not be bound by any subsisting valid marital bond.
(b) The bride and the bridegroom should be of 18 years and 21 years respectively.
(c) The parties must be competent to give consent for their marriage.
(d) The parties should not be within the levels of prohibited relationships.

In the landmark case of Mohd. Ahmed Khan v. Shah Bano Begum, Shah Bano was divorced by her husband Mohammed Ahmed Khan and unable to maintain herself and her children, she had filed a suit against the husband under Section 125 of the Code of Criminal Procedure. The lower court as well as the High Court of Madhya Pradesh gave the ruling in her favour. On an appeal to the Supreme Court by the husband, it was held that according to Section 125 of the Code of Criminal Procedure, it was the duty of a Muslim husband to maintain his wife beyond the iddat period. However, with the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, it was observed that the Muslim husband is entitled to maintain the wife only till the iddat period unless both the husband and wife brings to the knowledge of the Court that they wish to be governed by the Code of Criminal Procedure.

55AIR 1985 SC 945, 954: (1985) 2 SCC 556
In *Danial Latifi v. Union of India*\(^{56}\), the constitutional validity of the *Muslim Women (Protection of Rights on Divorce)* Act, 1986 was challenged and the Supreme Court held that a divorced Muslim woman is entitled to maintenance from her husband till the time she remarries and if she does not remarry, till her lifetime.

In *Sarla Mudgal v. Union of India*\(^{57}\), the question arose that whether a Hindu husband on having a valid Hindu marriage solemnise a second Muslim marriage by converting to Islam in the presence of the first marriage. It was held by the Supreme Court that the second marriage would be void as per Hindu law and he would be liable for an offence committed under Section 494 of the Indian Penal Code.

In *Lily Thomas v. Union of India*\(^{58}\), the decision given in the *Sarla Mudgal* case was reviewed and the need to set up a uniform civil code was significantly stressed upon to prevent people from duly misusing the sacred institution of marriage among the Hindus and also to secure national unity and harmony among the people.

ARGUMENTS FOR AND AGAINST THE UNIFORM CIVIL CODE:

**IN FAVOUR OF THE UNIFORM CIVIL CODE:**

India being a diverse country with its varied traditions and customs will be more unified and integrated with the enactment of a uniform civil code. The presence of a uniform civil code also denotes the mark of a progressive nation where there are no religious or social disparity. One of the most favoured reasons for the implementation\(^{59}\) of a uniform civil code is that women shall be given equal rights and there will be improvement in the social conditions of women. It will also ensure equal treatment given to all Indians irrespective of their religion or social standing. Uniform civil code is not against the concept of secularism and does not stop people from practising their own religion, but only ensures a set of unified laws which shall govern all the citizens. They are not in violation of Article 25 and Article 26 of the Constitution which guarantee to the citizens the right to practice, profess and propagate their own religion. The presence of a uniform civil code will only make the task of the judiciary easier to effectively administer the laws.

**AGAINST THE UNIFORM CIVIL CODE:**

The uniform civil code has a lot of reasoning to support its implementation, but also, there are a few cons of such a code. For a country like India with such a massive diversity, coming up with such a code is a difficult task which needs to cover all sections of the society. Further, it would be a direct intervention by the State in the religious rights of the people and would hinder their right to exercise their own traditions and rules. The enactment of such a code must necessarily take into account all the existing personal laws of the various communities and come up with a comprehensive code which caters to the needs of all the communities, otherwise it would be a massive ground for communal riots and violence.\(^{60}\)

\(^{56}\)AIR 2001 SC 3958: (2001) 7 SCC 740
\(^{57}\)AIR 1995 SC 1531, 1538: (1995) 3 SCC 635
\(^{58}\)AIR 2000 SC 1650: (2000) 6 SCC 224
CONCLUSION:

Like all controversial issues have its own pros and cons, so does the uniform civil code. The Law Commission of India has said that the uniform civil code is “neither necessary nor desirable at this stage.” We may presume that it is true as it can create a lot of ruckus in the country and would make the Indians believe that the judiciary is intruding in their religious and personal matters. The Indians are extremely sentimental about their religion and they are not easily adaptive to changes. To avoid such a situation, people stay away from establishing the uniform civil code. If implemented, the uniform civil code can integrate a nation in terms of governance by one law for all. It can arouse the sense of equality among the citizens of the country. The mental barrier of discriminating people through religion will stop to an extent and thus, India would continue to be secular in its truest sense. With the abolition of the instant triple talaq on 22nd August, 2017 by the Supreme Court, the Indian judiciary intruded into the matters of Islam. It felt that rights of women were getting violates by the men, thus, the Indian government had the opportunity to implement the code but instead, decided to stay aloof and silent on the matter of its establishment.

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MEDIA'S PERSPECTIVE OF WOMEN

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INTRODUCTION:

On contrary to popular practice, this paper doesn't aim at blaming the masculine gender for the distressed status of women. It aims at pointing the changes that humankind, collectively, regardless of gender needs to make, in order to produce a better society i.e. a society, where in women are not collateral damage for the mistakes of men and other women. Give how the society reacts to the same mistake done by a man and woman, a thought? When a man does a mistake, it sure does put a lot of materialistic values at stake. Except, when a woman does the same, her morality, character, values and materialistic things are judged and challenged. Now this is what begins to elucidate the changes this paper aims at bringing about.

"Women have been called queens for a long time, but the kingdom given them isn't worth ruling"

Only when women are provided with equal resources and respect, which they deserve, the true power of women will be enshrined in India. It is witless to criticize women before you get to feel their true power. Only this would enable the evolution of the whole country. It is not a choice for the people of India to fight with women for their safety and development, but the only course available to evolve as a society.

Media, i.e. your everyday newspaper, WhatsApp to advertisement, movies, etc. play a significant role in changing the perspective with which women are viewed, in India. But the same media, rather than being used for creative purposes is exploited for dreadful purposes. This research primarily deals with women empowerment through media, problems faced by women in media, failure of government in addressing women distress, women’s safety and feasible solutions.

PROBLEMS FACED BY WOMEN:

For every boon, there is a dozen corresponding bane. Similarly, for all the merits of media there are threats, demerits and consequences that are of serious nature. Media creates false, unreal expectations in the minds of people about women. To explain this, take a commercial that promotes a product used domestically. The advertisement usually shows women in distress and discomfort, which is how they are everyday and all of a sudden, the particular product comes in their life and showers the household with luxury. This induces the basic ideology that women are supposed to be like that, for the household to function normally. Movies, Cartoons, TV Dramas also portray women this way and strengthen the stigma that women are supposed to be treated so. The reputation of women is also spoken low in the above said industries. Disturbing content, predominantly sexual, objectify women and lower their dignity by portraying them inappropriately. When content of this sort is viewed, over time, people casualize it and feel no deal in incorporating the same in reality. Now here is where the problem arises. People for numerous psychological reasons do not get the difference between ‘on screen activities’ and ‘off screen
activities’. The content creators also fail to realise that majority of the people are vulnerable to the bad content and they are most likely to grasp what they see. Because, after all as Genna Daris said, “if they can see it, they can be it”.

Media’s influential power is like a match stick. It can provide warmth when gasped as well as sets dreams ablaze. Women face a lot of problems because of this.

DESTRUCTIVE EFFECTS OF MEDIA IN WOMEN’S LIVES:

Applications through unjust terms and conditions receive the permission from its users to use their personal media to its own advantage. Eg: morphing through the faceapp.

Women Journalist face serious threats when they are working on exposing content relating to people high of profile.

Stalkers can now monitor their target’s every move without the target knowing there are being monitored.

Hidden spy camera’s in unexpected places are installed for sole purpose of representing women indecently and making financial benefits by selling out the content to unauthorized and illegal sources such as pornography websites.

Majority of the society due to traditional stigma believes that victim should be blamed for enduring such a situation. Due to which the reputation of the women is being spoil.61

One gets used to something when experienced constantly or frequently. When content having inappropriate acts is viewed by the public over and over again, human brain generalizes it as something which is not of serious nature. Due to this, the consequences of committing the act are not taken seriously and the sentiments of the aggrieved are not respected. Example: Domestic violence in households, Sexual Harassment of a subordinate by superior (in corporations) etc.

The psychological importance of treating women like subjects, rather than objects cannot be stressed enough. These ‘ought to be followed’ ideologies need to be incorporated in everyone’s mind from childhood itself. The older one grows, the lesser he would comprehend the importance aspects of this sort. Unfortunately, not everyone is able to understand that women, just like men, are humans and need to be treated that way. This is not something they should be fighting or protesting for because this is their natural right.

Movies mould culture. People understand morals from movies more than from anywhere else. But movies also majorly objectify women, represent them indecently or inappropriately to get the public’s attention. The more content of this sort is given to the viewers, the worser they would start expecting in the future. Incorporating movie aspects in reality is also a major factor that exploits women and adds to their problems.

One of the reasons why the upcoming generations are spoilt from a very tender age is cartoons. Back in the days, cartoons represented innocence and fun. These days, even cartoons have genres like Drama, Romance, Sci-Fi, Sex, etc and they use vulgar language too. Every genre has an element of sex at some point or the other and this pretty much gives a new definition to cartoon.

Advertisement portrays women to be weaker, subjugating gender and encourages sexism in a lot of aspects.\textsuperscript{62} For instance, commercials that promote household products usually involve a woman working so hard, distressed and tired and then the product makes it easier for her to finish the particular chore\textsuperscript{63}. Or it's a woman trying to make her husband or her family happy by using a product and doing other household chores. Or a working woman who comes back home after a long day, returns home and cooks for the family using the advertising product. All these commercials have at least one aspect that makes it a point that women are expected to forego their comfort for the sake of others. Commercials influence people. And it's an understated aspect when it comes to consideration in \textit{Ajay Goswami v Union of India}, a relevant case which drew provisions from the Indian Penal Code, Indecent Representation of Women (Prohibition) Act etc to challenge the obscene content in newspapers.

8 out of 10 Indian TV dramas have a mother-in-law that abuses the daughter(s)-in-law physically and mentally for the most minor of all inconveniences and the aggrieved, suffer in silence. The husband also, supports his mother and does nothing about the abuse. And the daughter-in-law cooks, cleans, does the dishes, does the laundry and other chores and constantly stays in distress and depression. These dramas influence people and they unconsciously or consciously adapt themselves similar to the character and expect the family to function analogical to that of the on screen family. This is how irrational, influence can be.

\textbf{MEDIA'S ROLE IN EMPOWERING WOMEN:}

Media and women’s talent are analogical to a car and fuel. Though the element of talent was always vested in women, the ideal stimulating element was missing. But these days, women are reaching unbelievable heights and miraculous milestones with media fuelling their talent. Social media platforms, YouTube, Film Industry, TV dramas and all the other influential platforms have witnessed great involvement and contribution of women in various fields. Apart from this, victims of relieved crimes can now enlighten a greater audience about the pain they have been through, that helped them overcome it and how important it is to speak out, in order to get justice. Since it is a vital topic, consider this instance. Rape, a penal offence u/s 375, though happened at the same rate since time immemorial, is brought to light, frequently in the recent days because of media. It is a very serious issue regarding which people did not choose to talk about.

Justice Krishna Iyer in the case of \textit{Rafiq v State of U.P}\textsuperscript{65} made a remark that, ‘A murderer kills the body, but a rapist kills the soul’. Literally interpreting this quote, it signifies the importance of soul as something more than that of a body. Though speaking out is not going to eradicate rape completely, it would definitely spread awareness among the public and it is agreeable that

\begin{itemize}
  \item Ajay Goswami V. Union of India , AIR 2007 SC 493, (2007) 1 SCC 143.
\end{itemize}
'prevention is better than cure’. Besides influencers, bloggers and victims, homemakers also get to showcase their talent by creating YouTube channels that is exclusively for cooking, tailoring, teaching, fashion and other domestic activities. This way, the interests of people who prefer working from home is also protected. After all, not all heroes wear capes.

CONSTRUCTIVE EFFORTS OF MEDIA:

Section 22 of The Hindu Marriage Act 1955 i.e. In camera proceedings, safeguards the reputation of women when sensitive matters are concerned.

Section 228A of Indian Penal Code of 1860, prevents the disclosure of the victim’s name in offences under section 376 of Indian Penal Code 1860.

Applications that concerns with the safety of women are the positive outcomes of tragic events in recent times. eg: KAVALANAPP.

Media provides a platform for women who prefer to work from home. Victims can now enlighten the world about their silent suffering without having to jeopardize their reputation or their families.

Media provides a platform for women as well as men to express their opinion on the situation of women in India. The women need not worry about the controversies since the identity and gender can be masked in media. The topics of women inequality, safety and perception are widely discussed among various media such as instagram, facebook, bloggers, etc.

It provides a platform to showcase their skills and talents.66 Women can publish their writings through bloggers and other media, promote their business through facebook etc, promote themselves as models, make videos such as tik tok, dub smash, etc and show case their skills such as cooking, exploring, etc in YouTube, bloggers, etc.

Media provides access to information on all fields without gender or any kind of discrimination. The media is used as a medium to gain popularity but is not partial or unfair. The reach of the content you publish is based on the quality of the content. Higher the quality higher the reach goes. Media can mask the identity of the person publishing the content so that the content doesn’t get discriminated based on gender, caste, race, colour, etc but only criticized based on the contents that is published.

Violence against women has been persistent in India since time immemorial. But the birth of newspapers and introduction of other types of media in India, has been increasing awareness about the distressing situation of women in India. Though there has been no drastic decrease in the occurrence of violence against women, media has contributed in increasing awareness about the violence against women on a daily basis. There are cases where the government took extra care and focus in order to get justice for women after the reach of news widely in media such as whatsapp, facebook, instagram, etc. For instance, in the recent Unnao Rape Case, the victim wrote a letter concerning her situation to the CJI, Ranjan Gogoi, which never reached him, as per sources. But, the CJI acknowledged the letter through the news and social media posts which are nothing but media.

Media can be used to teach public about the need for changing the public perception over women\[67\]. The contents of media largely impact the users or viewers, especially young children who have tender and vulnerable minds. Media can be used to teach the young generation of our society the significance and greatness of women rather than spoiling them with various commercial contents. This way there would be no need for change in perception after the youth reach adulthood. Further the views would be passed on to the next generation so that the women need not face any obstacles, hopefully, in the future.

**REFORMATIVE MEASURES:**

Violence, of all sorts being the prime issue of concern, is addressed majority in this section. The global implementation plan to end violence against Women and girls was a recommendation from the multi-agency expert group meeting (EGM) on the prevention of violence against women and girls. The EGM was organized by UN women in collaboration with five other UN bodies. In March 2013, during the 57th session of the United Nations commission on the status of women, four main conclusions were agreed upon and they are:

- To strengthen the implementation of legal & global policy frameworks and accountability.
- To address structural and other causes and risk factors to prevent violence against women and girls
- To strengthen multi sectorial services, programmes and responses to violence against women and girls.
- To improve the evidence base.

Several sections of the Indian Penal Code are framed solely to protect women and their interest from media. For instance, section 228A protects the identity of victims of offences under section 376 from being disclosed. 228A(2) specifically extends the sub clause (1) contents from being disclosed to printing or publication in any media.

Section 22 of the Hindu Marriage Act deals with "in camera" proceedings. These are the proceedings that take place in the judge's chambers, in private and only the parties to the dispute participate in it. Usually this type of proceedings are opted when matter is pertaining to the morality of women, or any other sensitive matters like so on. No publication of any sort is encouraged and thus, this section saves women from media.

The Indecent Representation of Women (Prohibition) Act 1986, this Act punishes the indecent representation of women, which means the depiction in any manner of the figure of a woman.

Section 67 of the IT Act is the most serious legislative measure against pornography. The wordings of section 67 are wide enough to cover all perpetrators of cyber pornography, be it the Internet service providers, web hosting entities or the persons behind the actual website.

Cable Television Networks (Regulation) Act, 1995 prohibits the transmission of advertisements on the cable network which are not in conformity with the Advertisement Code.

Constitution of India Act, 1950 Ensures right to life that includes right to human dignity Right to live with human dignity

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enshrined in Article 21 derives life breath from the directive principles of State policy.

In Maneka Gandhi v Union of India\(^\text{68}\), it was ruled that right to life is not merely confined to physical existence but also includes within its ambit the right to live with human dignity.

In Chandra Raja Kumari v Police Commissioner, Hyd\(^\text{69}\), it had been held that right to live includes right to live with human dignity or decency and therefore holding of beauty contests is repugnant to dignity or decency of women and offends Art 21 of the Constitution.

Article 19 : Freedom of Speech and Expression

In R v Hicklin\(^\text{70}\), the court held that a publication or content is obscene if it tends to produce lascivious thoughts and arouses lustful desire in the minds of substantial numbers of that public into whose hands the book is likely to fall. Hence, the freedom of speech and expression are restricted in the interest of decency and morality.

The government of India has formulated several legislations in order to secure the dignity of women and provide them with equal resources and respect. But the execution of the legislations is very poor leading to the very purpose of the legislations being unattended. The law requires extensive procedures even after conviction for initiation of the punishment.

The Nirbhaya fund\(^\text{71}\) which was allocated for executing policies for women’s safety has not been used. Only 20% of the Nirbhaya has been used in the last 7 years since the allocation even though there are vast areas of women’s safety to be taken care of.

The National commission for Women, 1992, which is supposed to be the apex body established by the Press Council Of India Act, 1978, for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India. S. 14 of the Act gives the power to censure.

**FAILURE OF GOVERNMENT TO ADDRESS THE DISTRESS:**

It is the duty of government to every taxpaying woman in India to serve them with honesty and provide them with what they deserve. But the government has not made effective legislations and execution of such legislations is poor.

The government of India has formulated several legislations in order to secure the dignity of women and provide them with equal resources and respect. But the execution of the legislations is very poor leading to the very purpose of the legislations being unattended. The law requires extensive procedures even after conviction for initiation of the punishment.

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\(^{68}\) Maneka Gandhi v Union of India, 1978 AIR 597, 1978 SCR (2) 621.


\(^{70}\) R v Hicklin (1868) 3 Q.B. 360.

\(^{71}\) jagriti Chandra & Sumant Sen, Nirbhaya fund, The Hindu, (Nov29,2019,10:00AM), https://www.thehindu.com/news/national/only-20-of-nirbhaya-fund-has-been-used-by-states-until-2018/article28230097.ece
body for handling issues regarding woman has not performed efficiently. The powers given to the NCW\textsuperscript{72} has to be increased so that it can perform autonomously without any obstacles.

The legislations made by the government lack the intensity it requires in order to generate dread in the minds of people so that the crime is not committed in the future.

The justice which the woman victims of the Indian society deserve caused due to various crimes such as rape, domestic violence, acid attack, etc has to be given to them as soon as possible. But the system is extensive and inefficient making it slow and hard to achieve.\textsuperscript{73}

The cyber space is the place where all the people of India spend most of their time even more than in reality. Such cyberspace has to be managed so that the women do not face any obstacles. But cyber bullying, cyber stalking, morphing, defamation, trolling etc are highly prevalent in all cyber space. In recent years the violations against women has been doubled and various new violations have emerged in the society.\textsuperscript{74}

The government has not taken enough steps to formulate policies in order to improve the health and safety condition of women. The global Nutrition report states that more than half of Indian women of reproductive age suffer from anemia.\textsuperscript{75} This condition has not been given proper recognition. The government has also ignored the safety conditions of women which they deserve.

**FEASIBLE SOLUTIONS:**

“"She wasn’t looking for a knight; she was looking for a sword”"

\textsuperscript{\textit{Atticus}}

Women are not looking for knights in the politicians of our country but are looking for swords i.e. equality and safety. Women must be reserved 33\% of the seats in the parliament representing the women of our country rather than leaving the things in the hand of the politicians in our country. It has been 73 years since India achieved independence, in which only men have held most of the significant political positions and the conditions of women haven’t improved much. A bill addressing this issue has been pending in the Rajya Sabha for years. The most significant solution to the problem is having women legislators in the parliament who understands the needs and pain of women in our country.

Government should take in hand the process to change the perspective of women in India. Media being the primary source of spreading opinions and views should have been used wisely by government to spread contents that change the perspective of women in India.

\textsuperscript{\textit{\textsuperscript{72}Bhanu Pratab, National Commission For Women, Legal Services India, (Nov 29, 2019, 10:30AM), http://www.legalserviceindia.com/article/l318-National-Commission-For-Women.html .}}


\textsuperscript{\textit{\textsuperscript{75}Global Nutritional report, Burden of Malnutrition, (Nov 28, 2019, 1:15PM), https://globalnutritionreport.org/resources/nutrition-profiles/asia/southern-asia/india/.}}
Especially the young generation of the society needs to be taught the value of women in their lives and further the need for safety for the women in our society. This way the adults of future (i.e. the youth of current generation) treat women equally, protect them and pass on their views to upcoming generations.

"Justice delayed is justice denied"

There must be fast track procedures for handling cases regarding women i.e. rape, domestic violence, etc., so that the victim women need not waste years of her life just for a single case.

The use of cameras for illegal and immoral uses has to be controlled. For this purpose the government has to conduct periodical inspection over places that consist of potential illegal use of cameras. Further the immoral use of public cameras has to be stopped. The public camera which has to be used for the safety of the public is being used for immoral purposes in return for profit. Hence the periodical inspection over cameras in public as well as illegal use of cameras has to be conducted so as to control the violations of law and morality.

The government should legislate and amend laws punishing crimes against women with the concept of deterrence in the mind so that the other future potential crimes against women get diminished. It is through fear should the government control the potential future crimes against women in our society.

The laws concerning media and cyber space has to be amended, so that hate speech, hurtful contents has to be restricted. Violent porn contents have to be constrained and the procedure to publish porn contents has regulated. Publishing porn contents has to be licensed and laws concerning has to be amended.

**CONCLUSION:**

"I measure the progress of a community by the degree of progress which women have achieved"

- B.R.Ambedkar.

Women and men of India rather than holding silence should voice out their support for the distress faced by women. Victims of violence against women are being shamed rather than being supported and taken care of. The Indian women should be provided with equal opportunities and resources along with safe place to work and reside. The McKinsey Global Institute’s April report states that the GDP of India would increase by $770 billion if the women are provided equal opportunities in India. As for the exploitation of women, the loss already happened cannot be undone, but future losses can be prevented by incorporating the importance of safeguarding women’s reputation and rights, in all aspects possible. The present youth needs to leave a legacy behind that enlightens the future about the significance of existence of women and a world that comforts them. The supreme court has taken a giant leap by opening doors to women in military forces by stating that physiological features of women have no link to their rights the mind set must change with thousands of women valiently breaking the stereotypes and thousands of men helping them. Lets hope for a better tomorrow, where women are granted equal pay and equal respect that our grand mothers and mothers yearned for and our daughters rightfully deserve. Equality is the best gift that can bequeathed by us to our future generations.

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REGULATION OF NON-PERSONAL DATA IN INDIA

By Apoorva Singh
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The Personal Data Protection Bill, when enacted, seeks to replace section 43A of the IT Act, 2000 which is currently responsible for data protection in the nation. It was introduced to the Lok Sabha on December 11, 2019 by the MeitY. As the name suggests the bill is application to the processing of personal data, this personal data has been further classified into sensitive and critical personal data. The term “Data Principal” in the bill has been defined as any natural person who alone or in tandem with another determines the reason and way to process personal data. Non-Personal Data is any data that does not come under the definition of Personal Data i.e. any data that is not personal. Users of online businesses often leave behind digital data trail, the PDP bill seeks to protect any personal information that gets left behind in that trail, however, information such as weather trends collected by apps or data on which locations a site is getting traffic from cannot fall into the ambit of personal data as it is anonymized, hence to regulate this will be more of a challenge than personal data. In this article, I will be dealing with the developments of non-personal data in India and its interplay with the PDP bill.

1. Developments before the Draft Personal Data Protection Bill, 2018
   1.1 TRAI Consultation Paper

The Telecom Regulatory Authority of India on 9th August 2017 released a consultation paper titles “Privacy, Security, and Ownership of the Data in the Telecom Sector”\(^{78}\). This paper discussed the economic value of data. The paper by TRAI described the protection of data in the form of legal control over access and usage of data that has been stored in a digital format, it also includes the ability of a person to understand and control the way in which information that pertains to them can be used and accessed by other individuals.

TRAI stated that ownership over ones data was important and if it could be ascertained who held ownership of a given data and the ownership of this data could be of some benefit to the owner’s life. This would make data an empowering commodity. The TRAI paper suggested that the government should enable the data ownership sector grow by way of creating new services. They emphasized on 2 aspects, firstly, data portability, which is the ability to take user data from one service and share it with another, and secondly, the creation of anonymized public datasets also referred to as a data sandbox, this is a mechanism by which entities can contribute data that has been anonymized that could help in the development of new products. This public data set could be used as a test bed by new service providers.

1.2 NITI Aayog Discussion Paper
In June 2018, a discussion paper was released by the NITI Aayog named “National strategy for Artificial Intelligence”\(^{79}\). In this paper it was discussed that to incentivize more players

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\(^{76}\) Section 3(14), Personal Data Protection Bill, 2019
\(^{77}\) Explanation to Section 91(2), Personal Data Protection Bill, 2019
\(^{78}\) Consultation No:09/2017, Telecom Regulatory Authority of India
\(^{79}\) Discussion Paper, National Strategy for Artificial Intelligence, Anna Roy Advisor (Industry), NITI Aayog
to supply AI training data sets and services, it was important to have data available. There should also be an audit mechanism to curtail the reselling of the same data, there should also be means to address privacy and security concerns. A solution given in the discussion paper was that all the data could be centralized and hosted by a trusted party on behalf of the data providers. Obvious challenges arose with this idea, the largest being that data is a replicable resource. The technology was recommended as to form a decentralized data marketplace. The process of data exchange would come with provisions of anonymization, so as to remove personal information to give the data a market determined worth and move towards a formal data market economy. In this paper however, it was suggested that the concentration of this data in the hands of a few persons would create an entry barrier for entrepreneurs, hence suggested the market to share data. It was also stated that data must be shared for the purpose of good governance and creating public policies. It was also suggested that companies might be required to share data that they have aggregated for the good of the public.

2. Developments after the Draft Personal Data Protection Bill, 2018

The PDP bill has not been able to take Anonymized data in its ambit, even though it has not been expressly provided, the anonymization of large datasets is not an impossible task under this legislation. The Justice Srikrishna Committee Report discussed the degree of anonymity of anonymous data, data in modern times does not only exist in identifiable or un-identifiable states, identifiability can depend on many different factors as persons in processing the data can have additional data that can aid them in recognizing an individual based on data that was supposed to be anonymous. This will only increase as technology advances. Anonymization takes place when personal identifiers are removed so that the data principal cannot be identified. Several countries such as South Africa and EU do not include anonymized data into its ambit, the EU even has an entire system of pseudonyms where identifiers get supplanted by pseudonyms. The Saikrishna Committee recommended to the government to provide standards for the anonymization and de-identification of Data, all data that has gone through the process of de-identification will come under the purview of law meanwhile anonymized data that meets the given standard should be exempt from the law. 80

Section 105 of the Draft Bill, 2018 gave government the powers to form policies for a digital economy, this included methods to grow, secure, and, define non-personal data give a scope to its utilization.

3. Developments under the Personal Data Protection Act, 2019

Under the 2019 bill, Personal data can be defined as any data that can identify a natural person in any manner, it can be their characteristics, traits, or any feature both online and offline. 81 Information that can reveal a person’s financial, health, biometric, genetic, or sex life data among others is considered to be “Sensitive Personal Data” 82, the government can however declare certain data to be Critical Personal Data but no clarification as to what can be considered such has been provided

80 Recommendation for Sections 3(3), 3(16), and 61(6)(m) of the Draft Bill.
81 Section 3(28), Personal Data Protection Bill, 2019
82 Section 3(36), Personal Data Protection Bill, 2019
in the Bill. It should be noticed that the definition of Personal Data is very wide in comparison to the present law under the IT act, on the other hand, non-personal data is any data that is not personal.

Under Section 91 non-personal data is defined and gives the government the power to direct a data fiduciary to provide de-identified/anonymized data to provide them with any anonymized data, the real given for this is to enable the government to form more “evidence based” policies. The bill also provides that it would not apply to anonymized data other than what is provided in section 91 itself. This also lets the government ask the data fiduciaries to provide the government with anonymized data that is actually de-identified personal data.

MeitY in September 2019 formed a committee to deliberate over regulations regarding non-personal data known as the Gopalakrishnan Committee for Non-Personal Data. This committee was formed to deal with issues related to non-personal data regulation, the government stated that the committee needed to look at the ‘economic dimension’ to non-personal. In a circular given by MeitY it was stated the benefits of using “privately collected data” for the greater public good. The committee has not published a report as of yet and hence there currently exists no solid framework to regulate Non-Personal Data.

4. Government Involvement in Non-Personal Data
The government through section 91 of the PDP bill has the sovereign power to control non-personal data in the country. The government’s rationale in this situation is that according to them large companies such as Amazon and Google have a very large inventory of datasets which are like a natural resource towards development and should be utilized for the good of the public.

A flipside to this argument can be the fact that businesses invest a very large amount of resources to collect data, this collection can require building of new products and using several efficient data collection methodologies that helps them effectively aggregate data. This data can also put certain companies at advantageous position as compared to their competitors and can also be essential for their growth as a business. Sharing privately built assets with the government in which the government becomes the custodian of such assets is not fair to the companies.

An argument for government intervention can be three pronged. Firstly, there is a blatant information disproportionateness between a consumer and the data user, this

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83 Explanation to Section 33(2), Personal Data Protection Bill, 2019
84 Explanation to Section 91(2), Personal Data Protection Bill, 2019
85 Section 2(B), Personal Data Protection Bill, 2019
asymmetry is caused because a customer often under-estimates the value of their personal data and is ignorant about the massive scale at which their data is being collected and used. Data collectors can also unilaterally change their data policies hence making the system more disproportionate.\(^8^9\) Secondly, customers often lose sight of the long term consequences of their actions, when they share their personal information to avail specific services, this is a bounded rationality that favors the data user. Thirdly, since certain service providers hold the data, it gives them an advantage, this can end up giving these users a data monopoly. The results of this can be harmful to the market.\(^9^0\)

5. Probable Objectives for the Governance of Non-Personal Data

5.1 Ensuring digital Competition
Barriers to entry can be created primarily by economies of scale as Data-intensive businesses profit when they serve more consumers instead of a few\(^9^1\), which saw the rise in zero-price services as more the users more the company’s profit. Secondly, network affects which are the effects the users of a good can have on the value of the same good to other customers or even potential customers.\(^9^2\) Thirdly, economies of scale with network effects can lead to the creation of more data which can give the data user control over more data. Lastly, the data user after having access to various datasets for a long tune can enter other markets easily and hinder the development of some secondary markets.\(^9^3\) All the above factors can asymmetrically favor the service provider which can in the future be detrimental to the consumer.\(^9^4\)

5.2 Development of International Trade
The development of International Trade is very important to the Indian Government and hence data-driven economies will have to deal with the commodity that is non-personal data. International rules matter when it comes to non-personal data as they affect cross border data flow by regulating the trade of goods and services and protect Intellectual property, they also give rules that can warrant a change in national laws and limit the space in which national governments can make policies.\(^9^5\)

5.3 National Security
The Government of India has many data sharing initiatives that can collect as well as process data for the enhancement of public security. Systems collect information which can be personal and non-personal such as satellite data, traffic, financial information and etc. Laws also give the state the authority to collect documentation. Any policy that comes into place with respect to Non-Personal data will need to account for existing systems that give access to information data sets for the purpose of national security.\(^9^6\)

5.4 Privacy

\(^9^0\) Id.
\(^9^1\) OECD Annual Report, 2002
\(^9^2\) UNCTAD, Trade and Development Report 2019
\(^9^3\) Id.
\(^9^6\) Xynou, M., Hickok, Security, Surveillance and Data Sharing Schemes and Bodies in India. Retrieved from Centre for Internet and Society [ONLINE] Available at https://cis-india.org/internet-governance/blog/security-
As discussed previously, anonymization does not guarantee privacy. As data can be de-identified, there are risks of it being re-identified as the anonymization reverses. Post the re-identification, the data could be used for malicious purposes. Even though the PDP bill 2019 gives for an irreversible de-identification, a combination of de-identified data can possibly identify a data principal, hence a very rigorous standard needs to be observed so that the anonymized data cannot be re-identified.97

6. CONCLUSION
It is abundantly clear at this point that the Section 91 of the PDP Bill, 2019 will not be suitable as the sole regulator for the different objectives one needs for the regulation of Non-Personal Data. Given how different the considerations are for the two, a blanket framework or a one size fits all governance model will not be adequate. While there are benefits to the free flow of data, there are also concerns and policies should not be formed before addressing the concerns first.

UNIFORM CIVIL CODE – A DREAM OF UNITY WITHIN THE SPHERE OF DIVERSITY

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Abstract

As the evolutionary historians cites, that we humans churned ourselves to beat what nature has to offer against us by uniting ourselves and realising the potentiality of such unity. But with the evolution of humans and growth of civilisation there was an inherent difference which was created through the emergence of religion. Such growth through unification but the inclination of religion within the personal laws is slowly tearing the society apart and discriminating the individuals on the basis of religion and actions one could perform. Uniform civil code or an uniform code for all the people has the potential to eliminate discrimination between several individuals belongs to different religious background within the ambit of personal laws but it has been a much-debated topic in India where still old customary practices are codified to form laws of the land for every separate major religious group that exists. A unified code won’t just bring every religious community to much encouraged uniformity rather it would also adapt them to move on to a new era of modernization and innovation. We can witness such was emancipated by our forefather who drafted our Constitution and inscribed it under Article 44 of the Constitution of India. As with the enactment of this law the country could witness several grievous consequences as well as it could address several other factors such as recognition of homosexuality, gender inequality, following uncodified and discriminatory laws.

Keywords: Personal laws, Constitution, Codification

II. Introduction

Uniform civil code means equal laws which would govern them regarding their civil matters like marriage, succession, adoption, divorce and maintenance. With the advent of this unified code all the existing personal laws would cease to exist and every community would be wide open to relinquish their differences to adopt the new found uniformity in them. This sort of uniformity won’t just lessen the communal violence rather it would also let them adopt the concept of being one and together. This would lead the country to secularity which has been mentioned in the heart of the constitution of India and which has been in the core of our basic establishment under Article 15. This uniform code would also be able to address the issues like homosexuality and their struggle to have an equal status in the society in terms of civil matters and address the differences that has been created in the personal laws of various religious groups. It would also trigger a change in the gender inequality that has been constituted in different religious books and followed though different customs which now has been termed and codified as personal laws.

III. Conflicts within the Constituent Assembly

The history of Uniform Civil Code went through a lot of struggle to bring a uniform civil code has been an age-old argument even during the writing or the framing of the constitution of India. Since the early history of India whether be it during the rise of the Mughal empire or during the advancement of the British forces none of them ever interfered with the personal laws.
of the people as they were afraid the discontent would rise to such an extent that people would revolt and that would lead to the demise of their ruling. And this was the most conflicting point as to how the introduction of Uniform Civil Code would affect the people when no sovereign dynasty could ever bring upon the people of India. Nation head like the then prime minister Jawaharlal Nehru was in favour of the UCC but this was opposed by other senior leaders like Vallabhbhai Patel and Dr Rajendra Prasad. Constituent Assembly struggled as there were heated debates as to whether the uniform civil code was a proper step in the new India that was supposed to unfurl in-front of them. There were arguments both in favour and against the said step to bring uniformity of the personal laws. Muslim members at that time strongly opposed the said step to bring uniformity in personal laws as this would jeopardise their said faith and they won’t be able to follow their religious or the pious obligations. They also feared that a uniform civil code would just be biased on the part of Hindus and they won’t have a say in that they put forward every way to oppose the move. But most of the Hindu members were in favour of the said uniformity of the personal laws as they preferred a radical change in the new India regarding the laws and the personal beliefs. Chairman of the Constituent Assembly, Dr B R Ambedkar was in favour of the interference in the personal laws to bring uniform civil code as he was of the opinion that this would bring forward all the communities and extinguish the communal anger that still been flickering in the society over the partition of the country. There was strong opposition from M. A. Ayyangar who was also a member of constituent assembly and he contended that India was too big of a country and thus, it would be volatile to bring a single code of law for all religion. He also contended that there are various other European countries which follows separate personal laws and that’s what let them strive through the new world. Against to the notion and contention of Ayyangar, K M Munshi argued that there are European countries who followed the uniform civil code and even Turkey and Egypt doesn’t have separate personal laws for different religions. This contention was supported by A. K. Iyer and he even added that religion shouldn’t interfere in the new India and so it’s better to get over it at the rise of new India. During such contention Dr B R Ambedkar asked the Muslim members “not to read too much of the Article 44” as this was said as an assurance to them over their agitation. He also added that uniform civil code would only be applied against the ones who would be able to accept it. But such contention in the approval of having a Uniform Civil Code was rejected and thus it never came into force rather all the religions were allowed to have their own personal laws to govern them.

2 S Pal, India’s Constitution – Origin and Evolution (Constituent Assembly Debates), 1948

3 The Constitution of India, 1950

IV. Article 44 of the Indian Constitution – The soul of Uniform Civil Code

The notion of Uniform Civil Code is very much inscribed in the heart of the Constitution of India under Article 443. It’s read as “The State shall endeavour to secure for the citizens uniform civil code throughout the territory of India.”. This text meant that the State shall put in every effort and means to secure a uniform code in the land to govern people. But with the advent or the introduction of personal laws for every religious groups this Article of the
Constitution has become a vestigial part of the Constitution that has been neglected over the period of time and the progress of India as though there’s equality before the law and abolishment of discrimination has been envisaged under Article 14 and 15. Currently with the interference of laws there has been wide discrimination as some laws prevent certain person from committing certain acts as they’re termed as unconstitutional while on the other hand it is considered to be valid for a person belonging to other religion. Like polygamy which is considered to be an offence for the Hindus but it is legal for the Muslims as it has been an age-old practice for them and it has been imbedded under their holy Quran. The framers of the Constitution had a vision that in the near future the UCC would be implemented and a uniform law would prevail over this sacred land where there won’t be any discrimination based on religion as well as based on old customs. But after the framers put forward this provision it has been neglected and never been recovered or put forward to the people as there has been a political motive to manipulate the population to gain votes to win elections. From this it could also be deduced that the political parties had misguided or lured the people out of uniformity to gain power and they’re still doing it. With every passing time the community as well as the political parties are growing more ignorant and thus, it would become bothersome to bring such provision in the near future.

V. One nation one law

As with the anticipation of unifying the civil laws as well as lower the burden over the Courts because of such complicated and diversified laws, the “One nation one law” rule was suggested at various times and been promised to its people by the Government. It means in a single country there would be only one civil code or the uniform code and the whole population has to abide by it irrespective of their religion or their religious ideologies. For this to be implemented the government has to be slow but swift and make the people aware of the benefits of such provision and how it would help them in the long run. The Government also needs to stop aiding or posing themselves with any religious groups or ideologies so that people can become more comfortable with the said change. The political parties also need to work with the Government to bring the said change and educate the local masses so they too can adapt to it. This said change or the uniform civil code would be brought with the use of Article 355 of the constitution. By this the State can amend the existing laws to bring a single code of law to govern the people. The masses may oppose at the very instance of the enforcement of this uniform code but in the later period of time they could get adapted to it and a better sense of nationality, equality and above all secularity would prevail. This would bring down the incidences of communal violence as well as the discontentment between the genders over various issues that still exists in India as predicted by the constituent assembly members. While framing such laws leaders from all religious community would be present so they look through that the code isn’t just biased to a single community rather it is neutral from the perspective of all the religions. It would be a communal renouncing of the religious ideologies for the people and bring them closer without any feeling of being different or that their laws are biased towards a certain religion. This would bring a secular state for real and the true nature of the Constitution would truly be achieved.
VI. Enforcement of new laws to open the eyes of the people

Over the years the idea of UCC has always been triggered whenever there was a want to reduce the gender inequality in the Indian society and to empower the women with equal rights, status and dignity. The uniform civil code would also bring about gender equality in the matters of claiming maintenance by either of husband or the wife, or regarding the partition of property or succession as there won’t be any age-old customs involved in deciding such matters. It would also abolish all the unwritten or uncodified laws that still exists in India like the concept of coparceners. And custom which doesn’t correspond to the current ideologies would cease to exist with the advent of such provision. Uniform civil code won’t just bring uniformity in the personal laws rather it would also pave the way for the recognition of LGBT community and offering them equal status in the society as they long deserved and fought for. With the uniform civil code in force people won’t be biased or guided with their religious ideologies towards the acceptance of LGBT community. With advent of such steps the Sec 377 of IPC would cease to exist as such community won’t be disregarded or be treated as inferiors. Advancement of such a step would let the community be able to adopt children and be viable for marriage, divorce, maintenance and succession. And such provisions would let them have a respectful life to lead to without being discriminated or feeling the guilt of being different.

VII. Analysis of having an UCC

Just like any other legal provisions this step would also have pros and cons. But while taking any such step we look forward to how such step would affect in the immediate time and in the future. Such step would raise discontent in people after the application of such step but in the long run it would be beneficial to the whole of the community as well as for the sovereign authority that is present to govern. The pros of such a step as deduced by the framers of the constitution were that there would be less communal repulsion in the society or in the long run, people would be truly secular in mind and in action, people would be more open minded towards any other steps that would liberalise the society, there would be less conflict regarding the application of civil laws thus it would decrease the time for the people to get justice as well as it would be beneficiary for the judiciary. Though the words of secularism had been spoken wisely and widely but it’s hard to implement in a situation where such amount of diversity exists. The western or the developed country could establish a perfect sense of
secularism and uniformity only because the diversity existing in not as wide as it is in India. The cons that would include are like interference with the personal laws and the beliefs of the people, ignorance of the minority views, forcing of certain laws on the people and rise of discontent in people. This step would be really complicated and lead to wide protests against the said government. But as framers predicted this would be just for the initial time after that people would start getting adjusted towards the system of uniformity and ultimately it would be beneficial to them. Many people are of the view that in the current scenario where personal laws for different religions are applied is a way of showing secularity but that's not the case since personal laws are mostly driven and influenced by religion and religion brings unevenness and disparity in the laws. As there are provisions which is constituted to be unconstitutional for one religion but it is absolutely allowed for some other religion.

VIII. Enriching the dream of UCC
Current scenario

Over the period of time there had just been political clashes whether the uniform or common civil code could be a possible reality or not. Dr B R Ambedkar tried to bring changes in the Hindu code bill which targeted two concepts, one of them is casteism and untouchability. The Hindu code bill was passed and came into force in the year of 1955. But in 1954 there was a step taken towards the acceptance of UCC by enforcing the Special Marriage Act, 1954 that allowed marriages irrespective of religion, case and without any specific religious ceremonies. But it was not enough to open the minds of the people. In 1985, during the Shah Bano case there was huge out roar towards having a uniform civil code but that agitation was extinguished as the then Government in lieu of gaining appreciation and votes of the minority community enacted Muslim Women Act, 1986 to nullify the judgement of the Supreme Court which gave a judgement in favour of the enacted legal provision of Sec 125 of CrPC disregarding the personal laws. Previously Jana Sangh which was the predecessor of Bharatiya Janata Party also known as BJP first put the idea of uniform civil code and later on BJP too put out the same notion of uniform civil code as a promise to win Hindu votes but didn’t take any steps over the years to make any progress towards achieving that. But the current political stigma is pretty obnoxious and confusing as in 2015, the Supreme Court while dealing a matter related to Christian divorce Justices Vikramjit Sen and Shiva Kirti Singh was of the opinion that not all religion can come and ask for their own personal laws as this would be really confusing for the judiciary to function efficiently and asked for the Government's view on this.9 But the Government didn’t provide the Court with any concrete answer. In 2016, Tufail Ahmed who’s a Muslim scholar put forward a 12-point document draft regarding uniform civil code so that it could attract a public debate. He also targeted the political parties as well the public as to their inefficiency in bringing a uniform law in the country. In the same year in the month of February, Justice Sen said “religion should not be part of civil laws”. But in 2018, as per the recommendation of the Government the Law Commission held a detailed questionnaire regarding the said matter and in 185-page analysis10 it commented that “uniform civil code is neither necessary nor desirable”. How far this analysis is apt not yet know or analysed but the Supreme Court of India still adamant about having a uniform law devoid of religious interference. Only Goa in India
has a uniform civil code but it’s not strictly uniform as it has few laws pertaining to different religious groups. But still Goa puts forward a very good example to the whole of India towards their success of having a uniform civil code which was taken from Portuguese Civil Code, 1867 without jeopardising the law and order in there. Though there were attempts to bring non-uniform laws into it but it was met with strong opposition from Muslim Youth Welfare Association and Goa Muslim Women’s Association. Such acts of the government also bring into light their callous attitude towards having an UCC. But such examples are ignored to satisfy the common view of the people that India is too diverse to have uniformity of laws. People should learn from it that changes could be brought even in such a diverse field and it’s never too late to do so.


X. Unsewn dreams of having a Uniform Civil Code

After several decades of procuring independence from a foreign sovereign India is still struggling to have a UCC. A list of factors that leads to such disparity in the dreams of the framers are as follows:

- Diversity – India is known around the world for its richness in diversity and culture and this is also the reason that leads to not having an UCC. Such diversity is fuelled with age old customs which are backed by religion. Though with the advent of this such diversity would be affected but it won’t be nullified.

- Orthodox mindset – People in India carry an orthodox mind set which has always prevented the State from exercising its power to put forward a concrete step towards the achievement of uniformity.

- Political ignorance – Over the years different politicians has promised an UCC but they always failed to perform such promises either because of their incompetency or their unwillingness. They had always ignored it and never truly understood its value in the achieving of secularity. Currently it has become an agenda to lure people into gaining support.

XI. Recommendation & Conclusion

A detailed conclusion that could be deduced from this paper is that the matter of UCC is very controversial but it’s possible for the Government to enact a uniform law governing every religious groups and bringing them under a common umbrella of law if it’s determined enough to do and put forward authentic amount of effort towards achieving that rather than putting forward hollow promises. As always, the Supreme Court is of the opinion of supporting the
said act but the Government is too reluctant towards the said issue as they’re more motivated towards gaining the public votes rather than thinking about the long-term goal of achieving uniformity. If the Government is supposed to enforce such provision then it must be swift enough and should educate the masses in advance to avert any sort of agitation from the very beginning as the execution of such a law requires huge amount of patience. And while framing such laws it needs to keep in view all the major religions as well as the minor religious and their ideologies so that none of the laws in it doesn’t become one sided or biased towards a certain religion or any single religion becomes more oppressed than the other. They also need to focus on the condition of Goa as well as other countries where UCC already exists and understand how they were able to enforce singular law without disrupting the social fabric. But as of now India still struggles to have its own uniform civil code in spite of covering several decades of independence, a single set of laws governing every person irrespective of their religion and earning a true sense of secularity as it has been envisaged in our Constitution of India.

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ANALYSING THE MOTIVATIONS 
BEHIND PRESIDENT ROOSEVELT’S 
NEW DEAL

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Research Question: 
To what extent was political expediency the key reason for Franklin Delano Roosevelt’s formulation of The New Deal of 1933 - 39?

1.0 Introduction

The Great Depression, stemming from the Wall Street Crash of 1929, forced the people of The United States into a period of poverty, unemployment, and despair. This intensified the urgency for solutions to control the nationwide damage and change the political climate, which constituted of public distaste toward the Republican President, Herbert Hoover, due to his inability to curtail the fallout from the Wall Street Crash of 1929. Hence, in the elections of 1932, Franklin D. Roosevelt, along with a heavily Democratic Congress, replaced Hoover, buoying the nation’s hopes.

When Roosevelt became president in 1933, almost 25% of the workforce was unemployed. Thus, Roosevelt formulated The New Deal, a group of government programs and policies, aiming to help the American people. Majority of these policies were implemented during Roosevelt’s first three months, and this time period became known as the ‘Hundred Days’. The latter policies formed the Second New Deal of 1935.

My research question is significant as The New Deal was quintessential in changing the economic and social dynamic of America by transforming and introducing social and economic regulations. It is worthy of investigation as these regulations continue to be present in modern day America, and this research also allows us to gain further insight into the multifaceted approaches that impact a leader’s decisions, which is extremely relevant in the 21st century.

Historians such as William Leuchtenburg claim that Roosevelt had humanitarian motives for The New Deal, hoping to “use the authority of government as an organized form of self-help for all classes and groups and sections,” (Roosevelt 8) highlighted by Roosevelt’s character, his manner of dealing with opposition to the New Deal, and the social alignment of the policies.

Conversely, it is argued that Roosevelt instead had political motivations. Revisionist historians like John T. Flynn, Ira Katznelson, and Hofstadter argue that Roosevelt used The New Deal to consolidate personal and party power, and intermingle with elites. Hence, to classify Roosevelt’s intentions, the following question is explored:

To what extent was political expediency the key reason for Franklin Delano Roosevelt’s formulation of The New Deal of 1933 - 39?

To gain a wider view of Roosevelt’s motivations, this essay focuses on each motive and analyses its merits and discrepancies to come to a holistic, insightful conclusion.

2.0 Political Motivations

2.1 Maintain Support of Wealthy Businesses

It is argued that Roosevelt intermingled with large businesses and the country’s corporate sector, aiming to please the higher social strata to gain political support for the Democratic Party. Richard Hofstadter, an American historian even
asserts that “FDR’s basic policies for industry and agriculture had been designed after models supplied by great vested-interest groups.” (Hofstadter 435) Here, Hofstadter is referring to two subsets of the New Deal: the Agricultural Adjustment Act (AAA) and the National Recovery Administration (NRA). The AAA, enacted in May 1933, improved the lives of farmers by artificially increasing their incomes, while the NRA, initiated in June 1933, was a business-government partnership to incentivize job creation and promote economic growth.

Hofstadter also argues that the NRA empowered the corporate sector in exchange for their support and political aid. This can be said as the NRA was speculatively based on the Swope Plan and proposals by the War Industries Board (WIB). These proposals were put forward by industrialists Gerald Swope, Bernard Baruch, General Hugh Johnson, as well as several others, in an attempt to limit competition and benefit big companies as they promoted industrial self-regulation. Yet, despite the drawbacks of these proposals Roosevelt incorporated these ideas as a part of the NRA to garner support from the corporates. In fact, the NRA advocated the same ideas as the Swope Plan, for example the removal of ‘antitrust laws’ that cause monopolization. Further, even in the AAA, although posturing as an agency to protect all farmers, only provided subsidies based on a farmer’s acreage and output. Therefore, only rich farmers and landowners who already had wealth in terms of land benefitted. This has been argued by Historian Michael A. Bernstein who states FDR “sacrificed the interests of the marginal and the unrecognized to the welfare of those with greater political and economic power.” (Powell xi)

Moreover with hindsight, it also becomes clear that FDR aimed to appease opposition from the industrialists who had formed the American Liberty League in 1934. The league was a non-partisan organization which was opposition to the New Deal and its interventionist nature. Hence, to discourage further opposition FDR adopted a more conservative New Deal policy to not anger the corporates. This can be seen via the formulation the Wagner Act, which was an act to allow workers to engage in collective bargaining, take part in strikes, and create labor unions. This strictly anti-corporate legislation was first introduced by Senator Robert Wagner of New York in 1934, but could have garnered backlash from the corporates. Hence, Arthur Schlesinger, an pro-FDR American Historian who lived through the New Deal possesses considerable primary information, suggests that Roosevelt “still hoping for the business cooperation which might make NRA a success, declined to back the measure.” (Schlesinger 150).

Primary sources also aid Schlesinger’s argument as primary sources in the form of statements by Mrs. Perkins, the wife of Francis Perkins (the American Secretary of Labor), recalls that Roosevelt “never lifted a finger” (McKenna) to support the Wagner Act in Congress or in its formulation. This source and hence the argument can be trusted as Mrs. Perkins and her husband had close contact with FDR. However, Schlesinger wrote his book in 1956, and hence lacks access to new information about the New Deal and FDR, diluting the significance of his now to some extent outdated and relatively unsubstantiated arguments.

Moreover, FDR did not always support the corporates. In fact the Wagner Act was enacted in 1935 as a part of the Second New Deal, and Roosevelt even called the corporates “economic royalists” (Roosevelt) in 1936 as a part of his presidential election campaign.
However, linking back to the question even this highlights political motivations to the New Deal, as it highlights FDR’s opportunistic nature. This is as argued Roosevelt intermingled with businesses to expedite himself when was needed, yet betrayed them by changing his stance and New Deal policies when it benefited him. This is significant as FDR betrayed the corporates and altered the New Deal only upon seeing the NRA being declared unconstitutional in 1935, the upcoming presidential elections of 1936 and the fact the Wagner Act would be approved by the Senate despite his opposition. Thus, prioritized the Wagner Act and heralded it as act by him to help the workers to gain whatever political and electoral advantage he could, as he was losing support from the corporates.

2.2 Prevent opposition from Southern Traditionalist faction in the Democratic Party

Another reason that Roosevelt’s motivations for the New Deal may have been politically aligned is because he wanted to use the New Deal to maintain the ‘New Deal Coalition’, which was the political alignment of interest groups and voting blocs in the United States that supported the New Deal. Thus, Roosevelt aligned policies in a way to appease the traditionalist southern whites, known as the ‘Solid South,’ who constituted major support for the Democratic party. The Southern members harbored a racist attitude towards African-Americans, leading to an awkward partnership with Roosevelt’s progressive and humanitarian agenda.

Hence, to not garner opposition FDR intentionally stopped or discouraged the formulation and enactment of policies to help the African-American people. In fact, Historian Ira Katznelson, an American Historian, when referring to Roosevelt’s refusal to pass the anti-lynching legislation, asserts FDR decided to pursue a ‘southern strategy’. (Katznelson) In fact, in context of this event Roosevelt is quoted saying, “If I come out for the anti-lynching bill, they will block every bill,” (Goodwin 163) showing how political considerations did indeed affect the formulation of the New Deal.

Katznelson also having written her book in 2005, allowing for new information about the working of varied New Deal agencies, argues that Roosevelt also barred New Deal welfare policies from extending to the minority and African-American community. In fact, in the AAA the poorest farmers, especially those in South-America, bore the brunt, being disposed of their land and livelihood, while the Southern elite benefited. The Southern Tenant Farmers Union (STFU) leader, H.L. Mitchell, even stated that Roosevelt “talked like a cropper and acted like a planter.” (Schlesinger 379)

Here, adding to the validity of the argument even the pro-Roosevelt historian Schlesinger agrees that Roosevelt did not help the poorest farmers, perhaps as it would be an “unmistakable affront to the conservative Southern leadership in Congress on which he relied for so much of his legislative program.” (Schlesinger 379)

These inherent discriminatory policies work to show that FDR clearly had political considerations in the formulation of the New Deal to ensure that he and the Democratic Party continue to be a dominant political force in America.

2.3 Improve Public Image and Enhance Reputation

Arguably, Roosevelt hoped the New Deal programs would enhance his own image amongst the public, and ensure his presidency. Hence, FDR may have aligned the policies to gain him electoral
support and loyalty. This can be said as there is significant evidence highlighting how Roosevelt used the New Deal’s welfare policies to ‘buy votes’ and further his political cause. Historian John T. Flynn, who is a famous contemporary journalist, and an avid criticizer of the New Deal since its inception, argues about Roosevelt that, “it was always easy to interest him in a plan which would confer some special benefit upon some special class in the population in exchange for their votes.” (Flynn 65) This argument is widely supported, with many believing that with the presidential elections of 1936 around the corner, Roosevelt implemented policies that specifically provided relief to ‘sway states,’ those where he had relatively less support to increase his chances of a victory. In fact, the careful formulation of the Works Progress Administration (WPA), enacted in 1935 to hire unemployed workers, gave the federal government, and accordingly Roosevelt, the power to control billions of WPA dollars and its programs, and hence allowed for political coercion, interference, and corruption. Contemporary sources such as statements by Democrat Huey Long, who at the time of this statement planned to stand for President himself. He said, “why should Congress give Roosevelt a $5 billion blank check with an election coming on?” (Schnell) Moreover, with the benefit of hindsight and access to greater information economic-historians like Gavin Wright have been able to conduct detailed econometric analysis of the relief agencies and conclude that the primary goal in distributing New Deal unemployment funds was political. This analysis is largely based on facts and adds to the validity of the argument. (Wright)

Additionally, Roosevelt also used the programs to carry out political propaganda to emphasize his achievements, thereby maintaining and gaining support. In fact, Roosevelt used the Federal Theater Project (FTP) as a part of the WPA to create “plays about the social conditions in the country – and again, spotlight New Deal progress.” (Shlaes)

2.4 Political Opportunism, Elections and The New Deal

Lastly, it is argued Roosevelt was inherently a political opportunist who did not have a set motivation and aim for the New Deal, but rather only created politically aligned policies to exploit the prevailing social climate to benefit his party and himself. In fact John T. Flynn asserts that “the positions he took on political and economic questions were not taken in accordance with deeply rooted political beliefs, but under the influence of political necessity. He was in every sense purely an opportunist.” (Flynn 78). This statement was made in context of 1932 presidential elections, wherein FDR had promised to reduce the fiscal deficit, only to indulge in immense spending during his years as president to appease the public. FDR’s opportunism is also conveyed by visualizing his intermingling with his opposition. Francis Townsend, who opposed Roosevelt, through his Townsend Plan of 1934 called for a monthly pension for the elderly and hence gained massive support. It received around some 10 million endorsements and several members of Congress were elected on the Townsend platform, such as the California poet laureate John McGroarty. In fact, a contemporary news source, Harper's Monthly, said that “On Capitol Hill in Washington the politicians are amazed and terrified by it.” (Hiltzik 232) Therefore, seeing the changing political climate Roosevelt formulated and enacted the Social Security Act in 1935, which is renowned for establishing old-age pensions and unemployment benefits. Yet, it is an
evident product of the political-opportunism, as it was in attempt to quell opposition from the Townsend Plan.

Hence, this also presents the idea that elections were a major cause behind the political alignment of the New Deal, as the Social Security Act was implemented immediately prior to the elections of 1936. Similarly majority of New Deal policies are concentrated in periods immediately preceding some form of national election. The Second New Deal of 1935, which brought about a flurry of social reforms such as the Wagner Act, were enacted immediately prior to the 1936 national elections. In fact, speculatively FDR was fearful that the opposers may dilute FDR’s chances of winning the elections and hence used the New Deal to expedite himself politically. In fact in 1935 Roosevelt faced opposition from Louisiana Senator, Huey Long, as Long wanted to implement exorbitant taxes on the rich, and gained a massive following in the process. Yet, he was ultimately sidelined by Roosevelt when the Wealth Tax Act of 1935 was launched. The Act was essentially a repackaging of Long’s plan. He even himself said that this was done to “Steal Long’s thunder.” (A. M. Schlesinger 326) Linking back, even the implementation of the Wagner Act highlights how policies were politically aligned and formulated to help FDR in the elections.

3.0 Humanitarian Motivations:

On the other hand, primary sources and historians such William Leuchtenburg argue that Roosevelt harbored humanitarian aims for the New Deal: chiefly aiming to better the lives of the common people. This is made evident by Roosevelt’s character, massive relief and welfare programs, and the New Deal legislation he enacted to permanently change the social standard in America.

3.1 Roosevelt’s Character

Firstly, it can be argued that inherently Roosevelt was a humanitarian with a genuine intention to help the common man, and later this humanitarianism served to be a motivation for the New Deal. This can be exemplified via looking at his actions before presidency. For example, during his early political career as Governor of New York, in light of the Wall Street Crash and brewing depression, he supported lower taxes for farmers by getting the New York state legislature to pass the Temporary Emergency Relief Administration (TERA) and the provision of unemployment relief, which in turn relieved and provided employment to the needy. Furthermore, his humanitarian nature and support for his people is shown through his speeches and statements. In his famous campaign speech in April of 1932, The Forgotten Man, he claimed that “these unhappy times call for the building of plans that rest upon the forgotten… build from the bottom up and not from the top down, that put their faith once more in the forgotten man at the bottom of the economic pyramid.” (Roosevelt) This established Roosevelt’s credentials as a liberal reformer who wants to help the lower classes and showcased the imbied humanitarianism in Roosevelt. Yet, it can be argued that such speeches were only meant to garner support from the public and not representative of any humanitarian values.

3.2 New Deal Policies:

Furthermore, Roosevelt’s New Deal policies themselves show their social and humanitarian alignment as they catered to the needs of people and helped ease persisting problems. This can be seen via his campaigns and policies in the First Hundred Days. Through his relief and employment campaigns he directly
employed people, and from 1933 to 1935, Roosevelt reduced unemployment by 6% and rekindled confidence. Yet, despite having curbed the worst effects of the depression, he also brought out policies such as the Wagner Act, Social Security Act and the Fair Labor Standards Act, suggesting his commitment to helping people and not only progress politically. On the other hand, it can be argued that he was reluctant to support these reforms and was actually forced to implement them. For example, the Wagner Act and the Social Security Act could have only been enacted to dissuade opposition or because Roosevelt was unable to stop them.

Yet by the end, as asserted by Hofstadter, Roosevelt was seen as (Hofstadter 391) This image is visualized in the formulation of the Federal Emergency Relief Administration (FERA), which was initiated in May 1933 to provide direct relief in the form of cash payments to the poor and unemployed. As the head of FERA, Harry L. Hopkins, puts forward the following statement that suggests Roosevelt at times chose humanitarianism above political motivations. He claims that Roosevelt, after appointing Hopkins, called Hopkins to his office and said, “give immediate and adequate relief to the unemployed, and pay no attention to politics or politicians.” (Hopkins 162) As can be seen, Roosevelt’s intentions with the FERA seem pure and devoid of personal or political motives. Yet, it can be argued statements which in this case were based on memory may not always true. Thus, with the benefit of hindsight and a more reliable econometric analysis, the fact that the FERA was used to ‘buy votes’ dilutes this argument and again suggests political motivations were key in the New Deal. Hence, often contemporary sources and Roosevelt’s image is construed due to the propaganda and false statements.

3.3 New Deal and Minority Groups:

Additionally, Roosevelt’s motives for the New Deal are seen to be humanitarian, as he in contrast to previous governments, tried to enhance the life of minority groups who did not represent a large electoral majority. This is conveyed as through the New Deal Roosevelt helped farmers, who had suffered due to overproduction and competition from abroad in the 1920s. He did so by increasing their incomes through the AAA. Moreover, relief was granted without discrimination. A renowned labor historian Irving Bernstein, even asserts “Blacks, especially in the South, who had never before gotten anything from government, suddenly found themselves eligible for federal relief.” (Bernstein) This argument is also aided by the fact that it is made by a historian specializing in labor and workers, and hence is an unbiased argument and is from the perspective of the common worker. In conjunction, The FERA also attempted to provide women with equal work opportunities by ordering states to appoint women to head a division in each state agency. As can be seen, his policies were humanitarianly motivated and played a great role helping those without a voice. Lastly, this also draws away from the argument that FDR only supported groups with greater power, such as the southern democrats and the corporates, as the minority groups had a very small electoral impact.

However, his humanitarian motives are diluted by the fact that some policies were intentionally barred from include scope for minority groups such as African-Americans. In fact, the Civilian Conservation Corporation, initiated in April 1933, and the WPA, which both aimed to reduce unemployment, and in Roosevelt’s words, to “preserve not only the bodies of the unemployed from
destruction, but also their self-respect, their self-confidence, courage, and determination,” (Schnell) imposed quotas on African-American workers and segregated worker camps on a racial basis. This was arguably done to not oppose the southern supporters of the New Deal, and ensure that the New Deal coalition remained strong, again highlighting a political agenda to the New Deal.

3.4 Opposition and the New Deal:
Roosevelt also had humanitarian motives as he opposed all those who held conservative and corrupt motives for the New Deal. This is made evident through the fact that to preserve the humanitarian nature of the New Deal, he opposed both his own party and the supreme court, leading to political backlash. This is firstly seen through the opposition which came from the Supreme Court, who declared the AAA, NRA, among other New Deal agencies, unconstitutional. They argued the policies to be too interventionist and claimed relief should be handled by state governments. But, in 1937, Roosevelt opposed the court, and attempted to rid opposing judges through a ‘court packing’ scheme, wherein he would appoint sympathetic judges to the court. Although this failed and garnered him political backlash with historian William Leuchtenburg, a leading scholar of the life and career of FDR, arguing it was the worst reaction from Congress that Roosevelt suffered in his 12 years of presidency, it showed his willingness to fight those who did not allow the New Deal to be humanitarian.

Further, William Leuchtenburg with his vast amount of knowledge about the New Deal argues that Roosevelt was not a “representative of a single class but as the conductor of a concert of interests. A man above the political battle, the President aimed to serve as the unifier of interests.” (Leuchtenberg 84) In fact, he went against even his own conservative party elements in 1938 as the party lacked ideological consistency. In Roosevelt’s words “An election cannot give a country a firm sense of direction if it has two or more national parties which merely have different names but are as alike in their principles and aims as peas in the same pod.” (Roosevelt, "Fireside Chat") Hence, in the mid-1938s, he travelled across the country to defend his progressive policies and lash out at those who argued against it such as Democratic Senators: Walter George of Georgia and Millard Tydings of Maryland.

However, historians challenge this claim by asserting that he was attempting to gain political mileage. This can be said as the purge was preceding the midterm elections of 1938 and hence could have been an attempt to gain support from the public and power in the congress.

4.0 Economic Motivations:
Additionally, another of Roosevelt’s motivations was to improve the economy. In fact, often economic motivations took precedence over both humanitarian and political considerations. For example, to balance the growing fiscal deficit, Roosevelt substantially cut down government spending, despite knowing it would adversely affect the people and garner political uproar. This led to the recession of 1937, where unemployment rates jumped from 14.3% to 19.0%, and output fell by 37% from 1934. However, the economic and humanitarian aspect of the New Deal could be aligned to work together. Roosevelt believed in Keynesian Economics, claiming government spending, welfare spending and investing, all help economies improve and cause living standards to increase, interlinking the two motives.
5.0 Conclusion:
To conclude, Roosevelt majorly used the New Deal policies to garner political mileage. Although aspects of the New Deal show humanitarian motives, he was often obligated rather than motivated to include these as it was not possible to maintain power without appeasing the people. This is seen through Roosevelt using humanitarian policies to gain support prior to elections, making them a product of necessity rather than of his own ideology and beliefs.

Further, the fact that unemployment was over 17% in 1939 and weak economic growth suggests the New Deal policies were not implemented well and did not truly solve the people’s problems, showcasing it was used more to indulge in political expediency. Moreover, even Roosevelt’s support for groups such as the south and the corporates, rather than the common people and minorities, showcase that it was more politically aligned. Hence, it can be concluded that in the formulation of New Deal, politics dominated.

Lastly, while writing this essay, I faced the difficulty of having to ensure the sources I used were free from bias and additionally, ensuring that I evaluated each source. Furthermore, each argument had several nuances. For example, while on the surface level, the motives seemed humanitarian, they were subtly underlined by political intentions and I had to analyze this as well to ensure that my research was insightful.

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RIGHT ON INTERNET? THAT’S AN OXYMORON

By Ashutosh Anand and Sejal Jain
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The internet is becoming the town square for the global village of tomorrow.

- Bill Gates

ABSTRACT
The development of the Internet challenges traditional conceptions of information rights. The discourse surrounding these rights and the Internet typically deal with each right in isolation and attempt to adapt long-established understandings of each right to the new technological environment. Indian constitution marks the right to freedom of speech and expression a fundamental right for all citizens. It has been listed in Article 19 (1)(a) of the constitution. The Supreme Court has on many occasions expanded the scope of the right to freedom of speech and expression and RIGHT TO INTERNET is one such expansion. With the ever-expanding Internet user base in India, the Internet has become a staple of contemporary Indian society. Although the Internet may be seen, out of all the other things, as a platform that helps in realisation of individual rights.

INTRODUCTION
Internet access as a fundamental right is a fight against censorship and protecting digital freedom and free speech, promoting innovation, open access to knowledge and civil liberties.

The internet is a worldwide system of the network that uses telephone lines, cables, satellites and wireless connections to connect computers and other devices to create a network that would allow the users to connect one another. The Internet overall is viewed as a medium to impart which is out of anyone state’s jurisdiction, while portions of which are dependent upon laws and regulations of the countries in which they operate. The changing presence of internet from a medium for elites to one in common use has brought a drastic change in the society as a whole which has not only exclusively raised the significance of internet but has also made it a necessity in our day to day life.

However, the question here arises “is a necessity like an internet available to our entire population?” Internet should be a right and not a privilege as it is essential for development in every field, people are unable to get online particularly in developing countries like India and China which are fighting to be world’s greatest economy. Internet access should be accessible to every individual to exercise and enjoy their rights to freedom of expression and opinion online and other fundamental human rights as on the other hand they present scenario is that internet is accessible to few which can be due to lack of infrastructure, poverty, lack of digital literacy and many others which makes internet access a privilege to them.

INTERNATIONAL SCENARIO
The Internet is perhaps the best creation and furnishes individuals with instant access to an endless supply of information and diversion. Many international initiatives have been taken to promote and protect the internet universally. The first time when internet was made a right was at The World Summit on the Information Society in Geneva, 2003 through the declaration of principles of United Nations declared
internet as a right which is also known as “freedom to connect” as it ought to ensure an equitable distribution of resources, encourage access for all and ensure a stable and secure functioning of the Internet, considering multilingualism.\(^{98}\) Much the same as other innovations like mobile phones and televisions, the internet has also become a utility. UN Special Rapporteur in 2011 reported on “the promotion and protection of the right to freedom of opinion and expression online” exploring key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet, and that the governments cannot block anyone’s internet access along with the view that all countries should make internet accessible and affordable to its entire population. Right along with access should be there which is still a challenge in many countries like India, Cuba, Myanmar, China and many others where there are several internet shutdowns by the government in the name of defamation. Nations are as yet battling for their opportunity to discourse and articulation online, simply adopting the UN guidelines is insufficient, there should be noticeable endeavours and obligation taken by the state to ensure internet access.

On the other hand, there are initiatives taken by many others, In 2013, Facebook CEO Mark Zuckerberg announced the establishment of Internet.org\(^{100}\), a consortium that allied his company with handset makers, a browser company and network infrastructure manufacturers to execute his plan to Get Entire Planet Online, In his 10-page manifesto, Zuckerberg argued that the world economy is shifting to knowledge-based from resource-based industries thus who don’t have internet access are at a disadvantage. While other argued that internet does not meet the qualifications of human right, one of the most famous people to promote this idea was internet Pioneer Vint Cerf, one of the godfather of the web and chief internet evangelist for Google, In this 2012 New York Times he argued that equating internet with fundamental needs like freedom of speech is a mistake because over time we will end up valuing the wrong things.\(^{101}\)

There have been many other controversies over internet which were set aside after the 2009 BBC World Service Polls which showed that almost four out of five users and non-users around the world felt that internet should be a fundamental right \(^{102}\) along with an internet society’s global internet users survey, 2012 conducted over 10,000 internet users over 20 countries which stated that around 83% of population

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\(^{100}\) FACEBOOK, available at : https://about.fb.com/news/2013/08/technology-leaders-launch-partnership-to-make-internet-access-available-to-all/( Last visited on January 30th , 2020)


considered internet as a human right. After which there were many ongoing debates at the international platform leading to the UN Human Rights Council resolution announced in 2016 stating “the promotion, protection and enjoyment of human rights on the internet”, which clearly showed that all members of UN Human Rights Council, overwhelmingly agreed that the rights people have offline must also be protected online, before which two resolutions were adopted in 2012 to protect free speech of individuals on internet and providing digital privacy to all citizens along with the remedy to be provided to citizens at the time of violation in 2014.

This is the third declaration by UN body with regards to freedom of expression already protected by Article 19 of the Universal Declaration of Human Rights and the International Covenant on civil and political rights. Yet many members of UN body do not follow the guidelines as resolutions like this one aren’t legally binding though there have been countries Costa Rica, Estonia, Finland, France, Greece, Spain who believe in Internet access to all and has adopted laws concerning UN resolution.

WHO IS AT FAULT

The resolutions like these ought to be legitimately authoritative over all the UN Council members or else the countries will receive them as indicated by their acquiescence and not a necessity. This resolution itself was contradicted by a few nations including Russia and China, expecting to erase human rights-based approach. Also, there must be a severe discipline, perhaps as fine imposable on the countries who don’t follow the UN statement rules.

NATIONAL SCENARIO

Restriction of the internet should be based on necessity and not convenience.

Due to the intrusion of Technological advancement, India has become the fifth-largest economy in 2019, overtaking the United Kingdom and France. The country stands third when GDP is compared in terms of purchasing power parity at $11.33 trillion. The 21st century is known for its innovation as the Internet plays an important role in the growth of India’s economy. India with a vast population has a tradition of learning and applying knowledge to which the internet is essentially important. Otherwise, it would lead to digital illiteracy as stated in a report by digital empowerment foundation that states “30% of Indian population lags basic literacy and thrice of which lags digital literacy as well”.

In September 2019, Faheema Shirin v/s State of Kerala the single bench of Kerala High Court held Right to Internet access is a part fundamental right to urges-protection-of-privacy-in-digital-era.html (Last Visited on February 1st, 2020)

106 Hamilton Community Legal Clinic, available at :https://www.hamiltonjustice.ca/blog/?post=Six+Countries+that+Believe+Access+to+the+Internet+is+Basic+Human+Right&id=345 (Last visited on February 1st, 2020)

107 Digital Empowerment Foundation 2018-19, available at : https://defindia.org/annual-reports/(Last visited on February 5th, 2020)

108 Writ petition (Civil) No. 19716 of 2019(L)
education and Right to privacy under Article 21, wherein Kozhikode college only the girls were denied of internet access from 6 pm to 10 pm which violated their Article 14 right to equality, Article 19 (1)(a) right to freedom of speech and expression, Article 21 right to privacy acknowledged as fundamental right by supreme court of India in Justice K.S.Puttaswamy v/s Union of India109, personal liberty and information, Article 21(a) right to education. The court asked the college to re-admit the student along with pointing out the Human Rights Council Of UN declaration, 2016 “to promote and protect internet” and right of the students can only be restricted at the time of misuse of mobile or laptops.

Along with which court also said that the right to the internet is not absolute and “reasonable restrictions” may be imposed. In S.Ringarajan v/s P.Jagjivanram110, 1989 it was stated that internet can be restricted at the time of threat to sovereignty, public order, morality and decency etc under Article 19 (2). Before restricting internet at the time of need, all the alternative remedies should be assessed and used, curtailment of fundamental right should be the proportional and least restrictive measure to be a resort. In 1996, the Supreme Court adjudicated a challenge to the constitutionality of this provision and phone tapping, in the case of People’s Union for Civil Liberties vs Union of India111. The court held that the power can be resorted to only when “necessary,” and that chief among the considerations for necessity was whether the information “could reasonably be acquired by other means.” As stated under section 2(2) Telecom Suspension rules, 2017. The suspension of internet ought to be temporary and in compliance with Sec 5(2) of Telecom Suspension rules, 2017 which allows communication to be intercepted and denied at the time of “public emergency” or “public safety”. This power has been conveniently used for trapping calls and shutting down internet connections by the government which not only hinders with users right to privacy, personal liberty and information but also their freedom to trade and commerce affecting profession owing internet as well as telecommunications under article 19 (1)(g). Thus the internet shutdowns should be reviewed within 7 days under the “principle of proportionality” under article 21 which ensures if any action is arbitrary i.e. unreasonable and irrational, they should be struck down under Article 14 of Indian constitution. The real challenge is right along with the access to it, India has been dealing with the consequences of restricted access and affordability of the internet since decades in the following ways :

1. DIGITAL INEQUALITY

Inequality is when the most basic features of our constitution are barely available to the entire population. Most of the services ranging from private to public sectors are available online, moreover, some of the government services are only available online to which most of our population do not have access, which is leading to the digital divide. The digital divide is the disparity between the ones who have access to the internet and those who are denied of resources and communication tool due to age, gender, knowledge and skills to use

109 Writ petition (Civil) No. 494 of 2012
110 AIR (1989) 2 SCC 1668,1669
111 Writ petition (Civil) NO. 256 of 1991
technology and demographic difference, educated and uneducated, economic class, industrial and agricultural. The wide divide is essentially due to gender and rural-urban discrepancy, most of the women are denied of technology like mobile phones and computer devices and some only use it for voice calls, half of which are unaware of internet. This practice is especially evident in rural areas which are due to frame of mind, lack of infrastructure, illiteracy, language and economic barriers. Due to the extensive digital divide, some of us are privileged and more developed while others would undergo backwardness.

Example:- Passport applicants have a place with more fragile segments of society significantly, where computer illiteracy puts them on a wrong side of the digital divide, they are compelled to pay practically twofold the sum that a computer literate proficient applicant would pay to apply for a passport since they need to depend on cyber cafe and they need computers to apply.

Overcoming digital divide
In bridging up the gap there should be more penetration of mobile phones along with the knowledge to use it well, programmes to accelerate expansion of internet in rural areas through awareness and infrastructure supported by the people are comfortable with must be established, multiple modes of digital transactions is the need which would attract many rural and urban users and non-users overcoming the gender divide. Some of the most widely used digital transaction is Paytm, Google pay etc.

Bharat Broadband Network Limited, a telecom infrastructure provider started in 2012 gives connectivity to 250,000 gram panchayats covering 625,000 villages in the country, to improve telecommunications in India providing WIFI - hotspots to every village connecting high-speed 4G based tower stations. Recently the government of India said Rs. 6,000 Crore will be allocated for the BharatNet Programme in 2020-21 to enhance the connectivity in rural areas along with the focus on new economic models based on Artificial intelligence and internet of things, intending to bring out a policy for the private sector to build data centre perks throughout the country.

2. SOCIAL AND ECONOMIC BACKWARDNESS
The Internet has accelerated development growth of the country but statics shows that more than half of our population is digitally illiterate, most of them are not even aware of the innovation called Internet especially women and children, which makes them vulnerable to backwardness. Backwardness is lack of progress which may be social and economic. Lack of infrastructure leads to the interrupted supply of internet services and no services at all like Dawn, Kalpa, Lachen and Lachung….. etc where there is no network. Issues like these causes individuals to endure backwardness as they're not updated as the world, they're prevented from claiming the aptitudes and information which has become a significant piece of our advancement. India is a male-centric nation has progressively prevailing guidelines for women particularly in villages where they don't get admittance to the web effectively violating Article 15 the right to non-discrimination, which influences their familiarity with the web as well as right to education which is a principally directed under Article 21-A and right to life under Article 21.

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113 Digital India, power to empowerment, available at https://www.digitalindia.gov.in (Last visited on February 6th, 2020)
Web provides us with various digital benefits like online courses for students, digital transaction, Online shopping through Amazon, Myntra, Shein, work from home designed for people to restart their careers, online internships, entertainment, maps, making money, e-news, e-books, e-hospital. …etc which is not only includes national services but allows us to explore global market as well. With an enormous number of advantages, on the off chance that one would be precluded from claiming internet, at that point it won’t simply impact their insight and abilities, however, will likewise disregard their fundamental rights.

Backwardness due to internet access had also denied people of their freedom to assembly and association online (FoAA) which has become more of a digital privilege than a right. Online assembly is gathering of people on virtual platforms in groups to express their views, opinions and at times for criticising the government. Most of the people who aren’t aware of the internet are denied of their fundamental as well as digital rights.

**Overcoming Backwardness**

India has technology but not enough awareness to convert itself in a digital society which poses the biggest challenge of all. In many villages people are not willing to put up wifi-hotspots or data towers as they think internet to be a threat to their culture, they relate internet to the influence of western culture which is why the digital gap begins. There have been initiatives taken by the government like Digital India Programme, 2015 which aims to transform India into a digitally empowered society and knowledge economy connecting rural areas with high-speed internet and digital literacy. Government has set up online government jobs, digital lockers to store crucial documents like voter ID card, Aadhar card, driving license, educational certificates, national scholarship portal, Electronics Development Fund for manufacturing of electronic products that would help create jobs and reduce import and projects like Gyandoot which ensures a computer centre in every village of Madhya Pradesh and Dhar

More awareness must be created to arrive at the utility of web by the whole populace for which government had put up electronic libraries in Sikkim and Not Eastern states of India ensuring IT facility in every block, Microsoft technology and skill programme launched in 2004 providing technology and employment. The Unnati Project of HPCL which strives to bridge up the gap in rural schools for social and economic backward students and teachers providing training on operating computer.

Internet can also be used to bring more transparency, for example, most of the citizens have been subject to paying bribe to the government officials at some point or the other, like driving license, passport clearance, traffic police and what not !…however such small news aren’t published in newspapers but can reach the large audience through Facebook, Instagram and Twitter. Many of us are not aware of the crimes taking place in our day to day lives as some of us don’t buy newspapers and not all of us are subject to

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facilities of internet services although Internet which is subject to corruption itself is used as the weapon to overcome it.

3. BARRIER TO DEVELOPMENT
Development is a process that creates growth, positive change in physical, social, economic demographic components affecting every citizen of the country. India is an emerging and developing nation with the world’s largest democracy and one of the world’s fastest-growing economies. The Internet plays a very important role in the evolution of digital technology and provides with better lifestyle and opportunities but internet users constitute only a small percentage of total users in developing countries like India. The Web has been playing a very important role in our lives this thus state must refrain from shutting down the internet without any just cause in addition to which no restrictions on content and government surveillance. From 2012 till today there have been 382 total shutdowns in India, out of which the lowest shutdowns have been of 188 days and counting in Jammu and Kashmir from 4th August 2019 till present, 145 days in Kargil, 133 days in Jammu and Kashmir, 100 days in Darjeeling. Out of all 236 shutdowns were observed to be preventive i.e restrictions imposed in anticipation of law and order and 146 shutdowns were reactive i.e imposed to contain ongoing law and order breakdowns (20). With this rate of shutdowns, digital India will soon become offline affecting the livelihood, profession and education of our entire population. People doing online business or those who operate trade in association with an online website like Amazon, Myntra, Flipkart are not only affected for short but long period as the companies will deny doing trade with vendors with no internet and the online booking for shows, hotels and restaurants are closed affecting the tourism of the country. People in the profession of journalism are affected as internet and telephones shutdowns curbs media’s freedom. Restricted internet and shutdowns does not only affect their profession and trade but also their source of income which leads to poor lifestyle, affecting the education, knowledge and skills of their children, its a vicious cycle affecting the overall development and making people vulnerable to poverty, lack of information and violation of digital rights in the name of national security. Jammu and Kashmir have been subject to the longest shutdowns influencing their belongingness to the rest of the world especially India. Most of the RTI act filed were rejected citing national security as a reason thus more transparency is needed also more laws should be there for restricting these shutdown to specific hours or days. 

*Overcoming barrier to development*

In Anuradha Bhasin v/s Union of India & Gulam Nabi Azad v/s Union of India, 2020, the Supreme Court of India declared “Intent access as a Fundamental right” and gave guidelines over internet shutdowns.

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116 Gayathry Venkiteswaran, freedom of assembly and association online in India, Malaysia and Pakistan, available at: https://www.apc.org/sites/default/files/FOAA_online_IndiaMalaysiaPakistan.pdf (Last visited on February 7th, 2020)

117 SFLC, Internet shutdowns, available at: https://intemetshutdowns.in (Last visited on February 7th, 2020)

118 Defender of your digital freedom, available at: https://sflc.in ( Last visited on February 7th, 2020)

119 W.P.(C) No.-001031/2019

120 WRIT PETITION (CIVIL) NO. 1164 OF 2019
Sec 144 of the croc is remedial & preventive, can be used for present danger as well as the apprehension of danger.
Sec 144 cannot be used to suppress the expression of opinion if passed than subject to judicial review & cannot be used again as it will be subject to abuse of power.
To bring more transparency & mandate, shutdowns should be published. The biggest obstacle is to bring more transparency, Shutdowns are not the only barrier to development but more productive initiatives should be taken by the government to bring awareness and provide infrastructure in rural and urban areas, being more focused on rural areas the need of better infrastructure in cities should not be ignored. Also, laws to promote and protect the internet should be our priority, judicial review must be done in a week if the nature of the act is inconsistent with part III of the Indian Constitution.
Despite these advances, India has plenty of room to grow. Private sector innovation has helped empowered administrations to a huge number of customers and made online utilization progressively open. For example, Reliance Jio’s strategy of bundling virtually free smartphones with mobile-service subscriptions has spurred innovation and competitive pricing. The pace of growth is helping India’s poorer states to limit the digital gap with wealthier states. Lower-income states like Uttar Pradesh and Jharkhand are expanding internet infrastructure such as base tower stations and increasing the penetration of internet services to new customers faster than wealthier states.

CONCLUSION
Internet is an ability to access and use digital resources to learn and communicate thus impacting us with cost efficiency, accountability and more transparency. The Internet has become a spine for each one of those individuals attempting to create themselves subsequently the way toward making web accessible to all should begin from the foundation of India that is Gram Panchayat covering little towns to cities, working over awareness and infrastructure. Free Wifi hotspots will urge individuals to utilize the internet as a weapon to overcome inequality, backwardness as well as promote digital growth. More laws and punishment must be presented in respect of violation of fundamental right. Initiatives should also be taken by private sector companies to promote and protect internet for betterment of our youth as their fundamental rights i.e the right to equality, the right education, right to privacy, right to assembly should not be subject to any conditions making India a Digital Nation.

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ASSISTED REPRODUCTIVE TECHNOLOGIES AND CURRENT PERSPECTIVES OF SURROGACY LAWS IN INDIA]

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ABSTRACT
This paper is centred on Assisted Reproductive Technologies and present perspectives of Surrogacy laws in India. The paper examines about the definition of Assisted Reproductive Technologies (ART)’s, different kinds of ART’s and various risks involved when using ART’s. This paper gives a comprehensive analysis of meaning and concept of surrogacy, definitions of surrogacy, Indian history of surrogacy. The main features of THE SURROGACY (REGULATION) BILL, 2019 and transparency of ART in that bill will be examined in this paper. The author discusses various types of Surrogacy and arguments in favour and against surrogacy, Surrogacy and Human Rights, pros and cons of Surrogacy. This paper aspects present laws relating to surrogacy in India and compares with the laws of other countries. Moral, Ethical, and Legal issues of Surrogacy and along with this Judicial Response to Surrogacy in India will be discussed in this paper. Various case laws relating to ART and Surrogacy will be dealt during the course of discussion. Subsequent to this analysis, the conclusion will be drawn based on the observations and suggestions will be presented.

Key words: Assisted Reproductive Technologies (ART), Surrogacy, The Surrogacy (Regulation) Bill, 2019, Moral

Assisted reproductive technologies (ART’s) are the medical techniques which are used to treat infertility. In the past many types of infertility are considered untreatable. They have solutions today by way of Assisted Reproductive Technologies (ART) which rescues the infertile individuals by giving them various options to beget a naturally related child. Through the advancement in medical science particularly in the field of Assisted Reproductive Technologies (ART) numerous solutions for childless couples to get a child other than Adoption were provided.

ART involves a technique in which semen is infused into the vagina or uterus by medical means for the sake of inducing pregnancy. ART is also known as Cervical Fertilization or Intra-uterine Impregnation.

KINDS OF ART:
Various kinds of Assisted Reproductive Technologies (ART) can be detailed as follows:

1. Intra-Cervical Insemination: This technique comprises placing of “unprocessed semen” into cervix mucus and then placing a cervical cap or specifically designed vaginal tampon to hold the semen against the cervix.

2. Intra-Uterine Insemination: Intra-Uterine Insemination can be described as the procedure involving placing of maximum

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number of sperms in close proximity to the egg.

3. **Intra-Tubal Insemination:** Intra-Tubal Insemination can be explained as the procedure involving processing of semen to maximise its fertility and then it is placed through the cervix, by the usage of specially designed catheter into the uterine cavity and then in to the uterine hole of the fallopian tube.

4. **Artificial Insemination Mixed:** Artificial Insemination is one kind of ART in which the infertile husband’s semen is mixed with the donor’s semen and it is used to fertilize the wife of the husband.

5. **Homologous Artificial Insemination (AIH):** Homologous Artificial Insemination is one method of ART in which the woman is injected with her husband’s sperms only. In such cases, there is no question of legitimacy of children as the activity involves the task of husband and wife only.

6. **Heterogeneous Artificial Insemination:** In this method of ART the wife is not injected with the sperms of her husband but with that of a stranger. In this method, most of questions regarding the legitimacy of the child arises as the sperms which are injected to the woman belong to a stranger. In India there is no law as such which provides for the laws and rights of the child born through this method.

7. **In Vitro Fertilization:** In Vitro Fertilization (IVF) is the procedure involving the unification of male and female gametes (sperm and egg) to form a Zygote outside the female body. IVF practices generally include:
   a) **Transvaginal Ovum Retrieval:** The process in which a small needle is incorporated in order to make a hole in the rear area of the vagina and directed through ultrasound into the ovarian follicles to gather together the fluid that has within the eggs.
   b) **Embryo-Transfer:** This procedure involves the process of putting one or two embryos in to a particular position in the uterus of the female with an injection to set up a pregnancy.

**RISKS INVOLVED WHEN USING ART’S:**
Numerous risks are involved when using ART’s. Some of them can be elucidated as follows:
- **Infection:** when using a fine needle to take off the eggs from a woman may be a risk because it might bring contamination in to the woman’s body. Addition to this Sperm donation may pass diseases like Human Immunodeficiency Virus (HIV).
- **Ovarian Hyper Stimulation Syndrome (OHSS):** This results in painful and enlarged ovaries which causes abdominal discomfort. Symptoms of this disease may include shortness of breath, fluid retaining in the abdominal cavity. Drugs which are used to stimulate the ovaries during In Vitro Fertilization (IVF) process can lead to this disease.
- **Multiple Pregnancy:** ART particularly IVF rises the chance of having multiple pregnancy like twins or triplets which may cause health risks for both mother and children.
- **Genetic disorders:** Genetic disorders such as low birth weight and preterm birth weight are connected with several health problems like cerebral palsy and visual impairment.
- **Other risks:** Many other risks such as membrane damage which may bring a bad impression by increasing the membrane fusion proteins may arise when using ART’s.

**MEANING AND CONCEPT OF SURROGACY:**
Surrogacy can be explained as one of the most effective technique to overcome
biological infertility. Surrogacy is the process of reproduction with the usage of womb of one woman to reproduce the children for another woman. Generally Surrogacy can be explicated as the manner in which a woman carries a child for another woman who cannot give birth to the children naturally. The practice of surrogacy turned out to be an attractive alternative for the individuals and couples who wish to have biologically related children and for those people who are unable to reproduce through ART (Assisted Reproductive Technologies) and other artificial reproductive technologies such as in vitro fertilization.

DEFINITIONS OF SURROGACY:
The expression “Surrogate” originated from the Latin word “Surrogatus” which means that the one who is “appointed to act in the place of another”. Some important definitions of Surrogacy are stated below:

- **Merriam Webster Dictionary:** This dictionary defines surrogacy as ‘the practice by which a woman (called a surrogate mother) becomes pregnant and gives birth to a baby in order to give it to someone who cannot have children’.¹²³

- **Black’s Law Dictionary:** This dictionary expresses surrogacy as “an agreement wherein a woman agrees to be artificially inseminated with the semen of another woman’s husband.”¹²⁴

- **The New Encyclopaedia Britannica:** In this “Surrogate Motherhood” is described as the practice in which a woman bears a child to produce children in the usual way.¹²⁵

- **The Surrogacy (Regulation) Bill 2019:** This bill termed Surrogacy in Section 2 (zc). It states that “surrogacy” means 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.¹²⁶

**INDIAN HISTORY OF SURROGACY:**
Hindu mythology gives quite a lot of instances of surrogacy. Some important illustrations related to the concept of surrogacy in the Hindu tradition are mentioned below:

- **Bhagavata Purana:** In this purana it is stated that Vasude’s prayers imploring Kansa not to kill all sons being born were heard by Vishnu and transferred an embryo from the Devaki’s womb to the womb of Rohini, the second wife of Vasudev. Rohini gave birth to that baby named Balalram, who is the brother of Krishna. Rohini secretly raised the child (Balaram) while Kansa was informed by Vasudev and Devaki that the child born was dead.¹²⁷

- **Mahabharata:** In Mahabharata several instances signify Surrogacy. Some of them are:
  1. Gandhari delivered a semi solid material rather than delivering a natural child. That semi solid material was divided by Maharishi Vyas in to 100 pieces and he placed those 100 pieces in different pans and as a result 100 Kauravas were born.
  2. Maharishi Bharathwaj saw a godly nymph coming out of water after having a bath and after seeing such a divine woman he felt discern and deposited his semen in a pot

¹²³ Merriam Webster Dictionary definition for Surrogacy.
¹²⁴ Black’s Law Dictionary definition for surrogacy.
¹²⁵ The New Encyclopaedia Britannica definition for surrogate motherhood.
¹²⁶ The Surrogacy (Regulation) Bill 2019, Section 2 (ZC)

¹²⁷ Jasdeep Kaur, “Surrogacy: A Paradox regarding Motherhood rights with Special Reference to India”, Vol. IINo.1, 2012 The Legal Analyst (113 to 121) at 114.
used for yagna called as ‘Darona’ and that is source of Dronacharya’s birth who was named after the vessel.

- Jain Mythology: Thousands of years after the theological events in 599 AD Mahavira the 24th Thirthankar was born after an embryo has been transferred from Devananda wife of a Brahmin named Rishabdeva to the womb of Trishala by the gods ingeniously.

“THE SURROGACY (REGULATION) BILL 2019”:
Important features of ‘The Surrogacy Regulation Bill 2019’ are mentioned below:

a) For whom: This bill states that the Indian couples who are legally married for at least for 5 years of age can opt for surrogacy.

b) Type of surrogacy: The bill clearly states that the infertile intending couple who are opting Surrogacy can be allowed only to “Altruistic Surrogacy”.

c) Age limit: According to this bill the age criteria for males who are opting surrogacy is 26 to 55 years and for females it is 23 to 50 years.

d) Essential certificates: Two certificates are compulsory for the couple who are intending to go for surrogacy. They are Certificate of Essentiality and Certificate of Eligibility which must be obtained from the proper authority concerned. (change)

e) Requisites for the surrogate mother: This bill noticeably mentions certain eligibility criteria for the surrogate mother i.e. the woman who wants to become a surrogate mother should not have a child of her own and she must be the close relative to the intending couple and essentially the woman should be of the age 25 to 55 years.

f) The bill also mentions that the woman who is coming forward for taking the surrogacy must not have a surrogate earlier and the bill clearly declares that the woman is eligible for surrogacy only if she possesses a Certificate regarding Physical and Mental health from the respective authority concerned.

g) The bill states that under any circumstances or conditions the child who is born by way of surrogacy should not be abandoned by the intended couple.

h) Legal status of the surrogate child: The bill clearly states that the intending couple must accept the child born through surrogacy as their natural child and the surrogate child is qualified to have all legal rights and privileges that are available to the natural child.

i) Establishment of surrogacy boards: This Surrogacy Regulation Bill makes an adequate preparation for the establishment of the National Surrogacy Boards and the State Surrogacy Boards at the state levels.

j) Surrogacy clinics: The bill undoubtedly seeks to control the functioning of the surrogacy clinics by means of strong rules and regulations. The bill mentions that the medical clinics which are undertaking surrogacy procedures must be registered by the appropriate authority.

TYPES OF SURROGACY:
Depending up on the method in which the surrogacy is done, it is divided in to different types and various types of surrogacy are mentioned below:

- Traditional surrogacy: Natural surrogacy is the other name for this type of surrogacy. In this kind of surrogacy, the surrogate mother is artificially fertilized with the sperm of the male partner of an infertile couple and the child born through this type of surrogacy relates to the genetics between the male partner and the surrogate mother and not to the genes of the female partner of the intending couple.

- Gestational surrogacy: In this type of surrogacy the ovum of the wife of the infertile couple is fertilized in vitro of the husband’s sperms of the infertile couple by In Vitro Fertilization (IVF) or Intra
Cytoplasmic Sperm Injection (ICSI) procedure, and then the embryo is shifted in to the uterus of the surrogate mother and the surrogate mother carries that embryo for nine months. Here the surrogate mother becomes pregnant only by way of embryo transfer and she is not the biological mother of the child who is born by way of surrogacy. Thus this type surrogacy is also known as ‘Host Motherhood’.

❖ Commercial surrogacy: Commercial surrogacy is one kind of surrogacy where the whole surrogacy process will be done by way of agreement between both the parties i.e. intending couple and the surrogate mother and the agreement is for the exchange of the child born through surrogacy for some means of payment (generally a sum of money which is significantly greater than the medical costs sustained and the income lost by the surrogate mother due to her pregnancy and for bearing the child) which is given by the intending couple to the surrogate mother. The Surrogacy (Regulation) Bill 2019 bans this type of commercial surrogacy in India.

❖ Altruistic surrogacy: Altruistic surrogacy is a type of surrogacy where no financial reward or payment is given to the surrogate mother for her pregnancy. This type of surrogacy agreements refer that the surrogate mother will not receive any monetary compensation for gestational carrying from the couple and for sacrificing the child. The Surrogacy (Regulation) Bill 2019 states that the intending couple must only select Altruistic Surrogacy.

ARGUMENTS IN SUPPORT OF SURROGACY:
Some arguments of the general public who support surrogacy are stated below:

❖ Surrogacy is one of the best alternatives for the couples who cannot produce their children naturally due to medical complexities or physical incapability, which creates a biological linkage between the child born through the surrogacy process and the intended infertile couple.

❖ Altruistic surrogacy is one type of surrogacy where no financial reward is given to the surrogate mothers. In fact many women in the world participate willingly in such type of surrogacy to help the infertile couples and in return surrogate mother will experience a lot of satisfaction by way of helping the infertile couples.

❖ Commercial surrogacy is one type of surrogacy where in a financial reward is given to the surrogate mothers for carrying the child for the intending couples. In fact this commercial surrogacy not only help the poor and minority women in making money by renting their womb which is useful for their household expenses, education of their own children etc. but also helps the infertile couples by giving them genetically related children and making them a complete family.

❖ Through this surrogacy process even a single man, gay and lesbian can have their genetically related children in spite of their physical incapability or medical complication.

ARGUMENTS AGAINST SURROGACY:

❖ The concept of surrogacy motherhood is predominantly based on harms because firstly it harms the surrogate mother’s health if she is going for repetitive births of the children from her womb, secondly if the surrogate mother has real children then her acts will affect the children and as a result it creates a change in the mind-set of the children and it is a great harm to the society.

❖ Secondly if there are any abnormalities in the child who is born through surrogacy, both the surrogate mother and the intended parents refuses to accept the child and finally it will affect the attitude of the child.

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Surrogacy process destroys the traditional values of the families due to the new concepts of the motherhood in the society.

In many cases it has been observed that the medical practitioners like doctors and nurses are not helping the persons and couples like gay, lesbian or single who wants to have their own children even though they are not suffering from any hazardous diseases. As a result this might constitute in to a great discrimination for the public in general.

SURROGACY AND HUMAN RIGHTS:
Regarding the concept of human rights in the context of surrogacy there are different views in the people. Most of the people consider this surrogacy in a positive manner and some people consider it in a negative way and as a violation of human rights.

**Positive way:** Many people argue that in Article 21 of the Indian Constitution, the Right to life and personal liberty is given as a fundamental right. Similarly they consider that the reproductive rights must be included with Article 21 of the Indian Constitution and they must have their freedom to decide about the time and place to have children and to take freedom of choices.

**Negative way:** Most of the people consider that surrogacy violates the human rights of both the surrogate mother and the child because there is one sort of violation as the people are misusing by selling the babies and making the profits and the other kind of violation is that surrogate mothers are forced to take the pregnancy under coercion and after that the surrogate mothers are forgotten.

**PROS AND CONS OF SURROGACY:**

**Pros of surrogacy:**
1. It fulfils the wish for the couples as well as individuals including gay, lesbian and single person to complete their family.
2. Surrogacy is one of the latest and best tools to fight against infertility because through this surrogacy there is a genetic relation between the intending couple and the surrogate child.
3. Surrogacy is better than adoptions because adoption procedure will consume a lot of time to complete all procedure and it will take many years to understand the psychology of the adopted child.
4. Surrogate mothers will have a positive experience by helping the people to have their own child.
5. Through this surrogacy process the birth and death ratio of the country will improve.

**Cons of surrogacy:**
1. There is a high probability that Commercial Surrogacy can be treated as prostitution.
2. Women can be treated as labour in providing the facilities for the birth of the child.
3. If the child born through surrogacy is abnormal, then both commissioning parents as well as the surrogate mother refuses to keep the child and as a result the Rights of the child will be violated.

**CURRENT LAWS RELATED TO SURROGACY IN OTHER COUNTRIES:**
Even though there is a rapid growth in the international surrogacy, there are no uniform rules and regulations adhered by all the nations. As of now every country has separate laws on surrogacy. Many countries allowed surrogacy and some countries banned it. Present scenarios of laws in various countries are mentioned below:

- **Belgium:** In Belgium, Altruistic surrogacy is permitted but commercial surrogacy is banned. Although Altruistic

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128 Constitution of India, Article 21
surrogacy is allowed but there is only one hospital which takes in the couples, but, there to with the strict rules. So, the people generally prefer to have treatment outside the country.\textsuperscript{129}

\textbf{Germany:} In Germany, courts held this to violation of its Article 1 of the Constitution, which means that the human cannot be subjected to a contract including the use of the body of the third person for the reproduction of new life. It is also not permissible under German Civil Code.\textsuperscript{130}

\textbf{Netherlands:} Netherlands allows the Altruistic surrogacy, but not the commercial surrogacy. This country has the same conditions like Belgium where few hospitals take the couples which have strict rules. So, maximum persons seek for the treatment outside their country.\textsuperscript{131}

\textbf{United Kingdom:} United Kingdom, Commercial surrogacy is illegal and is prohibited by the Surrogacy Arrangements Act, 1985. The agreements on surrogacy are not legally enforceable and the child belongs to the surrogate mother only. The child becomes the legally of the commissioning parents only after the adoption or parental order is made. This approach makes very difficult for the persons to get into the commercial surrogacy.\textsuperscript{132}

\textbf{United States:} United States, citizenship of the child is governed by Immigration and Nationality Act (INA) Section 301 and 309. The citizenship depends on the genetic connections of the child with the commissioning parents. Furthermore the child should have the genetic relationship with the father in order to acquire the U.S. citizenship.\textsuperscript{133}

\textbf{India:} In India even though commercial surrogacy is legalised since 2002 it is banned now through The Surrogacy (Regulation) Bill 2019 and the latest bill allows only Altruistic surrogacy in India with certain rules and regulations.

\textbf{MORAL AND ETHICAL ISSUES RELATED TO SURROGACY:}

The main idea behind the concept of surrogacy particularly altruistic surrogacy is based on the principle of doing good to others. In general terms it can be explained as the process of one woman helping another infertile woman or couple for getting genetically related children. Some of the moral and ethical issues of surrogacy are mentioned below:

\textbf{1. Harm to the Surrogate mother:} Surrogacy can harm the surrogate mother because most of the women are accepting pregnancy by renting their womb due to the poverty or economic necessities and they are unaware of pregnancy risks. If there is any sort of situation where in harm is caused to the surrogate mother and neither medical staff nor the intended couple are taking the responsibility and liability then there will be one to indemnify the loss suffered by the surrogate mother.

\textbf{2. Interest of the child:} Generally commercial surrogacy involves the exchange of the child born through surrogacy for payment of money to the surrogate mother. If there are any abnormalities in the child born then neither party will accept the child then the declaration of the parentage of such surrogate children will be a contentious issue.

\textbf{3. Dignity of the woman will be degraded:} Surrogacy mainly involves the use of a woman’s body for producing a baby which


\textsuperscript{130} Ibid

\textsuperscript{131} Ibid

\textsuperscript{132} Ibid

\textsuperscript{133} Ibid
must be handed over to the intended infertile couple. During the pregnancy the surrogate mother must abide by the terms laid down in the surrogacy contract and she loses her rights to take any decision affecting her body. It is argued by many people that surrogacy is similar to the prostitution as the surrogate mother has no choice and must abide all terms in the contract irrespective of the circumstances and also she is in the control of the person who is paying money for her pregnancy.

4. **Attachment with the Gestational mother:** In surrogacy the woman who carries the baby for the intended infertile couple is known as the Gestational mother. Generally the Gestational mother must not have any relationship with the child born through surrogacy even though the gestational mother is both physically and mentally connected with the child and at last she must detach herself from the baby.

**LEGAL ISSUES RELATED TO SURROGACY:**

1. **Access to Surrogacy:** Right to procreation i.e. the right to have children is one of the basic fundamental rights. Usually surrogacy is considered as the option for procuring a child by the infertile couples. Now the legal questions like whether the said surrogacy can be considered and also used as a right? Who can avail this right? Can surrogacy be used by persons like divorced, widowed, single and same sex couples etc.? If surrogacy is used by the aged and disabled persons, who will take care of the children in the aspects of the maintenance and welfare? Is an important legal issue which is to be considered.

2. **Surrogacy contracts and their validity:** The legality of the surrogacy contracts is uncertain in India because most of the people argue that surrogacy contracts are opposed to public policy because those contracts generally involve use of a woman’s womb for begetting a child and finally which is to be handed over to the other party i.e. intended couple for the payment of money. So people consider that these agreements will come under the preview of The Indian Contract Act, 1872 and according to The Indian Contract Act the agreements or contracts which are opposed to the public policy are void. Hence the validity of surrogacy contracts is uncertain.

3. **Child’s right- Right to know his origin:** According to Article 7(1) of the Convention on the Rights of the Child (CRC), a child has the right to know about his or her origin. Generally the genetic information is necessary to cure and diagnosing certain diseases and also to avoid incest marriages. In case of surrogacy the disclosure of any such genetic information may lead to adverse consequences. The consequences will have an impact on the child, surrogate mother and also the commissioning parents.

**JUDICIAL RESPONSE TO SURROGACY IN INDIA:**

Baby Manaji Yamanda case:
The Supreme Court of India formally legalised commercial surrogacy in this case and the court defined the commercial surrogacy as the form of surrogacy in which a gestational carrier carry’s a child to maturity in her womb and for that she will be compensated in terms of money. In this case the substantial issue of surrogate arrangement was presented before the Supreme Court and the court dealt with related aspects of surrogacy like surrogacy agreements and the parties who may enter in to that surrogacy agreement.

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Jan Blaze v. Anand Municipality\textsuperscript{135}

This case is famously known as the German Couple case. In this case a childless German couple had twins through a surrogate mother in India. German laws do not recognise surrogacy as a means of parenthood so to avoid the foreseeable legal hurdle of the immigration process, the German couple approached the Gujarat High Court and the court held that “In the absence of any legislation to the contrary the court is inclined to recognise the gestational surrogate who has given birth to the child as the natural mother and anonymous egg donor cannot be recognised as the natural mother. Considering the intended mother the court held that she is just the wife of the biological father who has neither donated ova nor delivered the babies so in the absence of the legislation she cannot be treated as legal mother and the natural mother.

Both of these judgements aimed for the passing of a legislation regarding Surrogacy in India.

Commercial surrogacy has posed the challenge of whether maternity benefits should be allowed in organisations for the surrogate mothers also. In recent times, various Indian courts pronounced judgements regarding this issue by using several approaches and some of them are mentioned below:

1\textsuperscript{st} Approach: According to Article 21 of the Indian Constitution i.e. Right to life is one of the prominent fundamental rights. Motherhood forms an integral part of Right to Life so the maternity benefits should be awarded in all kinds of motherhood including surrogate motherhood.

2\textsuperscript{nd} Approach: Maternity benefits are meant against both physical and psychological hardships. Surrogate motherhood also contains emotional turmoil’s and psychological hardships. As a result maternity benefits must be extended to surrogate motherhood.

3\textsuperscript{rd} Approach: The maternity benefits given to surrogate mothers cannot be the same as the benefits given to the natural motherhood as the surrogate motherhood doesn’t include gestational period and physical hardships. So the benefits given to the surrogate mothers can be limited.

The organisations who are employing women must consider all these approaches given by the courts and must be empathetic towards the surrogate motherhood.

CONCLUSION:
According to me the motherhood is the basic right and it must be available to each and every woman. Through these developments in the field of science and technologies particularly in the field of Assisted Reproductive Technologies (ART’s) motherhood has been expanded to include children born even through IVF and surrogacy. The Surrogacy (Regulation) Bill, 2019 was drafted in order to protect the woman particularly poor from exploitation and victimisation in the present commercial surrogacy ecosystem. However there are many drawbacks in the surrogacy regulation bill. They are mentioned below:

DRAWDACKS OF THE SURROGACY (REGULATION) BILL 2019:
In my opinion:

- The bill violates Article 14\textsuperscript{136} of the Indian Constitution i.e. Right to Equality which is one of the basic fundamental right by not allowing single people, homosexuals,

\textsuperscript{135} AIR 2010 , Gujarat 21

\textsuperscript{136} Constitution of India, Article 14
widows and couples already having children to go for surrogacy.

- This bill tries to interfere with the woman’s Right to reproductive autonomy which includes procreation and parenthood.
- This bill states that the Altruistic form of surrogacy must only be followed and it must be done by the close relatives of the intended infertile couple. If there are no close relatives to the intended couple, there will be a difficulty in the surrogacy process because no one will be willing to become a surrogate.
- The Surrogacy regulation bill 2019 instead of regulating the commercial surrogacy it bans it which may cause this vast medical tourism industry to go underground and the exploitation will become much easier.

SUGGESTIONS/RECOMMENDATIONS:

- Even homosexuals, widows and single persons must be allowed to surrogacy method to have their genetically related children. As a result there will not be any violation of Article 14 i.e. Right to Equality.
- Disclosure of the surrogate relationship must be limited in order to avoid unfavourable circumstances.
- It is recommended that a provision must be there to provide intensive care and medical check-ups for the surrogate mother during the 3 months after her pregnancy.
- The rights of the surrogate mother should be protected in every possible manner.
- Laws must be framed to cover the grey areas so that the rights of the women and surrogate children will be protected.

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INDIAN FEDERALISM UNDER THE LIGHT OF JUDICIARY

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ABSTRACT
Federalism or federal governmental is a structure in which there is division of power between union and state government and those component units among which the power has been divided should be sovereign or independent in nature. The constitution of India do have federal feature such as supremacy of the constitution, division or decentralization of power, written and rigid constitution, bicameral legislation. The Indian judiciary has given interpretation to constitution of India after considering the legislative intent and inherent features of federalism from government of India Act, 1935. Through various cases the constitution has been considered as not so truly federal or amphibian constitution or federation with strong center or federal inkling towards unitary features. A famous debate which has been discussed in the judgement is the use of term union in article 1 of the constitution which describes the motive of the framers of Indian constitution that India that is bharat is not a result of any agreement, though it is a product of the unity which was furnished among different provinces at that period of time. However, India is now considered as federal country due to decentralization of power, supremacy of the constitution and bicameral legislation.

Keywords: Federalism, decentralization, supremacy of the constitution, bicameral legislation, sovereign.

I. INTRODUCTION
Federalism can be defined as the method of dividing powers so that the general and regional governments are each within a sphere co-ordinate and independent. It put emphasis on the separation of power between the central and state government so that they work accordingly in a coordinated manner to serve the citizen. It can also be defined as the distribution of powers among governmental bodies (each with limited and coordinate powers), along with the supremacy of the constitution and the authority of the courts as the interpreters of the constitution. It suggests distribution of power according to the constitution. The term federalism is derived from the Latin root foedus, which means "formal agreement or covenant." It includes the interrelationships between the states as well as between the states and the federal government. Federation is a political contrivance intended to reconcile national unity with the maintenance of State Rights.

It is the device for dividing decisions and functions of government. It is the process of federalizing a political community, that is to say, the process by which a number of separate political communities enter into arrangements for working out solutions,

139 C. MEISSNER, LATIN PHRASE BOOK, 435 (Macmillan, London, 1894)
140 PAL, CHANDRA, STATE AUTONOMY IN INDIAN FEDERATION, 18 (Deep and Deep Publications, New Delhi, 1984).
adoption of joint policies, and making joint decisions on joint problems and conversely, is also the process by which a unitary political community becomes differentiated into a federally organized whole.\textsuperscript{142} The constitution provides for the basic division of powers, but the dynamic nature of the federal system is illustrated by the judicial and political interpretations.\textsuperscript{143} Federal government is a device by which the federal qualities of the society are articulated and protected.\textsuperscript{144}

According to EA Freeman, two requisites seem necessary to constitute a federal government in its most perfect form. On the one hand, each of the members of the Union must be “wholly independent” in those matters which concern each member only. On the other hand, all must be subject to a common power in those matters which concern the whole body of members collectively.\textsuperscript{145} C. J. Friedrich’s description of federation as, “a union of groups, united by one or more common objectives, but retaining their distinctive group character for other purposes.”\textsuperscript{146} Federalism, as is a process of federalizing that is, the process of achieving a union of groups which retain their identity.\textsuperscript{147} And according to Ernst B. Haas, “federalism may be operating in both the directions of integration and differentiation, for both the transformation of the British Empire into the Commonwealth of Nations and that of European states into a United States of Europe are federalizing processes.”\textsuperscript{148}

Federalism is “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 other.”\textsuperscript{149} According to Garner, “Federal government, as contradistinguished from unitary government, is a system in which the totality of governmental power is divided and distributed by the national constitution on the organic act of Parliament creating it between the central government and the governments of the individual states or other territorial sub-division of which the federation is composed.”\textsuperscript{150} Federal systems operate best in societies with sufficient homogeneity of fundamental interests or consensus to allow a great deal of attitude in political operations and to place primary reliance upon voluntary collaboration.\textsuperscript{151} The state is one single entity, only its government is dual and from that state receives its federal character.\textsuperscript{152} Federalism is, therefore, a concept which unites separate States into a Union without sacrificing their own fundamental political

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\item \textsuperscript{142} Phul & Chand, \textit{Federalism and the Indian Political Parties}, 5, Journal of Constitutional and Parliamentary Studies, 147, 1972.
\item \textsuperscript{144} Phul & Chand, \textit{Federalism and the Indian Political Parties}, 5, Journal of Constitutional and Parliamentary Studies, 148, 1972.
\item \textsuperscript{145} E.A. Freeman, \textit{The History of Federal Government}, 3, 1863.
\item \textsuperscript{147} Birch, A. H., Political Studies, Clarendon, London, 18-38, 1966.
\item \textsuperscript{148} Haas, Ernst B., \textit{The Uniting of Europe}, 125, (Stanford University Press, London, 1958).
\item \textsuperscript{151} Verma, S.L., \textit{Federal Authority in the Indian Political System: A Comparative Study}, 33, (R.B.S.A Publisher, Jaipur, 1987).
\end{itemize}
\end{footnotesize}
The source of the present federal system in India lies in the Simon Report of May 1930 which supported the idea of a federal government in India. This support for the federal form of government for the India of the future was further affirmed in the First Round Table Conference of 1930. Through Government of India Act, 1935 federalism was introduced in India. This act for the first time introduced the federal concept and used the expression ‘Federation of India’. The act established a Federation of India made up of British Indian provinces and Indian states which might accede to be united.

The framer of the constitution while drafting the Indian Constitution wanted India to be federal in nature after taking into consideration its pluralistic characteristics which was there at the colonial time. Indian constitution contain various integral federal features such as separation of power, supremacy of the constitution, independent judiciary, bicameralism etc. it has been said that India is not a ‘coming-together’, federation of the traditional type (such as the US, Australia or Switzerland). Rather, a centralized ‘union’ was meant to ‘hold India together’. Federalism is the basic feature of the constitution. The establishment of federalism has not been stated anywhere in the Constitution, including its Preamble, but it is reflected not only in the division of the Union of India and its 29 states but also at the grassroots levels of villages and municipalities. Like democracy, federalism is also one of the unamendable basic features of the Constitution.

The Indian federalism was not a result of a compact between several sovereign units but a result of conversion of a unitary system into a federal system. Here the movement has been from unity to union, from unitarism to federalism, unlike other countries where the historical process has been for separate units to come together to form the federal union. The Supreme Court took note of this process and rejected the claim of the States that they shared sovereignty with the Centre. The Drafting Committee described the Constitution as “federal in structure” but they preferred to call it a “Union” to indicate two essential features of Indian federalism, namely, (a) that the Indian federation is not the result of an agreement by the units and (b) that the component units have freedom to secede from it. It would not be proper to describe the Indian Constitution as quasi federal unless one is prepared to classify the Canadian Constitution, too, as quasi-federal. Strictly speaking, any deviation from the American model of pure federation would make a system quasi-federal, and, if so, the Canadian system,

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156  S. Eliav (A.), Linz (J.J.) and Yadav (Y.) (Eds.), State-Nations. India and Other Multinational States, (Baltimore, Johns Hopkins, 2011).
160 State of West Bengal v. Union of India AIR 1963 SC 1241.
too, can hardly escape being branded quasi-federal. The difference between the Canadian and the Indian systems lies in the degree and extent of the unitary emphasis. The real test of the federal character of a political structure is, as PROF. WHEARE has himself observed—that, however, is what appears on paper only. It remains to be seen whether in actual practice the federal features entrench or strengthen themselves as they have in Canada, or whether the strong trend towards centralization which is a feature of most Western Governments in a world of crises, will compel these federal aspects of the Constitution to wither away.  

Union of India is a federal union having a distribution of powers of which the Judiciary is the interpreter was also acknowledged by the Supreme Court in the Special Reference case of 1964. The foundation for a federal set up for the nation was laid in Government off India Act, 1935. Though in every respect the distribution of legislative power between the Union and State as envisaged in 1935 Act has not been adopted in Indian constitution, but the basic framework is same. The Supreme Court in 2001 held that the Indian constitution is basically federal in form and is marked by traditional characteristics of a federal system, namely, supremacy of the constitution, division of power between the Union and States and existence of an independent judiciary.

The essential characteristics of federalism is the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other. federal concept is meant the idea of organization of state whereby a compromise is achieved between concurrent demands for union and for territorial diversity within a society, by the establishment of a single political system, within which, general (Central) and regional (State) governments are assigned coordinate authority so that neither level of government is legally or politically subordinate to the others. There is a state authority and powers of the state are divided between the central and regional governments. Both levels of government operate through their own agents and exercise power directly over individuals. The natural and literal interpretation of the word confines its application to cases in which these states, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions.

### II. NATURE OF INDIAN FEDERAL SYSTEM

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164 Id.
165 Keshav Singh v. Speaker, legislative Assembly AIR 1965 SC 745.
168 Keshav Singh v. Speaker, legislative Assembly AIR 1965 SC 745.
British authority on federalism, says, “the Constitution is quasi-federal,” and classifies India as “a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles.” Sir. Ivor. Jennings holds that India is a federation, with a strong centralizing tendency. According to K.M.Munshi, the constitution made India “a quasi-federal union invested with several important features of a unitary government.” Prof. P.K.Tripathi, formerly member of the Law Commission of India, finds “federalism in India a myth and not reality.

### III. FEDERAL FEATURES IN INDIAN CONSTITUTION

The main features of Indian Federal system are as follows:

1. **Division of Power:** The division of powers between two levels of governments is an essential feature of federalism. The basis of such distribution of power is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the centre and matters of local concern remain with the states. The Seventh schedule contains three legislative lists which enumerate subjects of administration viz., Union, State and Concurrent lists.

2. **Supremacy of the Law:** The Supremacy of the Constitution is essential if the government is to be federal; the written constitution is essential if the federal government is to work well.

3. **A Written Constitution:** The Indian constitution is a written document containing 395 Articles and 12 Schedules, and therefore fulfills this basic requirement of a federal government. In fact the Indian constitution is die most elaborate constitution of the world.

4. **Rigid Constitution:** In a rigid constitution the procedure of amendment is complicated and difficult. But this does not mean that the constitution should be legally unalterable. A Rigid constitution, as we know, is one which cannot be changed easily. The Indian constitution is largely a rigid constitution.

5. **Independent Judiciary:** A Federal court is indispensable to a federation. It acts as the guardian of the constitution. Especially, this principle has been playing an important and key role in the working of federal government. In order to ensure the impartiality of the judiciary, our judges are not removable by the executive and their salaries cannot be curtailed by the Parliament.

6. **Bicameral Legislation:** A bicameral system is considered essential in a

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174 STEPAN (A.), LINZ (J.J.) AND YADAV (Y.) (EDS.), STATE-NATIONS, INDIA AND OTHER MULTINATIONAL STATES, (Baltimore, Johns Hopkins, 2011).

175 Id.

176 Id.

177 Id.


179 Id.


181 STEPAN (A.), LINZ (J.J.) AND YADAV (Y.) (EDS.), STATE-NATIONS, INDIA AND OTHER MULTINATIONAL STATES, (Baltimore, Johns Hopkins, 2011).

federation because it is in the Upper House alone that the units can be given equal representation. Constitution of India also provides for a bicameral legislature at the Centre consisting of the Lok Sabha and the Rajya Sabha. While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by State Legislative Assemblies. “Legislatures are bicameral for two broad and different reasons as a part of federalism and as the result of a desire to check the popular principle in the Constitution.”

IV. JUDICIAL TRENDS

STATE OF WEST BENGAL V. UNION OF INDIA

Facts: Acquisition and Development Act, 1957 was enacted by the parliament and as per this act the Union of India can acquire any land or any right in or over land, in any part of India. By notification issued under the West Bengal Estates Acquisition Act, 1954, as amended, all estates and rights of intermediaries and Ryots vested in the State for the purposes of Government, free from encumbrances, together with rights in the sub-soil, including mines and minerals.

Issues:
1. Whether Parliament has legislative competence to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the State as alleged in para 8 of the plaint?
2. Whether the State of West Bengal is a sovereign authority as alleged in para 8 of the plaint?
3. Whether assuming that the State of West Bengal is a sovereign authority, Parliament is entitled to enact a law for compulsory acquisition of its lands and properties?
4. Whether the Act or any of its provisions are ultra vires the legislative competence of Parliament?
5. Whether the plaintiff is entitled to any relief and if so, what relief?

Judgement: J. Sinha delivered the judgement for majority discussing the competence of parliament for making law for compulsory acquisition and sovereign function of State at length.

Analysis: The main issue involved in this case was the exercise of sovereign power by the India states. The legislative competence of the Parliament to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the State and the sovereign authority of states as distinct entities was also examined. The apex Court has held that the Indian Constitution accepts federal concept and distribute the sovereign power between the Union and State. This concept implies that one cannot encroach upon the governmental functions or instrumentalties of the other, unless the Constitution expressly provides for such interference. The legislative work allotted to individual unit is within the framework prescribed by the constitution and it is mentioned nowhere in the constitution that one can overstep its boundary and step into the shoes of state. The Constitution of India is not truly Federal in character. The basis of


184 State of West Bengal v. Union of India AIR 1963 SC 1241.
the distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue, especially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union.”

STATE OF RAJASTHAN & ORS. V. UNION OF INDIA

Facts: There were various suits and three writ petition filed by the petitioners. The Union Minister, Mr. Charan Singh had written to the state chief minister to advise the Governor to dissolve the state assembly as the ruling party of the state had forfeited people's mandate, therefore to seek fresh mandate.

Issues: Whether the letter dated 18th April 1977 given by Union Minister is ultravirus, unconstitutional, and illegal.

Judgement: The judgment was delivered by CJ Beg and J. Faizal Ali unanimously for the bench. The judges dismissed the suit and petition as Art. 356 confers the power given to the Governor by Art. 174 (2) it would be a proper exercise of the discretion of the President to prorogue the Assembly instead of taking the extreme course of dissolving it. This, however, is purely a matter which lies within the domain of politics. The Court cannot substitute its discretion for that of the President nor is it for the Court to play the role of an Advisor as to what the President or the Council of Ministers should do in a particular event.

Analysis: The principle postulated for the existence of federalism by Dicey are that the bodies are so closely connected and there exist a state of sentiment among the inhabitants of the countries. He pointed out that the basis requirement of federalism is desire to unite. Therefore, the Indian Union is federal and the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually up-lifted. The members of our Constituent assembly believed that India had unique problems which had not 'confronted other federations in history'. Terms such as 'quasi-federal' and 'statutory decentralization' were not found by the learned author to be illuminating.

Constitution creates a Central Government which is amphibian”, in the sense that it can move either on the federal or unitary plane, according to the needs of the situation and circumstances of a case, the question which we are driven back to consider is whether an assessment of the "situation" in which the Union Government should move either on the federal or unitary plane are matters for the Union Government itself or for this Court to consider and determine.

SHAMSHER SINGH V. STATE OF PUNJAB

Facts: These appeal arises from the judgement given by Punjab and Haryana High Court. The services of two judges were terminated by the Governor as per his discretion at the time of their probation.

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185 State of West Bengal v. Union of India AIR 1963 SC 1241.
186 State of Rajasthan & Ors. v. Union of India 1977 3 SCC 592.
187 Id.
188 Mr. Granville Austin, The Indian Constitution- Cornerstone, Of A Nation, 186.
189 State of Rajasthan & Ors. v. Union of India (1977) 3 SCC 592.
period. The same order was challenged before the court.

**Issues:** Whether Governor as the constitutional or formal head of the State exercise his power given under constitution personally or as per aid and advice of the council of minister?

**Judgement:** Justice Ray gave the judgement of setting aside the termination of the appellants. President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers.  

**Analysis:** The term "Union" and "State," mentioned in Articles 53(1) and 154(1) respectively to bring about the federal principles embodied in the Constitution. The law of our Constitution, any student of Indian political history and of comparative constitutional systems will agree, is partly eclectic but primarily an Indo-Anglian version of the Westminster model with quasi-federal adaptations, historical modifications, geopolitical mutations and homespun traditions-basically a blended brew of the British parliamentary system, and the Government of India Act, 1935 and near-American, nomenclature-wise and in some other respects.

Justice Krishna Iyer clearly points out that “So far as the relationship of the President with the Cabinet is concerned, I must say that we have, so to say, completely copied the system of responsible government that is functioning in Britain today; we have made no deviation from it and the deviations that we have made are only such as are necessary because our Constitution is federal in structure.”

He also quoted the case of *Rai Sahib Ram Jwaya Kapur v. State of Punjab* “Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.”

**S R Bommai v. Union of India**

**Facts:** S R Bommai was the CM of Janta Dal government in Karnataka. His government was dismissed under article 356 of the constitution and President rule was imposed. The dismissal was on grounds that Bommai government has lost majority and governor refused to give chance to Bommai to test his majority. 

**Issues:** The case of Bommai not only comprised of the issue of Proclamation of emergency by the President but it also has different types of issues relating to secularism and federalism of the Constitution in the Indian context. It also

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191 Id.
192 Id.
195 Id.
enhances in the matter of judicial review of Article 365 of the Constitution which is capable of exercise in testing invalidating proclamation.\textsuperscript{198}

Judgement: The judgement concluded that the power of the president to dismiss a state government is not absolute. The president should exercise the power only after his proclamation is approved by both the houses.\textsuperscript{199} The judges also discussed the concept of federalism and secularism at length. Various opinion of the judges speaking for the bench are as follows:

1. **Justice Ahmadi**: Because of no mention of the words like ‘federal’ he declared it to be a quasi-federal constitution.

2. **Justice Sawant & Kuldip Singh**: Federalism is an essential feature of the constitution.

3. **Justice Ramaswamy**: Declared India to be an “Organic Federation” designed to suit the needs of the parliament.

4. **Justice Jeevan Reddy and Justice Agarwal**: Federalism in the constitution has a different meaning in accordance with the context. This case posed restrictions on the arbitrary use of article 356.

Analysis: Justice Ahmedi suggests that to form an opinion about the federal structure of India, it is important to note certain points regarding the same. Federalism is a concept, according to which the separate states unites to form a union without compromising their independent fundamental sovereignty.\textsuperscript{200} The essence of federalism is the distribution of power between the Union and the State. Constitution empowers Parliament to admit into the Union, or establish, new States on such terms and conditions as it thinks fit.\textsuperscript{201} Parliament can by law form a New State by separation of territory from any State or by uniting two or more States or parts of States or by unifying any territory to a part of any State; increasing the area of any State; diminishing the area of any State; altering the boundaries of any State; or altering the name of any State.\textsuperscript{202} According to article 2 of the constitution, it is left to the parliament to consider the terms and condition on which new states or Union territories can be added. In doing so, there is no say of the state whose boundary is likely to be effected by such proposal of addition of new states. The only condition under article 3 is that President shall refer the bill to the legislature of the state which is likely to get effected to express their views and once they mention their view, it is upto the parliament to decide upon such proposal. The setup is completely different from the American setup as the American states and their boundaries cannot be touched by the federal government. It is these independent sovereign units which together decided to form into a federation unlike in India where the States were not independent sovereign units but they were formed by article 1\textsuperscript{203} of the Constitution and their areas and boundaries could, therefore, be altered, without their concurrence, by Parliament.\textsuperscript{204}

The Preamble of our Constitution shows that the people of India had resolved to constitute India into a Sovereign Secular

\textsuperscript{198} Id.


\textsuperscript{200} SR Bommai v Union of India (1994) 3 SCC 1 para

\textsuperscript{201} INDIA CONST. art. 2.

\textsuperscript{202} INDIA CONST. art. 3.

\textsuperscript{203} INDIA CONST. art. 1.

\textsuperscript{204} SR Bommai v. Union of India (1994) 3 SCC 1 para 16.
Democratic Republic and promised to secure to all its citizens Justice, Liberty and Equality and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.\textsuperscript{205} The legal sovereignty vests in the people of India while the political sovereignty is distributed between the Union and the States. States depend for financial assistance upon the Union since their power to raise resources is limited.\textsuperscript{206}

Also the power to amend the constitution is with the parliament.\textsuperscript{207} A strong Central Government may not find it difficult to secure the requisite majority as well as ratification by one half of the legislatures if one goes by past experience.\textsuperscript{208} Justice Ahmedi concluded that the Indian constitution has pragmatic federalism which is overridden by unitary features.

Justice Kuldip Singh J. observed that democracy and federalism are the essential features of the Indian Constitution and part of its Basic Structure. It is concluded that federalism is the basic feature of the constitution in which Union of India is permanent and is indestructible. State is the creation of the constitution and therefore being a creation it has no right to claim its sovereignty. Union and State are coordinating institution and should exercise their power accordingly with adjustment and understanding.\textsuperscript{209} The Constitution of India has created a federation but with a bias in favour of the Centre. Within the sphere allotted to the States, they are supreme.\textsuperscript{210} The executive power of the President is different from the executive power of the Union and that this principle has not expressly been overruled in any of the cases.\textsuperscript{211} Federal and secular structure is an essential feature of the Constitution of India.\textsuperscript{212}

V. CONCLUSION

A federation is a type of polity operating a constitution which works on two levels of government, namely, one at central level and another at state level. In real sense of the term, the federal government works under the democratic set up. In the light of cases discussed, it can be said that India is not truly federal in nature as it moves upon unitary or federal platform according to need and circumstances. But, it can be very well inferred that India is federal with strong center as in various instances judiciary has tried to keep the center strong and follow the approach of drafter of the constitution. The judiciary very well tried to secure the aim of the drafter of the constitution and gave the reason accordingly that why the framers of the constitution mentioned the term union in article 1 of the constitution. Constitution of India has been described as amphibian or organic constitution because the constitution is federal with more power in the hand of center government.

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\textsuperscript{205} INDIA CONST. Preamble.
\textsuperscript{206} INDIA CONST. art. 275.
\textsuperscript{207} INDIA CONST. art. 368.
\textsuperscript{208} SR Bommai v. Union of India (1994) 3 SCC 1 para 19.
\textsuperscript{209} SR Bommai v. Union of India (1994) 3 SCC 1 para 247.
\textsuperscript{210} SR Bommai v. Union of India (1994) 3 SCC 1 para 434 (9).
\textsuperscript{212} ARVIND P. DATAR, DATAR ON CONSTITUTION, 1157, (Wadhwa and Company, 2001, New Delhi).
JUDICIAL RESPONSE TOWARDS THE OFFENCES AGAINST THE WOMEN

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RESEARCH OBJECTIVES

• To analyze the existing laws protecting women against the offences.
• To interpret the attempts of judiciary to confront the crimes against women.
• To evaluate the judicial role in resolving the problems of women.
• To study if there is incompetency of laws for offences committed against women.
• To examine if ineffectiveness of judiciary in rendering justice to women.
• To study regarding the need of changes in laws.

RESEARCH METHODOLOGY

Doctrinal research methodology was obtained to carry out the research but not empirical. The doctrinal research methodology involves a detailed analysis of the statutes, legislations and legal concepts. This research methodology mainly involves legal prepositions and doctrines. During the research, the precedents have been studied and interpreted for a better understanding. The authoritative secondary sources including articles, journals by eminent lawyers have been referred. The primary sources were not used during the research.

The evolution of judicial provisions has been studied. During the research process, the laws relating to the offences of women were analyzed. For the better understanding of the application of laws, the landmark judgments were thoroughly interpreted. The main focus was on the legal reasoning and rational deduction involved in the judgments. The existing statutory provisions were scrutinized. The doctrinal research methodology is normative in nature. It means that it focuses on the development of legal doctrines.

RESEARCH QUESTIONS

• What role does the judiciary play in regulating the offences against women?
• What are the laws protecting women against the offences committed against them in the Indian Penal Code?
• How does the judiciary help in safeguarding the rights of women?
• What are the provisions in law to regulate the obscenity and indecent representation of women?
• What is the status of women in India?
• What is the judicial approach to the crimes against women?
• Are there any changes made in the legal provisions for better protection of women?

REVIEW OF LITERATURE

To carry out research various books, journals and commentaries were referred. The book K.D Gaur, Indian Penal Code (5th edn., 2016) was exhaustive in nature that included properly analyzed case laws. All the diverse topics were appropriately dealt and characterized. The criticisms for the amendments helped in comprehending the legal provisions and coming up with certain solutions for it. The book also consisted of plethora of judgments along with the primary Law Reports. The commentary Ratanlal & Dhirajlal, The Indian Penal Code (Lexis Nxis, 32nd Enlarged edn.,) also encompasses 18,000 references which was useful for an extensive method of research. The commentaries by the authors shed light on various unexplored topics of the criminal law. The commentaries were beneficial for
interpreting the present laws with the changes that can be brought in by the Government. The commentary by eminent lawyers was informative and the opinions mentioned in the book assisted in the research project.

INTRODUCTION

As said by Mahatma Gandhi, “To call a woman the weaker sex is libel, it is man’s injustice to woman. If by strength is meant moral power, then woman is immeasurably man’s superior”. Women are usually considered to be weaker and inferior to men. Women are victims to many offences. The Indian Penal Code protects the dignity of women and also from the offences committed against them. Women are being affected mentally and physically due to these crimes. One of the most heinous crimes includes rape. The sexual assault against women has been continuously increasing.

These days, women are being exploited both mentally and physically. A crime is a social wrong. The people committing offences against women have been drastically increasing. The plight of women has become worse compared to the past years. The Constitution of India also provides that special provisions can be made to protect women and children. Despite the culture in India, violence against women has continued. On the darker side, there is more dominance of men in the society. From the birth of women, they are exposed to violence.

Government has been trying to make changes in the legislation in order to safeguard the rights of women. Few of the offences committed against women are rape, dowry death, abduction, acid attack, outraging modesty, sexual harassment at work place, stalking, cruelty by husband or his relatives etc. Atrocities subject to women are being analyzed by the Courts and accordingly amendments and rules have been laid down to determine the accused. The concept of feminism has also deepened into the roots of society.

In India, the majority of the population is women. The exploitation of women in various manners has to be stopped. There are various sections mentioned in the Indian Penal Code to secure women from various crimes committed. Most of the offences committed against women are very terrible and odious. Women generally reach out to the Courts for justice while their rights have been violated. People contend that the laws are discriminating men and women.

In this paper an attempt has been made to study few offences like rape, outraging modesty and acid attack. The plight of the women and the judicial response towards them has been scrutinized. Women have not only been victim to sexual assault, but also face humiliation in the society. Society has changed in various aspects and with that people’s mindset has also changed. The Government is definitely trying to minimize the crime rate by bringing in many amendments and legislations.

LAW GOVERNING OUTRAGING MODESTY OF WOMEN

The offence of outraging modesty of women was subject to conflicting interpretations in the Court of law. Section 354 of the Indian Penal Code provides for the assault or criminal force to woman with intent to outrage her modesty. When this offence is committed, police has an authority to arrest the criminal without any warrant. It is purely circumstantial. This makes it clear that this offence is very serious in nature. Section 354 of the Indian Penal Code does not specifically define the
term ‘outraging modesty’. It is upon the discretion of the Court to determine if the offence can be considered under outraging modesty. The main ingredients constituting the crime of outraging modesty is that the woman must be assaulted or criminal force should be used against her and the accused has an intention or knowledge of woman being outraged by the acts of accused.

The punishment awarded to the criminal is imprisonment for one to five years along with fine. The person is not accused only by outraging the modesty of women but also should have an intention or should have the knowledge that the act would outrage the women’s modesty. For an offence to fall under the category of ‘outraging modesty’, the person committing the offence should have an intention or knowledge that the women’s modesty will be outraged. It was argued that the law did not make provisions for outraging a man’s modesty and this in turn violated Article 14 of the Indian Constitution.

Modesty of a woman can be outraged either by a man or woman. This offence constitutes indecent assault upon woman. However, it has less gravity when compared to rape. Only when all the essentials are satisfied, a person can be punished. In S.P Mallik v. State of Orissa213, it was held that an essential ingredient of Section 354 of the Indian Penal Code is that criminal force or assault should be used against the women. Mere putting of hands on the belly cannot be construed as criminal intent. In such cases, culpable intention must be proved or else the Court does not consider it as outraging modesty of women.

Intention cannot be considered as the only criteria for an offence to fall under Section 354 of the Indian Penal Code, it can also be done through criminal force. In Sailendra Nath Hati v. Aswini Mukherjee214, a lady told the daughter of the accused not to discharge water from the road side tube making the road inaccessible for the citizens. Then, the accused slapped the lady and also kicked on her waist. The Court held the accused under Section 354 as it comes under outraging modesty of woman.

In Gajanan B. Mehetre v. State215, a woman voluntarily accompanied a driver, the accused in his vehicle. The accused her to allow for illicit relationship on payment of money. When the woman refused, he asked her to alight the vehicle. There was no used of force by the accused. In this case, the Court acquitted the driver and also held that mere verbal threat would not amount to criminal force.

This section safeguards public morality and from indecent behavior of men. The Hon’ble Supreme Court in Pandurang Mahale v. State of Maharashtra216 held that sex is an essential for woman’s modesty. The culpable intention is required while determining the liability of the accused. Females are considered as a class of people. Outraging modesty can be committed against woman of any particular age. Literally, the term ‘modesty’ with regards to woman means a decent behavior and conduct. In the case of Ramkripal217, when the accused was charged with rape. He took the defense that he only committed the offence of outraging woman but not rape. The Court was of the opinion that pulling a woman’s saree with an intention for having sexual intercourse is sufficient for the

213 1982 CrLJ 19 (Pat)  
214 1988 CrLJ 362 (AP)  
215 2006 (4) AIR Bom. 18  
216 AIR 2004 SC 1677  
217 Times of India, March 21, 2007
offence to fall under the offence of outraging modesty. Therefore, the accused was charged with the offence of murder.

In Ram Das v. State of West Bengal\textsuperscript{218}, the accused boarded the railway compartment and was seated with two female passengers. He suddenly removed his trousers. Thereby, the accused and the female passengers got into a quarrel. In this case, the accused was charged of outraging modesty under Section 354 of the Indian Penal Code. The act of the accused was indecent in nature. The evidence also proved that the act of the accused was intended to outrage the female passenger’s modesty.

In India, there are laws for protecting only woman from the offence of outraging woman but not men. Whereas in the English Law, a woman can also be held liable for an indecent act or assault against both men and women. The indecent assault includes battery as well as the mental torture. In Faulkner v. Talbot\textsuperscript{219}, a lady was convicted for an indecent assault on a boy aged 14 years. This incident took place when the boy’s parents left him at the accused home. She also made an attempt of sexual intercourse with the boy. Hence, she was convicted for the offence of outraging women under the English Law.

The comprehensive test for modesty is not fixed by the Court of law. The Court not only takes into account the reaction of the woman as the reaction also depends on the sensitivity of the victim.

JUDICIAL APPROACH TO THE OFFENCE OF RAPE

Rape is one of the most heinous crimes. This crime depicts women as a sex object. They treat women as sexual property of men. It is an unlawful sexual activity. This type of offence is committed by force, violence and a threatening behavior. Rape is a social evil. It not only affects the woman but also the entire society.

The offence is said to be rape if it falls under any of the following seven description: against her will, without her consent, when her consent has been obtained by putting her in fear of death or injury. The punishment for rape will be decided based on the gravity of the offence. Rape leaves a scar and also has a serious psychological impact on the victim. The woman undergoes torture. Rape is of different types like gang rape, custodial rape, marital rape etc... In Vishwanathan & ors. V. State of Tamil Nadu\textsuperscript{220}, when a woman was raped by a group of people (gang rape) with a common intention, then each person is liable under Section 376 (2)(g).

The Criminal Law Amendment Act, 1983 widened the scope of the term ‘rape’. After the Mathura case, many changes have been brought under the Criminal Procedure Code and in the Indian Penal Code regarding the enhancement of punishments, absence of consent of the victim and elements of custodial rape in 1983. An amendment was also brought in the Indian Evidence Act. In cases of gang rape, custodial rape etc., if it proved that the sexual intercourse took place between the accused and the victim, and the victim states that she has not given any consent for such act then the Court shall presume the absence of consent. The Government made an attempt to remove the gender inequality in the society through these amendments.

\textsuperscript{218} AIR 1954 SC 711
\textsuperscript{219} (1981) 3 All ER 468
\textsuperscript{220} AIR 2008 SC 2222
The crux of the offence u/s 376 in IPC is rape and it postulates sexual intercourse. The term sexual intercourse means sexual connection. Sexual intercourse involves penetration of penis or any object into the vagina, mouth, urethra or anus of a woman. In Rajendra Datta Jarekar v. State, it was held that rupturing of hymen is not necessary for constitution of crime and chances of false implications are too remote as nobody would like to do it by placing family reputation at stake. So, rupturing of hymen would not amount to rape. In Bhundanlal Sharma v. State of Orissa, it was held that partial penetration of the penis within labia - majora of the vulva or pudendum with or without emission of semen is an adequate ground for rape. In R. v. Hill, the Court said that penetration is required for the offence to constitute crime.

In the English law, a section provides that there must be unlawful sexual intercourse with a woman who has not given consent to the act. A wife is presumed to give consent to have sexual intercourse with the husband unless they are separated by the Court’s order. The Indian law has identical provisions as to the English law. There are four clauses under Section 375. The initial two clauses describes about a woman who is in a position to give her consent or has enough knowledge to express about her willingness. The next clause outlines the circumstances in which the consent has been obtained by putting the woman in fear of injury or death. If the consent is obtained by undue influence, it is not considered to be a valid consent.

Rape depicts the civilization of the person. In spite of making provisions in IPC and Cr.P.C to protect woman from the cruel rapists, the number of cases reported of rape has always been increasing. It proves the inadequacy of laws. The Government has terribly failed to safeguard the woman from the horrible atrocities. There is a lack of uniform punishment to persons committing rape due to their age.

In State of Punjab v. Gurmit Singh, the Supreme Court directed the lower Court that even in cases where the victim is habituated to sex, the Court cannot comment or make statements about the character of the victim.

In Rafiq v. State of U.P., a middle aged girl was raped by the accused while she was sleeping in the girls hostel. In this case, the accused was held liable even when there were no injuries on the girl. In Prem Narayan v. State of Madhya Pradesh, the accused dragged a 9 year old into the bushes and attempted to have a sexual intercourse. The girl has been severely injured. The doctors could not carry out an internal examination due to severe pain of the victim. So, there was a benefit of doubt to the accused that he took it as a good ground of defense. Hence, the trial Court only convicted him for attempt of rape. On an appeal to the High Court, it was held that every indecent assault cannot be called as an attempt of rape. When there was only preparation done for the act, the accused can only be charged for outraging the modesty of women under Section 354 of the Indian Penal Code.

The Hon’ble Supreme Court in State of Punjab v. Gurmit Singh held the accused liable under Section 375 and punished under section 376 in a case where the

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221 2008 CrLJ 710 (SC)
222 (1961) 1 CrLJ 689
223 (1986) 1 SCR 313
224 1996 SCC (2) 384
225 1989 Cri. L.J. 70734
226 AIR 1996 SC 1393
prosecutrix was abducted by three people and forced her into sexual intercourse. In cases where the consent of the women is obtained by misrepresentation or fraud is not a valid consent. In R. v. Williams, the accused has a sexual intercourse with prosecutrix. He made her believe that he is going to perform a surgery to improve her voice. It is clear that the consent is obtained by fraud. Hence, the accused was convicted for the offence of rape.

If the sexual intercourse takes place with a man promising to marry when he had no intention of keeping up the promise, then in such cases the accused will be convicted for the offence of rape. The consent is obtained from the women with a malafide intention and also constitutes fraud. This was held in Deepak Gulati v. State of Haryana.

In Prithi Chand v. State of Himachal Pradesh, it was held that the absence of spermatozoa cannot bring in a doubt on the correctness of the prosecution. The accused in State of Uttar Pradesh v. Chottey Lal caught hold of the victim, gagged her mouth. The terms ‘against her will’ and ‘without consent’ have different dimensions.

The Supreme Court declared rape as a crime against basic human rights. The Courts must also deal with such cases of women very sternly. Hence, the testimony of the victim can be acted upon without corroboration in material products.

Under the English law, it is considered that a boy below the age of 14 years cannot commit rape. Whereas in Indian law there is no such presumption. It is an accepted proposition that the accused cannot be convicted only on the basis of the evidence, but there were many incidents where the judgment was given on the basis of the evidence if the Court believes it to be worthy. In State of Chattisgarh v. Derha, the conviction on the basis testimony of the victim was permitted by the Court as the evidence seemed satisfied to the Court.

If only the evidence of the victim is reliable, it is sufficient for the conviction of the accused under Section 375 of the Indian Penal Code during the timely filing of FIR and any other corroborative material evidence of the offence that is being alleged against the accused. In Bisheshwar Mumu v. State of Bihar, it was held that mere holding the hands of woman does not come under the offence of attempt to rape.

ATTEMPT OF JUDICIARY TO REGULATE ACID ATTACK

Acid attack is one of the violent form of aggression on the woman. The menace of acid attack violates the human rights and fundamental rights of woman. The Criminal Law (Amendment) Act, 2013 addresses the evil of acid attacks making it a separate provision in the Indian Penal Code. The physical and psychological pain suffered by the woman due to the acid attack is unimaginable. Previously there was no specific provisions as such for punishing the offenders committing acid attacks.

The Government took various steps to curb the acid attacks India and has also taken measures to treat and compensate the victims of acid attack. By the Criminal Law

227 (1923) 1KB 240 (CCA)
228 AIR 2013 SC 2071
229 AIR 1989 SC 702
(Amendment) Act, 2013, Section 326A and 326B were inserted for an effective protection. After this amendment, acid attack or an attempt have been made cognizable and non-bailable offence. The Section made first aid for the victims compulsory along with the compensation amount given by the State Government. Section 357A of the Code of Criminal Procedure, 1973 provides for the compensation.

Section 326 provides for the voluntary causing grievous hurt by dangerous weapons or means. The major difference between Section 324 and 326 is that the hurt caused under Section 326 is grievous hurt. The essentials for an offence to fall under Section 326 are – the accused must cause the grievous hurt voluntarily and the instrument must be used for the cause of stabbing, shooting, cutting etc... This offence is non-compoundable and is tried by the first class Magistrate Court. In State of Punjab v. Suraj Singh233, during the fight the accused brought an axe and inflicted a blow on the head. As hitting with an axe is an injurious act and can cause grievous hurt, the accused was held under Section 326 of IPC. “In Laxmi v. Union of India234, the Hon’ble Supreme Court of India the guidelines has laid down guidelines on the regulation of acid along with compensation for the victim. The Court held that minimum of Rs. 3 lakhs must be given to the victim by the State Government as part of the victim’s rehabilitation cost.” In Pratap Kumar v. State of Punjab235, the accused continuously hit the deceased with a hot iron rod in the name of taking out the evil spirit from the body. There were many inflictions of injury on body of the deceased. The accused was held liable under Section 326 of the Indian Penal Code.

The Section 326A provides specifically for the hurt caused by acid. It states that a permanent or partial damage, burns or disfigures must be caused by throwing acid with an intention or knowledge of causing hurt to the person. Then, the person will be imprisoned for not less than 10 years or imprisonment for life along with fine. The term ‘acid’ includes all substances with acidic or corrosive or burning nature that can cause bodily injury. The attempt of acid attack will lead to the imprisonment of seven years along with fine.

In Sachin Jana v. State of West Bengal236, due to the gravity of the offence committed, the Court also charged the accused with attempt to murder under Section 307 of IPC. The grievous hurt can also lead to the death of the person. As in this case in ordinary circumstances, it can lead to death of the victim the Apex Court applied the attempt to murder along with acid attack. The Court takes into consideration the intention or knowledge while committing the act irrespective of the result of the offence committed.

In Parivartan Kendra v. Union of India237, a PIL was to make clear provisions regarding the plight of acid attack victims like free medical care, rehabilitation, compensation under Survivor Compensation Schemes. The Court held that more than Rs. 3 lakhs can be given to the victim based on the gravity of the offence. In this landmark judgment Supreme Court issued a direction that the State Governments/ UT should seriously discuss and take up the matter with all the private hospitals in their respective State/ UT to the effect that the

233 1976 Cr LJ 239 (All).
234 (2014) 4 SCC 427
235 1964 SCR (4) 733
236 (2008) 3 SCC 390
237 2015 (13) SCALE 325
private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries.

In State of Maharashtra v. Ankur Panwar, the accused threw acid on a woman named Preeti Rathi at Bandra Station in 2013 because she refused the proposal of marriage as she wanted to pursue her graduation. The accused was convicted for acid attack and was sentenced to death. The Special Judge Anju S. Shende opined that due to the aggravating circumstances in this case, the accused was sentenced to death.

Acid attack is an offence that is committed against a man or woman. But in India, it is more woman centric. Most of the acid attacks were committed against women. This offence has a specific gender dimension when compared to other nations. This way of violence is chosen by men in the process of taking revenge or showing aggression or disapproval to the actions of women. This offence showcases the cruel nature of the accused. Not protecting women from these offences shows the incompetence of the State in fulfilling their rights.

**CONCLUSION**

We observe that the exploitation of women is still not stopped. Even though the punishment for the offences committed against women is very stringent, there is an increase in the crime rate. According to the National Crime Records Bureau, in 2013 there were more than 20,000 rape cases were recorded. The changes in the Section related to rape were made in 2013 after the Nirbhaya incident. In 2015, more than 34,000 rape cases were recorded. The increase in the crime rate is shocking even where there is high quantum of punishment.

From 2011 to 2015, the number of cases registered under outraging modesty of women are 42,968; 45,351; 70,739; 82,235; 82,422 respectively. A total of 84,746 cases of outraging modesty of woman by assaulting them were reported in the year 2016. There is a drastic increase in the percentage of crime registered every year.

As per the Data provided by NCRB, in 2014 a total of 137 cases were reported for offence of acid attack under Section 326A and 154 arrests were made on the basis of the reported cases. Of all the cases reported, only 135 were charge-sheeted of which finally there were only 08 convicts. For attempt of acid attack under Section 326B, 40 cases were reported in respect of which 39 arrests were made. Only 23 cases were charge-sheeted out of which only 3 accused persons were convicted. In 2014, total number of victims was 146 in cases registered for acid attack and 41 for attempt.

In the year 2015, there were a total of 123 reported cases of acid attacks in respect of which 192 arrests were made. In 2015, total number of victims was 147 for acid attack.

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238 2019 SCC OnLine Bom 968
in cases registered and 30 for attempt. It is clear that though a number of cases were reported and charge sheets are filed, the rate of conviction of the accused is very low. In 2016, 167 incidents of acid attacks were reported. After every year, there is only an increase in the number of victims. The total number of victims rose to 182 for acid attacks. The statistics is steadily increasing for the offences against women. The punishment for both attempt of acid attack and acid attack should be made same.

After the amendment, a decline in the crime rate was expected. But as the days passed, we only observe that the cruel nature is continuously increasing and the plight of women is deteriorating. Even though the amount of punishment is quite high, the offences against women are not being curbed. The quantum of punishment should be enhanced to decrease the crime rate as it does not seem to be sufficient to curb the menace against women.

There is a need to analyze the existing provisions for protecting women so as to tackle the growing crime incidents. The laws can further be amended by increasing the quantum of punishment for the offences. There is a pressing need for a social change.

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Fundamental rights are the most important element of any just and ordered society. The more the number of fundamental rights the citizens are granted, the more the happiness quotient of that country increases thereby increasing the efficiency of any society.

But unfortunately, the recent happenings in our country clearly shows us how these Nobel rights can be misused by some people to the extent that it starts hampering with the development of our country and makes us question, do we really deserve such rights?

Nonetheless, the conduct of some anti-social elements should not take away the sanctity of fundamental rights. Whenever there is any discussion about fundamental rights there is always a mention of United States since it is always said that we have borrowed it from them. But strangely there is an amazing fact that fundamental rights which we have embodied in our Indian constitution, its origin can be traced to Indian culture and traditions. It was in India where the roots of the basic human rights were planted whose fruits were later enjoyed by all the societies in the world.

Mythology and Fundamental rights and duties

Our Indian culture and traditions are full of great mythological and divine stories that give us an idea of how an ideal society should be. There are many stories which lay down solid roots and evidence that just rights and duties were the foundation of our Indian society from time immemorial. There are two most important and popular myths that give us a strong idea and they are The Ramayana and The Mahabharat.

Ram who included all in his kingdom

Ramayana clearly depict the law and order which are considered to be ideal and are to be followed in order to have Ram Rajya at the present times. It is no mystery that story of Ramayana shows what the fundamental rights that was available to subjects and it was the duty of the king i.e. Lord Ram to provide it to all his subjects without any discrimination.

Some of the stories that show us how fundamental rights exits even in our mythology which are considered to be older than our universe.

During the period of Ram Rajya there was equality before law and equal protection of law. The king Lord Ram used to treat everyone with equality and there was no discrimination of any kind. Even the story of Shabri where she despite being of a lower strata offers berries to Lord Ram and the king despite being of higher caste and strata eats those berries without any hesitation.

This story tells us that our culture was not abode to cruel and inhuman practice of untouchability and everyone was treated equally and without any discrimination.

The most shocking and upsetting fact is that it took us almost 70 plus years to accept the LGBTQ community but in our Ramayana, they were already accepted as part of the society from a very long time. The story goes on as follows, when the residents of Ayodhya heard of the news that Lord Ram decided to go to exile, the residents followed him. Ram prayed and said,” men and women of Ayodhya, if you truly love me please return to Ayodhya.” The people obeyed him. When Lord Ram returned after 14 years, he was surprised to see a few people still on the banks of the river.

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asked them “What are you doing here?”
The people said 14 years ago you said men and women, but we are neither men nor women, we were not given any instructions. On hearing their story, Ram was moved to tears and he hugged each one of them and returned to Ayodhya with them thus giving a clear message that Ayodhya belongs to all.

Even when Lord Ram killed Ravana because he disregarded the dignity of goddess Sita and other women were the evidence that protecting the dignity of women was the utmost duty of the state and the society.

Even the story where goddess Sita decides to go after people of Ayodhya disregards and questions her purity, it shows us that people’s opinion was considered to be supreme and there was freedom of speech and expression where people even were allowed to point out or disregard the rulers.

**Ashramas of Vedic life**
Ashramas are the stages of life which provide training and are ideal for realising the ideal of our life. There are four ashramas in all: Brahmacharya (student life), Garhasthya (family life), Vanaprastha (retired life), and Sannyasa (life of renunciation). The first two provides the training and environment for the Pravrtti Marg and the last two for the Nivrtti Marg of development.

The first ashram that is Brihaspati tells us that there was right to education to all children which we have now after so many years accorded importance in our constitution under article 21a.

Second is Grihastha ashram where he was allowed to choose any profession of his choice and was allowed and given the right to get married and start a family.

Third was Vanaprastha ashram where he could live a retired life. It was his right to live his retired life with dignity and it was his right to be maintained by his children in his old age.

Last is Sanyas ashram where it was his right to freely propagate and practice his religion without any interference.

Thus, the ashrams whose origin can be traced in our mythology and was followed throughout the history of India and is still followed to some extent in India. Even the present time shows us how ashrams gave us some rights, which we have incorporated even today in our practice.

**Mahabharat and fundamental rights**
The entire story of Mahabharat depicts how protecting the dignity of a woman was a fundamental duty not only of the one but also of the entire society and was a right which every woman had. And when such right was violated the result was catastrophic and massive destruction.

Also, Mahabharat shows how women had right to choose their spouse when we see they were given the right to choose their bridegroom in a swayamvar. The best example is when Draupadi choose Arjuna and rejected Karna. Similarly when Subhadra choose Arjun and rejected Duryodhan and the best example is when princess Uruvi choose the low caste Karna as her husband and rejected Arjuna.

Also, there was no discrimination and even LGBTQ community were treated equally and were given the highest position in the arm and Shikandi is the best example of it.

**Ancient India**
The origin of the idea of the human rights which have become fundamental in almost all civilized society can be traced back to 4000 years. Though many western thinkers are not inclined towards this idea of development of human rights in Bharat, but there are strong evidences that Bharat has incorporated basic human rights, which now have been given the status of
fundamental rights which cannot be denied to any person were already existing and was very common in practice among subjects and rulers.

There are various sources of Hindu law like puranas, smritis, shrutis which lay down the rights and duties of a person in a society. The main canonical and sacred texts of Hinduism which can be quoted as one of the earliest documents that mentions about fundamental rights are the four Vedas – Rigved, Samved, Yajurved and Atharvaved.

The main reason for treating the four Vedas as supreme and the very first torch bearer of human rights is that they are treated to be divine words written and spoken by God themselves. People at that time used to follow the theory of natural law or divine law which were the rights that came from Vedas. These were rights that were given be God themselves and therefore, they cannot be denied to any person. The sovereign was not the king who does as he pleases. It was the Divine force who made laws comprising of rights and duties of people whose traces can be found even in our Bhartiya Samvidhan and these laws are so eternal that they will remain in force forever for the time being till the existence of mankind and after the end of mankind will only pass on to other world where mankind will begin but will never get vanish since it is impossible to erase the divine law of Vedas, which are eternal.

**Rigved and fundamental rights**

Rigved is one of the four Vedas, which is regarded by many learned scholars as to be the roots of the many human rights which exist today in our constitution.

There are different theories about origin and development of Rights, for example positive law traces the origin of human rights from the laws made by the sovereign. On the other hand natural law says that it is embedded in the very nature of human beings. Similarly, there are religious theories which look at Human rights from moral perspective. Such morals which are the very foundation of human rights can be found in many Hindu texts and scriptures, one being the Rig Veda.

`‘Amritasya Putrah Vayam’`
(We all are begotten of the immortal)

Svetasvatara Upanishad

“Every individual soul is potentially divine” says Swami Vivekananda.

This is how Hinduism looks at the mankind. From the above shloka it is clear that Hinduism does not look at a man merely as a material being but accords a divinity to all individuals by saying that all are the children of the immortal. It endows them with intrinsic dignity. Today this right to live with human dignity is found in Article 21 of Indian constitution.

Rig Veda also mentions about purush (primal man) from whose body the four varnas of society were created. From his mouth came Brahmns, Kshatriyas from his arms, and vaishyas from his thighs and shudras from his feet. This leads to the formation of Varna system in Indian society. It must be noted that Varna system was introduced only for the purpose of division of labour in the dynamic society. It was later misinterpreted by certain class of people, for their own benefit, to be discriminatory.

`‘Ajyesthaaso Akanisthaasa Yete Sam Bhraataro Vaavrudhuh Soubhagaya”`
(No one is superior or inferior; all are brothers; all should strive for the interest of all and progress collectively)

- Rig Veda, Mandala-5, Sukta-60
Hindu text recognised the fundamental right of equality by stating that no one is superior of inferior thus placing all individuals on equal footing. Even in ancient days when there was monarch system in Indian society, Raja was considered as father of his subjects and any person irrespective of his caste or financial status could approach the king or Raja. This was a common practice in Ram Rajya and many other kingdoms.

This right of equality is today contained in Art.14 of our Indian Constitution which states that “The state shall not deny to any person equality before law and equal protection of law within the territory of India”

Rig Veda further speaks about three rights of civil nature
- Tan (body)
- Skridhi (dwelling place)
- Jibhasi (life)

i.e. right to personal liberty, right to shelter and right to life as we know them today.

THE CONCEPT OF DHARMA

Dharma is a fundamental concept which was deep rooted in ancient Indian society. It is considered as the highest ideal of life. In ancient society dharma governed all the important religious, civil and other actions of men in society.

Though there is no specific and exact translation if the word dharma in any of the western language yet it can be said to have been derived from a Sanskrit term ‘dhr’ meaning root. In this sense it means something that upholds supports and nourishes.

Dharma is “Sanatana” that which is eternal. It differs from religion in contradiction to the common belief. It is derived from Vedas, Smritis and was purported to form a peaceful society.

Medieval India saw some rulers who were protector of fundamental rights and some rulers who denied even basic human rights to their subjects. There were rulers like Babur, Aurangzeb and other rulers who denied their subjects any rights especially the Hindu subjects. There was no freedom of speech and expression at all. They were not given any justice when there was any dispute amongst Hindu and a Muslim subject.

Most importantly during the Mughal times there was massive conversion of many Hindus to Muslims. As under their rule Hindu were forced to pay jijiya tax to practice their religion. As a result it is very evident there was no right of religion, expression or rule of law.

But still we cannot negate the very fact that there were some great rulers who were protector of fundamental rights amidst all this tyrannical and cruel rulers. And they were Akbar who abolished paying of religion tax jijiya. He also had panel of experts which consisted of Hindus to aid and advise him.

Also, there were rulers like Maharana Pratap in whose kingdom rule of law existed. He treated everyone with equality. He did not discriminate amongst his subjects on the basis of caste and status. There is a famous story of Maharani Pratap where he fought his war with “Bhil” who were schedule tribes. He not only stayed with the Bhils but treated them fairly and with utmost respect. Thus laying down the foundation of what we have today i.e. article 14 and article 15.

Then there were also rulers like Great Shivaji who treated people equally and inducted both Muslims and Hindus in his army thus establishing equality in his region.
Pre independence and fundamental rights

During British rule, we saw the grossest form of violation of fundamental rights. The basic rights like freedom of speech and expression, freedom to form association ad unions, freedom to education, freedom to religion as denied in this period. It would be a fallacy to say that some fundamental rights are taken from British rule since none were taken as Britishers failed to provide even basic human rights to Indians.

Fundamental duties – how it have only deteriorated

Duties

Dharma was the fundamental and core value or ideal in the ancient jurisprudence. All the actions of kings and subjects were guided by this highest ideal. One of the remarkable features of this Hindu jurisprudence guided by Dharma was that it laid more emphasis on duties than on the rights. Duty was the only passport to any right or claim.

The Gita also asks the person who perform his duty according to dharma, which is the highest law and according to his position in the society. In ancient India when one speaks of his right, he ordinarily meant duties which others had to perform for him. Thus, in ancient or Vedic period a person became entitled to right only after performance of duties. In fact, it must be noted that there is no appropriate word for anything called right. The closest word to the term ‘right’ was adhikar used by Manu but the word Adhikar does not mean right in Sanskrit. Adhikari in Sanskrit means the one who is fit or capable for any particular task.

In ancient India both rights and duties were closely connected and interwoven in sharp contrast to the present time where only the former is enforceable. This gap between both the two can be remedied by revival of the eternal concept of Dharma.

Today scenario unfortunately shows us how the status of fundamental duties has only deteriorated in our country. The current scenario is really upsetting and disgusting. It is shocking how the advocates of fundamental rights are the only ones who are the violators of fundamental duties.

The recent protests in Shaheen Bagh, Jamia Islamia and JNU shows how people have no respect for the country’s property, it’s flag, it’s unity and integrity. The constant violence on the national property by these so called advocates who believe their rights are been violated are the number one violators of duties towards their nation.

Constant destroying the property, threatening the unity of the country, constantly blockading the public’s movement, constantly raising anti-national slogans just shows us they have been given excessive power and freedom of exercising their fundamental rights that their exercise is not only violation or leading them to commit crimes against the nation but is also hampering and interfering the rights of the other citizens.

But it is high time we revert back to our ancient culture and Vedic practices of following our fundamental duties and take India again to the glorious heights at which it was during Vedic and ancient period of Satyayuga.

Jai hind !!!

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GENDER INEQUALITY & CONSTITUTIONAL RIGHTS OF WOMAN TO FIGHT IT

By Erica Roseline Toppo
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In this era of feminism in India, despite progress being made toward attaining equal rights; women and girls in India continue to face inequality, discrimination, and harassment and experience consequential barriers for achieving their full prospective. The daily encounter of gender inequality ranges from undermining portrayals of women in the media and underrepresentation of women in positions of power, to direct discrimination and breaches their human rights. Social suppositions and assumptions about the abilities, roles, and opportunities which should be presented on the basis of gender continue to elucidate the life chances of women today.

Gender refers to the socially constructed attributes of women and men, such as norms, roles, and relationships of and between groups of women and men. It varies from society to society and can change over time.

Gender equality means that the different behaviour, aspirations, and needs of women and men are considered, valued and favoured equally. If you believe in gender equality, you are a feminist. Feminism is the belief that men and women should have equal rights and opportunities.

Gender inequality refers to unequal treatment or perceptions of individuals based on their gender. It arises from differences in socially constructed gender roles.

The major cause of Gender Inequality are religious and cultural norms (preference or dominance of men over women), social stigma, rigid culture and traditions, illiteracy, lack of empowerment, unequal pay for equal (and even bigger) work if compared with men, lack of medical care. Poverty makes women to take up jobs which pay insufficiently, this is also one of the reasons why they get involved in human trafficking and prostitution. Most people still think that women are too weak to perform serious work and obtain top positions.

The examples of gender inequality in our society are:

- Education: Many of the girls and women in our country have never stepped inside a school.
- Economic independence: Even if some women are allowed to visit the school and get an education, they still face a problem of inequality when participating in the labor market. They work hard but are paid lower wages. It happens because women are thought to be weaker employees compared to men.
- Illiteracy: A child from an illiterate mother has fewer chances of survival till the age of five. Illiteracy is the primary reason why they cannot gain the necessary knowledge and help their children to cope with diseases in the right way.
- Infant life expectancy: Due to some cultural matters, many tribes give preference to male children. A girl child is provided with little to no basic necessities. That’s why one can observe a high risk of child mortality of girls between the ages from one to five years.
- Access to medical care: Most of the mothers in developing countries like ours, with male child preferences, give birth to their infant girl child in improper
conditions. The men get both necessary medical care and vaccination. Women leadership positions in government: Gender inequality is one of the key reasons why you do not see a lot of women in administrative organs. Child marriages: This problem destroys not only the hope for a happy future but isolates the young girls from the world and the opportunities, which are accessible for men. Violence against women and sexual assault: Women often become the victims of violence and sexual assault both at work and home. The only way out of the gender inequality problem is expanding women's rights, freedoms, desire to get education and work. Balancing the genders will lead to the perfect cooperation of labor opportunities and harmony in the society as well.

**Constitutional Rights of Women to fight Gender Inequality**

The Indian Constitution under the fundamental rights ensures that men and women are treated equally. It notes that in certain respects women have been ill treated or regarded as inferior. To remove this injustice and to ensure equality, the Constitution allows the state to make special provisions favouring women. The Directive Principles of State Policy of the Constitution obligates the State to make special efforts to improve the position of the weaker sections of the society, including women. The Constitution also provides for the state to take steps to prevent the exploitation of women. The Indian Constitution ensures equality between men and women. Article 14 of the constitution provides that the state will not deny to any person equality before the law and equal protection of the laws within India. The Constitution prevent discrimination against women. Article 15 (1) of the Constitution provides that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth. Article 16 (1) and Article 16 (2) prohibit discrimination in general and also discrimination on the ground of sex in employment and those employed under the State. Article 15 (3) of the Constitution specially provides that the State is permitted to make special provisions for the benefit of women. Article 39 (a) of the Constitution provides that the state shall, in particular, direct its policy towards securing that citizens, men, and women equally, have the right to an adequate means of livelihood. This is a Directive Principle of State Policy. Article 39 (b) of the Constitution provides for the State to direct its policy towards ensuring equal pay for equal work for men and women. This is a directive principle of State policy. In accordance with this principle, the Parliament has enacted the Equal Remuneration Act, 1976 for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women. Article 39 (c) of the Constitution requires that the state should secure the health and strength of workers, men and women and that child are not abused and citizens are not forced by economic necessity to enter vocations unsuited to their age and strength. This again is a directive principle of State policy. Article 51A(e) of the Constitution provides that it will be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Under Article 15(3) of the Constitution reservation of certain posts exclusively for women was upheld by the Supreme Court in Union of India VV.P. Prabhakaran. (1997) 11 SCC 638. Similarly, the Court held that rules providing preference/reservation in favour
of women for posts of Principal/Teacher/ woman Superintendent in exclusive Girls college is not violative of Articles 14, 16. Further, it said that the Court cannot sit in appeal against policy decision taken by State under Article 15(3). \(^\text{239}\)

Section 36 of the Special Marriage Act allows maintenance (during the pendency of litigation) only in favour of wives. Its validity has been upheld. \(^\text{240}\)

Women are exempted from punishment for adultery the validity of this exception has been upheld. \(^\text{241}\)

Provisions exist in the Code of Criminal Procedure giving special rights to women for release on bail. These also have been upheld. \(^\text{242}\)

Under the Code of Civil Procedure, summons cannot be served on a female member of the family. This has been held to be valid. \(^\text{243}\)

Provisions for reservation of seats for women in local bodies have been held to be valid. \(^\text{244}\)

Similarly, provisions for reservation for women in educational institutions have been upheld. \(^\text{245}\)

The provision in section 354 of the Indian Penal Code punishing indecent assault only on women has been held to be valid as a reasonable classification Part IX of the Constitution of India has reserved one-third of the total number of seats in every Panchayat for women.

There are provisions in the Legal Services Authority Act for providing legal aid to the woman free of cost, irrespective of the situation she is placed in.

The National Commission for Women had been constituted to look after the complaints and harassment of women as a class either by the Government bodies or other persons.

India is still a very sexist and male-dominated country, even with all of the new developments. There may be laws and rights given to Indian women, but they are not strongly enforced. Over time, there have been many women who have surpassed the standards that are expected from women. To begin a new era of equality in the world, everyone must aid in promoting the cause of women, irrespective of sex, age, or ethnicity.

An equal society begins with women reclaiming their strong voice, and then gender wouldn’t be as much of a relation of power. Gender equality is a fundamental right which contributes to a healthy society filled with respectful relationships between one another. “Women can address their conditions in life, either resisting or submitting to oppressive relations”. Women who begin to step outside of the norm are questioned for their power and capability to accomplish their great ambitions. Women have every right in the world to strive for what they want, it is a society that tells them differently.

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\(^{239}\) Vijaya Lakshmi v. Punjab University and Ors. AIR 2003 SC 3331.


\(^{242}\) Vishakha and others V. State of Rajasthan and others. (AIR 1997 SUPREME COURT 3011)


\(^{244}\) Dattaraya v. State of Bombay, AIR 1953, Bom. 311

THE ACTS THAT FAIL
CONSTITUTIONAL TEST

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We are supposed to do things that make us happy within the confines of the legal system. The law should protect the country. A bad amendment can create chaos in the legal system. And so the saying "Lex malla, lex nulla which A bad law is no law" is justified. Some of the recent amendments have had a catastrophic impact on our society.

Unlike even the so-called “mature democracies” of Europe and the Americas, India ensured full equality for all when it came to matters of citizenship from the day the Constitution came into force and the republic was born. The CAA is unconstitutional for both violating the text of the Constitution but also going fundamentally against one of the basic features of the Constitution. In this piece, I will elaborate on how it does both. The CAA denies the value of community as it violates fraternal bonds between communities, a public good recognized by Dr. Bheem Rao Ambedkar.

The unconstitutionality of the Citizenship Amendment Act (CAA), as violative of the fundamental rights of equality, life and liberty, has now been widely appreciated. What also deserves attention is how it sacrifices our deepest constitutional commitments to dignity, fraternity and integrity of the nation that breathe life into our fundamental rights. Citizenship amendment act gives rise to two basic issues:

- Religion cannot be a factor in the acquisition of citizenship which has been rejected by the Constitution of India. Before elaborating about it we should know what are the factors or what are the provisions related to Citizenship in India.

There are three concepts which are required to be mentioned to understand the concept of Citizenship:

- Born in the territory of India.
- His parents are born in the territory of India i.e. dissent.
- He is an ordinary resident in the territory of India.

These are the three grounds on which Citizenship is granted in India. One more thing is that if a person was part of undivided India, he shall be provided Citizenship with a proviso that he was a citizen of undivided India and not only this, but he is required to become the resident of India i.e. 6 months prior to July 1996. In this case, only the person will be considered as a citizen of India. So, what we conclude is that resident, ordinary residence, a bonafide resident are essential conditions for being citizens. Those who came after the specific time period were required to file an application to an appropriate authority and before they file this application they are required to be resident for 6 months within the territory of India. There is another provision under Article 11 of the Constitution of India that a person can acquire citizenship through a law made by Parliament or can terminate citizenship i.e. the Citizenship Act, 1955.

Now the Citizenship Act says that if you are born in the territory of India from January 26, 1950, - July 1, 1987, also you shall be the citizen of India if you are born in the territory of India from July 1, 1987 to when the 2003 bill was passed. You will
be considered as the citizen of India if one of your parents is a citizen of India. But if you are born after 2004 you shall be the citizen of India if one of your parents is a citizen of India only if you are not an “illegal migrant”. This the condition of the Citizenship Act, 1955. If one of the spouses is an illegal migrant you cannot be the citizen of India.

Now, what the amendment of the said act says under section 2(1)(b) is that “Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act”.

The Foreigners Act, 1946 deals with the people who declared as foreigners and the Passport (Entry into India) Act, 1920 deals with people who have entered into India without a valid passport and now under the objects and reasons of the act the Government has mentioned that these all are the people who have been persecuted, thus a very fair question arises as to where is the provision related to persecution mentioned in the act. There is no provision related to persecution in the said act.

It is interesting to have a glance at the statement of Dr. Manmohan Singh which was “the people who have been persecuted and come from our neighboring countries, they should be given citizenship” and what Advani Ji remarked is that anyone fleeing religious persecution is a refugee, and cannot be equated with an illegal immigrant, but refugees cannot be at par with citizens. The pertinent question arises as to how the government is going to discriminate between two illegal immigrants. Both have entered into India illegally then how is the government going to decide that one has been persecuted and other is not, unfortunately, there is no provision or basis of determining it. What the government is doing is that it is targeting a particular community without naming it. It violates the basic structure of the Constitution of India. Neither the Constitution nor the Citizenship law talk about religion being a criterion for granting Citizenship.

It has been mentioned under Section 2 of the said Act that it is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. But the said act has selected the countries arbitrarily as Afghanistan cannot be considered as a country sharing a border with us. By singling out certain countries the Act has omitted to include Muslim minorities like Ahmadiyyas in Pakistan, the Shias and Hazaras in Afghanistan, the Rohingyas from Myanmar. In fact, Myanmar has been left out altogether even though we share a border with it which we do not with Afghanistan since POK came in between. Also, the said Act has failed to include SriLankan Hindus. The Act is including Hindus only from the above mentioned three countries. Is the Government interested only in providing Citizenship to the Hindi speaking Hindus by excluding non-Hindi speaking Hindus in Sri Lanka?

By arbitrarily selecting just three countries without any valid ground, the act is doing a huge injustice to the human race. Therefore, the statements “Equality and...”
Arbitrariness are sworn enemies” and “Arbitrariness is antithesis to equality” are absolutely justified. The argument made by the Union government is that this is a ‘reasonable classification’ permissible under the Constitution. Although the Constitution does not use these words, the test goes back to the State of West Bengal vs Anwar Ali Sarkar (1952) in which the Supreme Court was interpreting the scope of Article 14, which guarantees equality before the law. The said Act is in violation of Article 14 of the Constitution of India which demands reasonable classification which includes intelligible differentia and it should have a reasonable nexus with the objective sought to be achieved. Selection of only three countries on the name of religious persecution and excluding a particular community without naming it is in violation of the principle enumerated under Article 14, 15 and 25 of the Constitution of India. Trans genders, Atheists, Adivasis and Dalits are also not under the purview of the said amendment. Also, the said act is indirectly providing citizenship to illegal immigrants. The act says if the travel documents like passport and visa are not in order or are not available, an individual can apply for Indian citizenship if he can prove that he was persecuted back home. Now what the Act is trying to convey is that if 4 people have entered inside the territorial boundaries of India illegally, naturally they won’t be having any document to show that they are from India. Also, at the same time, they won’t be saying that they are illegal immigrants. The act now wants them to say is that they have been persecuted from among the three countries. The CAA creates this legal right for such migrants or illegal immigrants. Secondly, they get a faster route for Indian citizenship through the Naturalisation Mode. The minimum residency requirement in India would be only 1+5 years instead of 1+11 years as applicable for all other categories of Foreigners. Finally, the CAA denies the value of community as it violates fraternal bonds between communities: a public good recognized by Ambedkar and the Supreme Court in decisions on secularism. In passing such a humiliating and inhuman law, and then by curbing protests with brutality, the government of India has told its people that they are mere instruments in a larger political plan. The republic is, therefore, again under siege. This time by an explicit denial of our deepest constitutional commitments.

Power corrupts and absolute power corrupts absolutely and thus the recent amendment to the Unlawful Activities Prevention Act,1967 gave a wide magnitude of powers to the government and thus ended in having a catastrophic effect in the legal system. With this, the government has become unbelievably parsimonious. The appurtenant question is that can we trust political parties and Government official who have the power to decide whether someone is a terrorist without that person being given a fair opportunity of trial?

Well, it was absolutely surprising to know that the government has given this power and what is worse is that it is hard-pressed to find any discussion on any news channel about it. The talk is about the recent amendment done to the Unlawful Activities Prevention Act or The UAPA and why this is the most dangerous law in this country. The bill to amend UAPA was introduced by Union Home Minister in the Lok Sabha this week and was passed by a brief discussion. A few opposition MP’s like Mahua Moitra and Asauddin Qwaisi
tried their best and came up with excellent arguments to oppose the bill and to highlight exactly how bad this amendment to the law is and how will it be affecting the nation. But the supermajority of the NDA government in the Lok sabha and their concerns were easily drowned and subsequently, it became an Act. Lacunas in the said act were overlooked. The UAPA was first passed in 1967 and gives widespread power to the Government to do several things.

The key ingredients of the act are:
- It has the power to designate any organization as unlawful.
- It defines what is called unlawful activity.

In 2004 the act was amended to declare terrorism as a crime and to grant the government the power and authority to declare any organization as a terrorist organization. The law also gives enhanced power to police with respect to interrogation and makes it extremely difficult for an arrested person to get bail. The new Act allows the National Investigation Authority to wreak havoc with India’s federal structure of our country. But the point of attraction is the single most dangerous element enshrined in the Act which is that the government to declare individuals as a terrorist and not just organizations. The pertinent question is what kind of individual does the government intend to designate as terrorist under the amended law. The Home Minister gave certain reasons for making an amendment in the bill. The important questions that are needed to be addressed are:

What is the purpose of designating an individual a terrorist?

It is important to remember that if the individual engages in what UAPA defines as terrorism, then the Government already has the power to prosecute and punish them. In other words, if we have a bad guy in our sights, by all means, arrest him and prosecute him and if we have the evidence, then the courts will also convict him. This is how law abiding society fights terrorism. Who can have a problem with that? But then the question is why we would want to weigh the system down with another layer of action of designating someone as terrorist if we can just convict him and send him to jail anyway. This is what we should worry about that designation of an individual as terrorist gives Government and the officials the power to label and stigmatize an individual as terrorist even though they do not have the evidence to actually prosecute and convict that person. If fake encounters allow the police officer to pass death sentence without going into the process, then Government’s plan to designate individuals as terrorist will essentially allow the Government to make someone’s life a living hell. This form of solitary confinement without a trial and without sending someone to jail, we could lose our job, we will always be covered by the bad image, our kids will have a tough time at school. Everyone will look at us with suspicious eyes and the police will keep harassing us. We can appeal the Government’s decision of designating you as a terrorist but the way the system chooses these people who conduct these reviews, good luck with that.

Turning to the second question that the Home Minister’s remarks in the Parliament regarding the terrorist literature and terrorist theory that the act doesn’t deal. What is terrorist literature and terrorist theory and given the attitude of
police and the manner in which the security laws in India are routinely misused to target political opponents and dissidents? Do we really want to give officials in the Home Ministry the power to brand or label someone a terrorist, because they already have a copy of communist manifesto at their home, If the police in Jharkhand has tried to charge literally thousands of tribal people (Adivasis) with sedition because of their support to the Pattalgadi movement which only talks about the rights that constitution has given to the Tribals. We can be sure that the power to designate an individual as terrorist will be rampantly abused. Already the existing UAPA had been used to file an utterly glimsy case against selfless and dedicated human right activist like Sudha Bharti. This proves that the parent law is a terrible piece of legislation. The UAPA was passed by Congress party in a very rushed manner in 2004 without any proper parliamentary scrutiny and the Narendra Modi government is attempting to do the same with this atrocious amendments. The new law will give the State Government unprecedented power.

Let’s take a look at the history of fake encounters done by the police especially in the case of Shorabuddin Fake encounter and also the snooping case of Ishrat Jahan. We can imagine the faces of the people who are wielding this power. If we can trust them, then all the very best and if we cannot, we should be scared, very very scared.

The two Mentioned act are disastrous and are destroying the federal structure of our constitution. On the one hand the Citizenship amendment act is providing citizenship in an arbitrary manner where as on the other hand the Unlawful Activities Prevention Act is itself making it a nightmare for the people to be the citizens of this country. There is a need to decide which side of history we want to be on. Do we want to be upholders of this Constitution or do we want to be its pallbearers?

The voice of contradiction has been tormented in light of which it has become essential that the voice of difference be heard. Let me start first by citing Maulana Azaad he once said about this nation that you are battling to construct " it is india's notable fate that numerous races and culture should stream to her, discovering her home in the reseptible soil and that numerous a convoy should discover rest here, while our societies, our dialects, our verse, our writing, our craft, the multitudinous happenings of our every day life will bear the stamp of our joint undertaking."

This is the possibility that had been cut in the constitution . This is the very constitution that every last one of us has vowed to ensure. In any case, this constitution is under risk today. A significant number of us may differ with me by saying "acche racket" are here and nothing can ever turn out badly under this great showrious domain. Be that as it may, at that point you are feeling the loss of the signs , you are feeling the loss of the sign and if just you open your visually impaired collapsed eye you could see that these signs are all over. That this nation isn't the nation that once Mahatma Gandhi longed for making it , this nation has been destroyed.

In 2017, the United States Holocaust Memorial Museum set up a blurb in its fundamental anteroom. It contained a rundown of the considerable number of indications of early one party rule. What's
more, you won't be amazed to realize that each one of those signs are now occurring right now.

There is a ground-breaking and proceeding with patriotism being jeered into our national texture. It is shallow; it is xenophobic, and it is limited. It is the desire to partition; it's anything but a longing to join together.

Individuals who have lived right now 50 years are solicited to show a piece from paper that they are residents of this nation, where priests can't deliver degrees to show that they have moved on from school, you anticipate that seized needy individuals should demonstrate papers to show that they have a place with this nation.

Trademarks, images and coagulating designs are utilized to test the devotion. There is nobody trademark nobody religion that can show any Indian that he is a loyalist.

There is resonating scorn of humanism right now, has been a 10 overlap increment in the quantity of loathe violations. The lynching of residents based on religion is been expanding each day and there are powers right now are simply giving a help to this expansion.

There is an incomprehensible oppression and controlling of broad communications today. The top media houses right now straightforwardly or in a roundabout way obliged by one gathering or one man right now.

Religion and government are currently interlaced right now. Do I at any point need to talk about it? Neither should I advise you that we have reclassified being a resident. With the NRC and the Citizenship (Amendment) Bill, we are ensuring that it is just a single network that is the objective of against movement laws.

I don't debate the resonating command that this legislature has. Be that as it may, I reserve the option to differ with your thought that there is nobody before you and there will be nobody after you.

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INTRODUCTION:

India, a country where there are numerous religions, cultures, traditions and rituals are celebrated. It gave nativity to many faiths other than Hinduism, consisting of Sikhism, Buddhism, Jainism, etc. There are people from many religions inhabiting in India like Muslims, Christians, and Parsis bringing the concept of diversity in India where the country celebrates the concept of secularism which is one of the major factors in governing the policies of India.

Marriage is one of the most sacred institutions celebrated around the globe. Earlier, the communities in India believed in the concept of arranged marriages either within their community or in their respective caste and strongly condemned the idea of inter-caste marriages and remarriages. Today, due to globalisation and rapid development of law and legislation around the globe few communities and few groups of society has started accepting the inter-caste and inter-religious marriages and also India has a proper legislation to regulate such marriages and to prevent the unlawful practices that still prevail in few parts if India.

In 1872, Henry Sumner Maine first introduced the Act III of 1872, which would give permission to dissenters to marry whom so ever they choose under a new civil marriage law. Later in the final wording, the regulation sought to legitimise marriages for those inclined to renounce their faith altogether ("I do not profess the Hindu, Christian, Jewish, etc. religion") and can follow inter-caste marriages. Overall, the view of the local governments and the administrators was that they unanimously opposed to Maine's Bill and believed that this regulation is recommending marriages based on lust, which leads to immorality.
Later, in 1954 the Parliament enacted The Special Marriage Act to provide the validation and registration of the special form of marriage in India. This article aims to furnish a general outlook and analysis on the Special Marriages highlighting the problems with judicial perspective on numerous problems under the Special Marriage Act.

In a case it was held that the caste system is like a curse on the nation and the sooner it’s suppressed it’s better for the nation. In fact, the caste system in India is misinterpreted and is the cause for the division of nation at a time where one needs to be united to face the upcoming challenges of our country. Hence it was held that, inter-caste marriages are in fact within the national interest as it will help our nation to stay united as a result in destroying the caste system. [3]

Personal Laws with respect to Special Marriage Act:
India being the land of diversity and with celebrates various religions has various personal laws at the same time and also every religion has a different procedure for marriage which follows different religious ceremonies and rituals for solemnization of their marriage.

Hindu Law:
The Hindu Marriage Act which was laid down in 1955 provides us the conditions for the solemnization of marriage are under the Section 5 of the Act. The conditions mentioned in Section 5(i), 5(ii), 5(iii) and 5(iv) are somewhat corresponding to that of conditions that are laid down under Section 4 of the Special Marriage Act, 1954 with minute variance like

- The violation of a condition mentioned in section 5(iii) [4] of Hindu Marriage Act, 1955 will not result in making the marriage void whereas the violation of Section 4(c) of the Special Marriage Act, 1954 will amount to make the marriage void under Section 24(1)(i) [5] of the Special Marriage Act, 1954.
- Section 5(iv) and 5(v) of Hindu Marriage Act, 1955 and Section 4(iv) of the Special Marriage Act, 1954 both defines the degree of prohibited relationship but The Special Marriage Act, 1954 provides relaxation in the degree of prohibited relationship than in Hindu Marriage Act. Section 7 of The Hindu Marriage Act, 1955 provides with the ceremonies of the marriage and performance of the certain religious rituals which are to be conducted mandatorily in order to make the marriage a valid one otherwise the

[4] 9 S.5 a marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: (iii) the groom has completed the age of one years and the bride, the age of eighteen years at the time of the marriage.
[5] 1) Any marriage solemnized under this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if- (i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled;
marriage will be considered as a void marriage. There also exists a provision for the registration of marriages under the Section 8 of The Hindu Marriage Act, 1955 which is again left up to the discretion of the parties whether to solemnize their marriage before the sub-registrar directly or either register their marriage after performing their marriage according to their conformity with Hindu Beliefs and the State Government may make rules accordingly to facilitate the proof of Hindu marriages.

Muslim Law:
According to the Muslim Law of marriage, the nature of marriage is considered to be a contractual one. There is a system of private registration of marriages with the kazi which has mostly been prevailed among the Muslims residing in India. Though the principle Islamic Law states that solemnization of marriage does not require any rituals among the Muslims of India but the marriages are invariably solemnized by their religious officials known as the “kazi” in a short ceremony performed by them known as “nikah”, which begins with obtaining consent of the parties formally first from the bride and then from the groom which later ends with recitation from the Holy Quran followed by prayers. Then a nikah-nama i.e. a marriage certificate is prepared by the Kazi either before the conduct of nikah, or immediately after the ceremony, which contains all the details of the parties and is signed by both of them, and by two witnesses. The nikah-nama is then authenticated by the signatures of the Kazi and later putting a seal on it. The printed forms of the standard nikah-nama which contains the details of the marriages they solemnize preserve the copy of the same in their in Hindi and Urdu and issue the same copies to both the parties. Under the Indian Law the nikah-namas issued by the kazis are treated to be admissible in evidence. Thus Muslim Law recognises private registration by signing a nikah-nama by both the parties and witnesses which can be taken as a proof of marriage.

Christian Law:
The Indian Christian Marriage Act passed in 1872 provides that every marriage where either both the parties are, or an either party being a Christian shall be solemnized in accordance with its provisions only. The Indian Christian Marriage Act, 1872 makes a clear distinction between “Christians” (defined as “persons who are professing Christian religion”) and “Indian Christians” (defined as “persons are who got converted into Christian as converts and are also the decedents of the native Indians are Indian Christians”). It also makes separate provisions for followers of various Churches which includes Church of England (called Anglican Church), Church of Scotland and Church of Rome (so called as Roman Catholic Church). The Indian Christian Act provides separate rules for the solemnization and registration of marriages for Indian Christians and as well as other Christians, and also for the followers of various Churches. Due to such classification and distinctions the system of registration of marriages provided by the Act is quite complicated. According to the Act, marriages may be solemnized by the following:
1. Ministers of Church who has received Episcopal ordination;
2. Clergymen of the Church of Scotland;
3. Ministers of Religion who got licensed under this Act;
4. Marriage Registrars appointed under this Act; and
5. Persons who are licensed under the Act to grant certificates of marriage between “Indian Christians”. Indian Christian Marriage Act, 1872, laid down certain conditions \[11\] for the certification of marriage. These are –
1. The age of the man intending to be married shall be above 21 years and age of the woman intending to be married shall be above 18 years;
2. Neither of the persons intending to be married shall have a spouse still living.

3. In the presence of a person licensed under Section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other –
‘I call upon these persons here present to witness that I, AB, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, CD, to be my lawful wedded wife or husband’ or words to the like effect. Under Christian law marriage with a cousin may be permitted by a special dispensation by the Church. Part IV of the Act (Sections 27-37) contains elaborate provisions for registration of marriages solemnized by Ministers and Clergymen covered by categories (i) to (iii) above.

There are in this Part separate registration provisions for marriages of Christians in general and of Indian or Native Christians. Part V of the Act (Sections 38-59) provides rules for solemnization-cum-registration of marriages directly by Marriage Registrars appointed under the Act. Part VI (Sections 60-65) relates to marriages of “Indian Christians” solemnized by licensees under the Act and provides rules for certification.\[12\] This Act, thus, has a very complicated system of registration of marriage solemnized under this Act and it suffers from a tremendous lack of uniformity. The Indian Christian Marriage Act provides for compulsory registration.

**Parsi Law:**
The Parsi Marriage and Divorce Act was first enacted in 1865 which was later replaced by a new Act bearing the same name in 1936 and also was amended in few aspects in 1988. Parsi marriages are to be solemnized under The Parsi marriage and Divorce Act by the Parsi priests who are required to certify them in a prescribed form which is to be signed by the priest, the contracting parties and two witnesses.\[13\] According to the Act the priests are required to periodically transmit their records to Marriage Registrars appointed under the Act. A priest who neglects either to so certify a marriage or to transmit its copy to the Marriage Registrar will be made guilty of an offence punishable with simple imprisonment up to three months, or with fine up to a hundred rupees, or with both.\[14\]

\[8\] Parts I, Section 4, Indian Christian Marriage Act, 1872.
\[10\] Part I, Section 5, Indian Christian Marriage Act, 1872.
\[11\] Part VI, Section 60, Indian Christian Marriage Act, 1872.

\[12\] Government of India, Law Commission of India, Laws on Registration of Marriage and Divorce – A Proposal for
Section 3 of Parsi Marriage and Divorce Act, 1936 provides the conditions for valid marriage. The Parsi Marriage and Divorce Act, 1936 makes necessary Registration of Marriages but non-registration also does not affect the validity of marriage.

The Special Marriage Act, 1954 acts as a boon to the society which aids the citizens of India in overcoming the constraints posed by their respective personal laws. The Special Marriage Act, 1954 with respect to marriage and its registration mainly, worked for the welfare of citizens by protecting their matrimonial rights. The Special Marriage Act, 1954 proved to be a rescuer in cases where there were various ceremonies to be conducted by the families of the parties and also found a way and held support in inter-caste marriages. Section 7 of the Hindu Marriage Act, 1955 provides for various ceremonies for a Hindu marriage to be valid. In the case of Kanwal Ram v Himachal Pradesh Administration [15] the court held that a marriage is not proved valid unless the essential ceremonies required for its solemnization are proved to have been performed.

Thus, rites and ceremonies in Hindu marriage proved to be essential requirement of a valid marriage and any fault or mistake on the part of parties at the time of solemnization of the marriage will led to a void marriage. Here in such cases the Special Marriage Act, 1954 proved itself to be an alternative as no such ceremonies are required under the Act. The Registration of the marriage under this act is a sufficient proof of a valid marriage.

Violation of condition i.e. mentioned in section 5(iii) [16] of Hindu Marriage act, 1955 will not make the marriage void while the violation of section 4(c) of the Special Marriage Act, 1954 will make the marriage void under Section 24(1) (i). Thus, Special marriage Act, 1954 also restrains child marriages. Similarly, The Muslim Law provides for private registration of marriage but there is no such provision for official registration. Under Muslim law if a man want to marry his divorced wife again then both the parties had to through various religious customs like the wife to undergo through her Iddat Period of three months whereas under this act there are no such rituals to be followed. The Parsi Marriage and Divorce Act, 1936 provides for compulsory registration of marriage but they do not allow inter – religion marriage whereas The Special Marriage Act, 1954 again provides them with the platform for solemnization of marriage for inter religion marriage. The compulsory registration of marriage under Special Marriage Act, 1954 ensures that the registered marriage cannot be declared as void in any circumstances and also makes sure that the children born to their parents out of the wedlock will be regarded as their legitimate children. Thus, the Act protects the interest of the parties in marriage, the children born to the parties and the compulsory registration also keeps a check on bigamy and child marriages.

[15] [AIR 1966 SC 614]
[16] S.5 A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: (iii) the bridegroom has completed the age of one years and the bride, the age of eighteen years at the time of the marriage.
The Special Marriage Act, 1954 and Its Scope:
The Special Marriage Act, 1954 came into force from 1\textsuperscript{st} January 1955 and contains 51 sections which are systematically divided into 8 chapters. Under this act, there is a special legislation to provide for a special type of marriage [as one does not need to convert or renounce their religion] via registration. Unlike the conventional type of arranged marriages which usually takes place between two families belonging to same caste or community, this act focuses on the inter alia providing for legalising inter-religious or inter-castes marriages. The Certificate of registration under the Act has been considered as a universal proof of marriage. The Act as stated inside the preamble affords a unique form of marriage in definite cases, for the registration of such and certain other marriages and for divorce. The foremost goals which may be culled out from the Preamble of the Act are:

(i) a special type of marriage in certain occasions,
(ii) for registration of certain marriages,
(iii) For divorce.

Application of the Special Marriage Act:
The Special Marriage Act applies to the whole of India except in the state of Jammu and Kashmir\textsuperscript{[17]} but presently as per the new changes being made by scrapping the Article 370 from the constitution this Special Marriage Act might be applicable in the states of Jammu and Kashmir also. Besides Indians this Act also extends to the Indian nationals residing in foreign countries. The basic requirement for a valid marriage under this act is the consent of both the parties where it doesn’t require any kind of rituals, ceremonies or customs to be performed as any marriage conducted under this act is considered as a civil contract. Any kind of caste, community sections or spiritual variations cannot terminate their union of marriage. Parties connoting to marry regardless of the religion/faith they follow may be a Hindu, Sikh, Jew, Muslim, Christian, Buddhist, Jain or Parsi can execute their marriage under this Act. Thus, The Special Marriage Act 1954 applies to all individuals of all religions. This legislation enables the parties to marry each other irrespective of all religions, caste or community. In case if the parties move for divorce, it needs to be governed via The Special Marriage Act, 1954. The Act in divergence with various other personal marriage laws authorizes marriage without converting to the other partner’s religion. The Act provides for solemnization of special marriages, registration thereof, effects of marriage under the Act, restitution of conjugal rights, judicial separation and nullity of marriage and divorce. It also provides for jurisdiction of Courts and procedure to be followed.

In Robin v. Jasbir Kaur,\textsuperscript{[19]} the husband is a Christian whereas the wife is a Sikh and the Marriage was performed as per the Hindu rites between them. In this case it was held that a Hindu can marry a Christian under the special Marriage Act and such marriage cannot be held void only on the basis that it was not performed as per the provisions given under Section 6 of the Indian Christian Marriage Act, 1872. The High Court ruled that it cannot be held that the marriage between the husband who is a Christian and the wife, who comes under the definition of a Hindu, is not valid for purposes to grant the relief u/s 125 Cr.P.C.

Responsibility/Duty of the Marriage Officer:
The Marriage Officer on receipt of the application filed under Section 15 of The Special Marriage Act has to present a public notice as prescribed under the given rules. The Marriage Officer is bound by his duty to give 30 days for filing objections. The Marriage Officer has to hear the objections received within the time stipulated and has to make sure that all the conditions mentioned under section 15 are satisfied, he shall enter the Certificate of Marriage in the Marriage Certificate Book, as specified under the fifth schedule. Certificate of Marriage needs to be signed by the parties to the marriage and by the three witnesses.

Section 22 of the Special Marriage Act, 1954
Robin v Jasbir Kaur decided by Punjab & Haryana High Court on 3rd June, 2016 available at https://indiankanoon.org/doc/27367589/

The Marriage Officer when takes a decision under Section 16 read with Rule 7 and 6(b), he is exercising a quasi-judicial function. The Rule obliges the Marriage Officer to record the evidence and his decision on the objection and the reasons in his own handwriting. On satisfying all the conditions mentioned under Section 15, the Marriage Officer shall enter a Certificate of Marriage in the form specified in the Fifth Schedule of the act and this form shall be signed by the respective parties provided with their three witnesses. The statutory form, prescribed in the fifth schedule of the act deals with the manner in which the Marriage Officer, the husband, the wife and their three witnesses has to sign the certificate of marriage and the mode in which the declaration has to be made by the parties. A declaration, that a ceremony of marriage has been performed between the parties and that they have been living together as husband and wife since the time of marriage and that in accordance with their will to have their marriage registered under the Act, on a particular date, has to be made jointly by the husband and wife in the presence of the Marriage Officer and their three witnesses. The requirements in our view should be statutory in nature and mandatory in character. Neither the Marriage Officer nor the parties can deviate from the statutory provisions given under the act. Recognizing the recent traits in India, the Courts opined that there's no impediment for marriage between an Indian bride groom and a foreign national. In Krishna Das v. State of Kerala the petitioner, a citizen of India, was predetermined to marry a foreign national. Though he approached the Marriage Officer concerned under The Special Marriage Act with the notice of the intended marriage, the Marriage Officer refused to accept the notice given by him. The High Court of Kerala has directed the Marriage Officer to take notice of the marriage under The Special Marriage Act, 1954.

Eligibility for Special Marriage:
The Special Marriage Act, 1954 has laid down few conditions on the parties to be eligible for marriage. Section 4 of the Special Marriage Act, 1954 provides the conditions relating to any kind of solemnization of special marriages between the parties. A marriage between any two individuals can be solemnized under this act, only if the at the time of marriage the following conditions are satisfied:

[22] Section 4 of the Special Marriage Act, 1954.
1. Neither of the parties should have other subsisting valid marriage in other words the resulting marriage should be monogamous for either of the parties. [23]
2. Neither of the parties should be of unsound mind i.e. both the parties should be competent enough to make a contract of marriage and should be of sane mind when giving the consent. [24]
3. Neither of the parties should be affected with any mental disorder which renders them unfit for marriage and for procreation of children.
4. The minimum age that a girl/female should attain is 18 years and a boy/male should attain is of 21 years of age. [25]
5. The consent made by the parties for marriage should be free i.e. the consent should be without any undue influence.
6. The parties should not fall within the purview of the degrees of prohibited relationship i.e. the parties should not be related to each other by blood and other prohibited relations stipulated by the legislation. [26]

If the following conditions given under The Special Marriage Act are not satisfied then the marriage can be termed as void and will not be considered as a valid marriage.

Registration of Marriages:
In Smt. Seema v. Ashwani Kumar [27] the Supreme Court of India has observed that all the persons who are the citizens of India irrespective of their religion have to be made their marriages compulsorily registrable in their respective States, where the marriage is solemnized. Thus the Supreme Court has directed the Central as well as the State Governments to take the following steps:
• The registration procedure of the respective states should be notified within the three months from the date given.

[23] Chapter II, Section 4(a), the Special Marriage Act, 1954.
[25] Chapter II, Section 4(c), the Special Marriage Act, 1954.
[26] Chapter II, Section 4(d), the Special Marriage Act, 1954.
[27] Smt. Seema v. Ashwani Kumar AIR 2006 S C 1158

This task can be done by amending the prevailing rules or by framing new rules. However these changes will bring unrest among people and objections from various sections of the society so thus the matter shall be kept open to the public to raise objections for a period of one month as on the day it was open. On the expiry of the given period, the States shall issue appropriate notification bringing the Rules into force in their respective States.

The officer shall be appointed as per the said Rules of The State who shall be duly authorized to register the marriages under this act. The age and the marital status i.e. unmarried or divorced shall be also clearly stated thereby.

If in case in any circumstance there is non-registration of marriages or if there is a filing of false declaration by the officer in charged the consequences of the same are provided in the said Rules and the object of the Rules stated shall be performed as per the directions of the respective Court.
• If the Central Government as and when enacts a comprehensive statute, the same shall be scrutinized before the courts of law.
• To ensure that that the directions given herein are put into force
immediately and are carried out fruitfully there are various learned counsels established for various States and Union Territories in India.

The Supreme Court of India has highlighted the need for registering all types of marriages of Indian Citizens belonging to various communities, religion and various States immediately after the solemnization of marriage. Thus, keeping in note of the above given directions by the Supreme Court, all the State Governments had to amend the Rules providing the provision for compulsory registration of the marriage (but not compulsory after the performance of the ceremonial marriage as per their respective customs, irrespective of their religion and caste etc.).

Prohibited Relationship under Law:
The provision provided under Section 4 of the Special Marriage Act deals with the prohibited degrees of relationship between the parties.

It says that,
If there is at least a custom prevailing that governs one of the parties, then it permits the execution of marriage between them, such marriage can be solemnized provided should not fall within the degrees of prohibited relationship.

Thus, it was held that there is no bar to an inter-caste marriage in any circumstance under the Hindu Marriage Act or any other such prevailing set of personal laws. The boy and the girl i.e. either of the parties should not fall under any of the provisions of the prohibited relationship. The prohibited degrees of relationship are defined completely different in purview of The Special Marriage Act, 1954. Few of the prohibited degrees of relationship defined under this act are as follows:

- All the first cousins either as of the paternal or maternal side or of parallel and cross falls in the category of prohibited marital relationship but it does not place any second cousin in its two lists of prohibited degrees provided that custom governing to at least one of the parties permits.
- But as per the Muslim Personal Law marriage between the first cousins is allowed i.e. all the first cousin both on the paternal and the maternal sides doesn’t come inside the purviews of the prohibited degrees of marriage.
- Also under the Christian Marriage Law, the marriage with the first cousin may be permitted by an exception given by the Church. Thus, if the expression custom is defined in the Special Marriage Act, 1954 and would include the personal law of the parties on a condition of the recognition by the State Government through a Gazette Notification should be satisfied.

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[Section 4(d) of the Special Marriage Act, 1954]

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Thus, if the expression custom is defined in the Special Marriage Act, 1954 and would include the personal law of the parties then a condition of the recognition by the State Government through a Gazette Notification should be satisfied.\[^{30}\]

But at the same time this act ignores the discrimination that is prevailing among the different Communities of India. For instance, under The Hindu Marriage Act, 1955 there is a restriction known as the as Sapinda relationship marriage\[^{31}\] which states that the marriage with the second cousin is not allowed whereas in The Special Marriage Act, 1954 it is clearly stated that, marriage with the second cousins is valid. Thus, if a Hindu, Sikh, Jain or a Buddhist can marry a second cousin if he wants to under this Special Marriage Act, though it's not permitted in their respective personal laws. Similarly in Muslim Personal Law, the law here permits a marriage with a first cousin whereas it's not permitted in The Special Marriage Act.\[^{32}\]

This act also specifies a minimum age of the male and a female i.e. 21 years and 18 years respectively. It also states that for a special marriage to be valid the parties should be of sound mind and should be capable of giving a valid consent and the marriage between the parties should be monogamous at the time of conduct of the marriage i.e. either divorced or unmarried and should not have a spouse living during the conduct of the marriage.

### Jurisdiction of Courts with respect to Transfer of Cases

Every petition that shall be made under the Chapter V and Chapter VI shall be presented to the District Court with their local limits of whose original civil jurisdiction.\[^{33}\]


\[^{31}\] See Section 5(V) of Hindu Marriage Act, 1955. —Saha pinda bandhavya nishedhahal

\[^{32}\] Laws of Civil Marriages in India – A Proposal to Resolve Certain Conflicts, Report 212, October 2008, Chapter IV - Prohibited degrees

\[^{33}\] Subs. By the marriage laws amendment act, 1976(68 of 1976) Sec. 3

Divorce:

India, being governed by various personal laws based on their religion and the same are legislated by the Central Government by India.\[^{35}\]

Different religious groups in
India are governed by their respective religious codes and by customary laws of their respective communities. The Hindu Marriages and Divorces are governed by the Hindu Marriage Act, 1955 which also applies to all the other communities that comes under the definition of a Hindu namely, Buddhist, Jains and Sikhs etc.\[^{[36]}\]

Apart from this there are separate laws which govern with the family matters of Muslims\[^{[37]}\] and Christians\[^{[38]}\]. And later to bring uniformity in the nation there is also a Special Marriage Act enacted which allows for marriage between members of any religion affiliation and also governs with divorce at the same time.\[^{[39]}\]

The Hindu Marriage Act and The Special Marriage Act have similar grounds for granting a divorce to the parties. Few of the main grounds for granting a divorce to the parties can be summarized under the following categories: matrimonial fault, special circumstances and by mutual consent. The first ground of matrimonial fault includes adultery (with stringent proof), Cruelty\[^{[40]}\], Desertion for not less than two years, unsound mind, communicable venereal diseases, incurable leprosy, renunciation of the world by entering religious orders, has not been seen alive for period of seven or more years. The Act provides wife for additional grounds of divorce under special circumstances such as if the husband has been found guilty of rape, sodomy or bestiality or if the marriage was solemnized before the woman turned 15 and she repudiates the marriage before age 18. Finally divorce can also be granted by mutual consent. There is no provision under Hindu Marriage Act or Special Marriage Act to grant divorce due to irretrievable breakdown of marriage or to grant divorce without mutual consent that does not involve fault or special circumstances.

One of the important aspects of Hindu Marriage Act and Special Marriage Act is that it recognizes customary divorce which can be granted through customary ways by village councils, caste organization, quasi-legal and non-formal institutions. Hindu Marriage Act states that —[Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage...] with a liberal interpretation of custom.\[^{[41]}\]

Such recognition of customary laws interprets that divorce to the parties can be granted without any judicial involvement.
Similarly, for Muslims in India, Sharia remains largely un-codified law and marriage is treated to be a contract and can be terminated if the contract is valid or not valid.

[39] Special Marriage Act allows marriages in which both parties are from different religions or from the same religion or no religion. This is an optional law and serves as an alternative to different religious personal laws (Law Commission of India 2008b).

[40] Courts have differed in their interpretation of cruelty. Partying to acne problems have been ruled as form of cruelty to the spouse and a reason for divorce (BBC 2015). The Supreme Court of India in recent judgments has noted that cruelty must be judged on the “intensity, gravity, and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home” (Law Commission of India 2009: 17). For Supreme Court’s interpretation of cruelty and other aspects of the HMA, see Kohli 2010.

[41] Hindu Marriage Act, 1955, Chapter 1: Definitions. Earlier, the marriage would be repudiated by husband pronouncing talaq three times, for any or no cause, in the presence or absence of wife, is binding and irrecoversable either in oral or written form, but as per the new amendment the triple talaq is not valid.Whereas, a wife can repudiate a marriage only if the husband grants her the power to do so or if the wife has negotiated to have such powers in the marriage contract. Wife and husband can also initiate divorce through mutual consent known as Khul or Khula. Wife can also seek divorce known as faskh from a qazi (religious teacher) or third parties if there is no mutual consent. Only women, can also seek unilateral divorce under the Dissolution of Muslim Marriages Act (DMMA) of 1939 under specified conditions like apostasy, failure to provide maintenance, unknown whereabouts, cruelty, failure to perform marital obligation without reasonable cause, impotence, insanity, severe disease or any grounds recognized by Muslim law. In India we can observe that the matrimonial laws specially relating to divorce and separation have been greatly influenced by the English matrimonial law viz., the Matrimonial Causes Act, 1857. The Special Marriage Act, 1954 as amended under the Marriage Laws (Amendment) Act, 1976 recognises the following eight fault grounds for divorce:

- Adultery
- Desertion
- Imprisonment for 7 years
- Cruelty
- Unsound mind and mental disorder
- Venereal disease
- Leprosy
- Respondent not heard for 7 years

Apart from these there are special grounds provided for wife only namely,

- The husband, since the solemnization of marriage has been guilty of rape, sodomy or bestiality, and
- Cohabitation has not been resumed for one year or more after an order of maintenance has been passed under section 125 of the Criminal Procedure Code.

In a case, Suman Kundra vs. Sanjeev Kundra, the parties were married as per Hindu rites and ceremonies on 29th
October, 1986. However, their love marriage did not continue very long and the marriage dissolved by a decree of divorce on 02nd June, 1988. The parties re-married for the second time before the Marriage Officer under SM Act on 03rd May, 1990. However, the parties could not reconcile their inherent differences and the husband filed a petition for dissolution of marriage under Section 13(1) (a) and (b) of the HM Act on 21st July, 2005. The wife challenged the maintainability of the petition. This Court held that since the parties were married under the SM Act, their conduct with regard to the grant of divorce or relationship would be covered under the SM Act only.

Conclusions and Suggestions:
Marriage is considered as one of the sacred institution in India and is an integral part of our culture. India being a diverse country has people residing from several religions and cultures which also influences the caste and religion in our country. The Inter-Caste marriages performed in India are still considered as a taboo. India follows a very rigid structure of the caste system where people are expected to marry within their caste and within their respective communities and to follow their traditional barriers otherwise when not followed are shunned by the society which also is a cause for increase in number of honour killings reported on daily basis. Thus to safe guard the society from such evils, the Special Marriage Act, 1954 was enacted in the interest for the public which helps the people to come over their orthodox and unnecessary religious practices and also helps in lifting the barrier in performance of inter-caste marriages. So the Parliament enacted the Special Marriage Act in 1954 which provides for a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the caste and religion.

[45] AIR 2015 Del 124
Thus, we can conclude that, Registration plays an important component of marriage when it comes to Special Marriage Act. The Act provides for compulsory registration as without the registration marriage will not be valid and thus be considered as void. The unique feature of this Act is that any marriage solemnized in any other form under or under any other personal law, Indian or foreigner, between any two persons can be registered under the Act. The Indian Christian Marriages Act, 1872 makes it compulsory for the marriage to get registered under The Special Marriage Act, 1954. Parsi Marriage and Divorce Act, 1936 makes necessary Registration of Marriages but without the registration also marriage is considered as a valid one. In Muslim law, a marriage is regarded as a civil contract and the Qazi, or the officiating priest, also records the terms of the marriage in a nikahnama or marriage certificate, which is handed over to the parties i.e. a provision of private registration of marriage. Also there exists a provision under Section 8 of the Hindu Marriage Act, 1954 for registration of marriages but it’s left to the contracting parties to either solemnize the marriage before the sub-Registrar or register it after performing the ceremony according to their Hindu beliefs.

Compulsory registration helps in protecting the interest of the parties in marriage and also helps in encountering and preventing few problems which exists in society like bigamy, child marriage and desertion. Few of the suggestions that can be taken into consideration is that the registration under Hindu Marriage Act, 1955 should be made compulsory and every state should take
necessary steps to make laws for compulsory registration in their state as provided under section 8 of Hindu Marriage Act. Similarly, in the Muslim society they follow a system of private registration of marriages by the kazis, which needs to be streamlined and linked with registration of marriage with State Registry. In very few States it has been observed that all the marriages irrespective of the law under which these may have been solemnized have to be compulsorily registered under this Act. The majority of States in India have not enacted any general law on marriage registration which is applicable to all the communities. It is also observed that the States where there are laws for compulsory registration of all marriages, such laws are highly ineffective and are not taken care by the legislative thus acting as faulty laws. People generally residing there do not adhere to such laws, as non-registration entails only fine of a petty amount. So, punishment for non-registration of marriage should be given importance and at the same time should be strengthened and the laws should be strictly and effectively implemented.

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COMMERCIAL DISPUTE
RESOLUTION

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INTERPRETATION,
CONSTRUCTION AND
ENFORCEMENT OF CONTRACTS

A contract is an agreement between parties which is enforceable by law and that which governs the rights and obligations of the parties. Parties’ intent is the essence of every contract. The law is highly volatile, which might lead to different interpretations of the drafted agreement in accordance with the party’s intent. Contractual obligations are nothing more than the chosen obligations of the parties, giving effect to one’s own choice which was earlier drafted by the parties themselves. Initially, the party’s intent is ambiguous. One has to clearly understand whether it refers to the parties’ intended exchange or their legal obligations to get a clear picture of the party’s intent. The party’s attention has to be drawn towards the order of application where interpretation supersedes construction.

What does relationship between parties in a contractual term mean? It is the promise made by one party to another to fulfill the legal obligation that they have assigned to them. The parties to a contract should create a legal relationship evidenced by offer, acceptance and a valid consideration. The terms that the parties have agreed to in the contract can be used to deduce the way in which the parties have interpreted the terms of their agreement. Consensus ad idem is the basic element of interpretation.

The words ‘interpretation’ and ‘construction’ are used interchangeably, but there exists a fine line of difference between them. A linguistic and simple meaning of the legal text is called interpretation, while its legal effect is called construction. Moreover, interpretation almost defines the intention of the statute. Both formulation and enforcement of a contract must be effective, in substantial and procedural manners to ensure that parties in a contract are ultimately satisfied.

Construction is the most conflict-ridden part and therefore it is important for employers and contractors to include appropriate dispute resolution clauses in their contracts as various methods of Alternative Dispute Resolution (hereinafter ADR) have emerged to provide greater access to individualized justice. Our paper will throw light on the various methods of ADR in India, strengthening and simplifying legal provisions for the enforcement of contracts by reassessing the quality and efficiency of dispute resolution in India and why the ADR system should not just be an alternative in today’s world, but rather a mandatory settlement process for disputes of certain nature.

ALTERNATIVE DISPUTE RESOLUTION IN INDIA

Alternative dispute resolution refers to a "procedure for settling a dispute by means other than litigation, such as arbitration or mediation." ADR is a solution of choice for legal disputes through which parties in dispute obtain remedy without involving the process of litigation, with the help of a third party. In India, the ADR system created a supportive platform for conflict resolution. It helped disputing parties achieve a greater sense of justice in a

246 Black's Law Dictionary 91 (9th ed. 2009).
peaceful manner. ADR was introduced as an alternative to the adversarial litigation in India to resolve legal disputes in a timely and cost-efficient manner. Alternate modes of resolving disputes are gaining prominence in recent years, especially in the resolution of commercial disputes. In India, laws related to ADR are dynamic in nature. The judiciary also encouraged such out-of-court settlement procedures and has set up premium institutions such as the Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution (ICADR) and many other regional ADR forums. The Indian law also recognizes arbitration and conciliation governed by the Arbitration and Conciliation Act of 1996, judicial settlement including settlement through Lok Adalats governed by the Legal Services Authorities Act, 1987 and mediation as the mechanism of settlement of disputes, apart from litigation. The reasons for the visible shift to alternative modes of dispute resolution include: time efficiency, cost efficiency and specialized adjudicator for resolving disputes. In particular cases, alternative dispute resolution is statutorily prescribed as a means of seeking remedy. For instance, in Section 7B of the Indian Telegraph Act, 1885, the determination of a dispute is mandated only through arbitration and cannot be questioned in any Court.

**LOK ADALATS**

The Lok Adalat system is an alternative dispute resolution which is effective in settlement of money claims and they are given statutory status under the National Legal Services Authorities Act, 1987. It is a forum where cases in court at a pre-litigation stage are settled. It is the duty of the State to ensure justice to the citizens by maintaining all those rights which are fundamental to the existence of common man. But in today’s judicial system, there exists a dearth of effective administration and access to justice, which necessitated the establishment of ADR forums. Lok Adalats were firstly established at the village level and popularly called as ‘Panchayats’ which enabled it to settle disputes between two parties amicably without much hassle. Unlike courts, Lok Adalats always ensure a win-win situation where all the parties to the dispute have something to gain. There are no requirements for a lawyer and there is no requirement of a court fee. The parties are allowed to talk to the presiding officer directly. Lok Adalats are deemed to be civil courts under certain circumstances. The disputes can be brought into the Lok Adalat directly, instead of approaching the courts and then referring it to the Lok Adalats. Lok Adalats provide fast and inexpensive remedies with judicial status. Not all cases are suitable for Lok Adalats and further, the judicial system faces a gamut of pending cases which requires the reinforcement of existing ADR system.

**LAWS REGARDING ADR IN INDIA**

The Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 ensures fair and efficient settlement of commercial disputes by arbitration and conciliation. The Amendment aimed at improving institutional arbitration by establishing the ACI to set down standards, make the arbitration process more effective and efficient, and ensure disposal of cases in a timely manner. The ACI has the authority to frame rules on the evaluation of institutions, the norms to be followed, checking the quality and monitoring performance, and also encourages the training of arbitrators. **In spite of many reinforcements in the composition of the Arbitration Council of India (ACI), the**
confidentiality of proceeding and many aspects of the same, there are still loopholes which should be looked into by the concerned officials.

The Commercial Courts, Commercial Division and Commercial Appellate Division Of High Courts (Amendment) Act, 2018 which amended the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 aimed at increasing India’s rank in the Ease of doing Business Index and covers a wide ambit of cases relating to disputes involving ‘commercial transactions’. However, the Act still has certain defects which will be dealt with in the later part of the paper.

WHY ALTERNATIVE DISPUTE RESOLUTION SYSTEM?

Why is it better to approach ADR forums than courts for enforcing contracts in the way that the parties interpreted it rather than just enforcing their rights and obligations? ADR provides a room for parties to understand each other’s situation and encourage them for coming up with innovative solutions. It strives to promote effective and affordable access of justice to everyone. It provides an opportunity to work faster and in a less expensive manner than approaching the court through the neutral help of third party. An ADR system does not escalate the conflict, rather it preserves the goodwill which might help them to have a good relationship even after an amicable settlement.

The major drawback of the traditional court system is the pendency of cases and lack of transparency. Most importantly, there is a lack of interaction between the judiciary and the public to a large extent. The formal system of court often results in marginalization of litigants whose participation in judicial proceedings is distinguished. Since litigants are deprived of legal advice, they are often seen giving vent to their emotions, opinions, perceptions, and interests when they appear in a court of law. The ADR system ensures freedom for a party to choose the method of resolution that they desire. The parties also have the freedom to choose their own arbitrators and mediators. ADR is inclined towards simple justice which demands a system of redressal of disputes. Arbitration ensures confidentiality as the proceeding takes place only with the designated party. Online arbitration has benefits of allowing parties to reduce costs and increase efficiency. Modern arbitration enables the arbitrator to provide positive outcomes.

There is a huge lack of awareness about the ADR system in India and courts should make it a point to make mandatory referrals to the available ADR methods as advocated by the Law Commission in its 129th report and by the Malimath Committee. There are various methods of ADR available which helps parties solve their disputes amicably and economically. "The courts of this country should not be the places where the resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried." Over time, Alternate Dispute Resolution has come to have a new meaning- ‘appropriate dispute resolution’ which suits the ADR realm in the current scenario. In light of the rapid growth of mediation, arbitration, conciliation and negotiation, there is, in fact, nothing alternative at all about ADR today.

247 Sandra Day O’Connor, Associate Supreme Court judge of the U.S.
ANOMOLIES IN THE ADR SYSTEM- IS THERE SCOPE FOR IMPROVEMENT?

Despite the existence of Lok Adalats, commercial courts and commercial appellate courts, the efficiency of the ADR system in India can yet be transformed into something better by empowering the existing ADR forums with more strength and stability and ensuring that people are aware of the same.

The Judicial Reform Index, which is an instrument to evaluate judicial independence, judicial reform and the mechanisms present or lacking in a country’s judicial system through factors like quality, education, financial resources, structural safeguards, transparency and judicial efficiency, should be utilised in India. Since the JRI assessment facilitates strategic planning by categorizing problems and their solutions, the performance of our judicial bodies can be analysed so that the government can determine the changes needed in the existing system as well as the need to introduce dedicated mediation bodies and arbitration centres that cater to commercial issues.

Presently, the number of ADR bodies in India is extremely less when compared to the number of cases that courts are flooded with on a daily basis. Only when there is an increase in the number of centres catering specifically to commercial issues there can be a constructive change in the ADR realm. In many instances, settlements are not facilitated in the best interest of the aggrieved parties due to the delaying tactics of legal practitioners for financial gains, which results in unfair outcomes for the disputants. This defeats the motive of the entire litigation process itself, thus rendering the judicial system as inutile and paralyzed.

Although substantive laws are comparatively important, the efficacy of substantive laws is contingent upon the qualitative deliverance of procedural laws. Our paper will deal with the procedural and infrastructural aspects of ADR mainly and will shed light on certain substantive provisions, and how both these areas can be improved and work hand in hand.

Indian courts are faced with a plethora of pending cases due to limited infrastructural facilities and less number of judges. Article 39A of the Constitution of India (enacted in 1976) enjoins that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Thus, easy access to justice to all sections of people and provision of legal aid for the poor and needy and dispensation of justice by an independent Judiciary within a reasonable time are the cherished goals of our Constitutional Republic and for that matter, of any progressive democracy.\(^{248}\)

The very purpose of alternate dispute forums is to reduce the burden on courts, but various efforts to achieve the same has been futile. The number of courts dealing with commercial matters should be increased, along with an increase in the number of judges who decide cases within a stipulated time. This not only increases the efficiency of the system but also increases the trust that people have on these

\(^{248}\) The 238th Law Commission Report
dispute resolution bodies to provide speedy remedy. The Lok Adalat system has become adversarial, leaving people more dissatisfied with it. Lines are usually long and the presence of lawyers is inconsistent. Currently, resources are scarce in the Lok Adalat system, which has reduced the number of cases heard, insufficient personnel and extensive clutter in the dispensation of cases. The forum no longer provides the swift and fair justice upon which people had come to rely, which has led to people viewing it as another arm of the formal justice system. An influx of staff, funding and facilities would allow Lok Adalats to run more effectively, making them structurally sound and increase public confidence in them. The sessions should be held on a consistent basis, participation by the parties be made compulsory and they should make greater use of technology to accelerate the entire spectrum of the process.

India is a diverse country where people speak various languages and follow different culture and traditions which varies from place to place. A legal system that does not take into consideration the particularities of each region will definitely be ineffective. Therefore, Lok Adalats should work towards incorporating the commonly used processes and characteristics of every locality in order to have a permanent effect and compel parties to switch to Lok Adalats. At present, Lok Adalats rarely consider aboriginal customs and practices. A remedy that does not suit the needs of the party is incompetent in all respects. To ensure that the resolution does not turn out to be inappropriate, Lok Adalats should be more inclusive of the conventions prevalent in each region. Arbitration is a private process but it is ultimately linked to the courts. An award passed by an arbitral tribunal takes plenteous time to be enforced by the courts. What is the point of having separate bodies for arbitration if their decisions are reverted to courts for sanction? However, recently with the reduction of court intervention in foreign seated arbitrations, it is anticipated that awards will be enforced in a dynamic manner and at a faster pace.

Introduction of technology in the dispute resolution field will improve the prevailing conditions and provide a better platform for the disputing parties to resolve their issues. With the aid of technology, substantial documentation can be separated and indexed properly with the appropriate parameters, thereby saving valuable time and effort. It is necessary that ADR forums utilize internet and cellular technology so that parties can be updated on the status of their case, with absolutely no requirement of their physical presence.

The implementation of the Commercial Courts Act which focused on raising India’s rankings in the World Bank’s *Ease of Doing Business Index* was volatile as the reforms for commercial litigation were affected. However, the Ordinance promulgated on May 3, 2018 amending the Act expanded the scope of commercial courts in India and has made positive changes, but it led to an overlapping of jurisdiction of commercial divisions of the High Court and Commercial courts. It has not achieved the desired effect of increased efficiency in the resolution of commercial disputes. The language of the Ordinance should be modified in such a way that the pecuniary jurisdiction of the commercial divisions commences from the value which is the maximum pecuniary jurisdiction of commercial courts. Also, the State government can appoint judges of the Commercial courts without the concurrence
of the Chief Justice of the High Courts. This reduces the independence of the judiciary and might suggest a biased role on the part of the selected judges while deciding matters.

**Section 89 of the Civil Procedure Code,** which gives the Court the power to refer the dispute for settlement to ADR bodies, was introduced with the purpose of enforcing an amicable settlement between the parties without the intervention of the court. However, even after a decade of its implementation, the provision provided for ADR under Section 89 suffers from many anomalies. The frequency with which ADR is utilized for resolution of disputes remains minute, which arises due to lack of awareness about the same or on account of the disinclination of the parties.

There is a dire need to modify Section 89 of the Civil Procedure Code which mandates that the Court shall formulate the terms of settlement and later refer it to ADR bodies. This places a significant burden on courts and defeats the purpose for which ADR forums exist as parties cannot explore their options for negotiated settlement. The Supreme Court in *Salem Advocate Bar Association, TN v. Union of India* 249 was of the view that there were some creases in Section 89 which could be ironed out by formulating appropriate rules and regulations for implementation.

The 238th Law Commission Report advocated for a few changes as specified in the case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.* 250 and called for a revamp of the Section. The Commission stated that it would be unsuitable to deem a Lok Adalat as a mediator and treating the Lok Adalat Award as a mere agreement, and suggested that an appropriate course would be for the mediator to submit the terms of the settlement to the court, and after due scrutiny, can pass a decree in accordance with the compromise arrived at between the parties.

In conclusion, the ADR system in India requires a few impactful changes which will go a long way in improving the existing conditions of alternate dispute resolution, especially in commercial matters. Easing the burden on formal courts is the need of the hour which the ADR system aims to achieve in a cost efficient manner, thus making it one of the most viable options for dispute resolution.

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249 *AIR 2003 SC 189*

250 *2010 (5) AWC 5409 (SC)*

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THE CONGRUITY OF COHABITING PARTNERS AND IT’S STATUTORY EXIGENCY

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ABSTRACT:
The transition of personal transportation from walking to the use of hover boards is flabbergasting. Without a second thought, we acknowledge that it deserves valuation but when we look into the reason behind such invention, it is definitely not fascinating. The lackadaisical attitude of people to even walk led to the discovery of hover boards. An instrument to breathe without nasal movement is next on the list. And in that list, live-in relationships are not something to be awed at. It’s a paved path for excusing oneself to dust off the responsibilities in marriage. Marriage is no longer sacred since it has been diluted with other concepts in this modern era. This paper is not about the moral dilemma of live-in relationships. It is a fact that this type of relationship exists in India and the need of the hour is not to debate on it but to deliberate for legislation to govern it. The authors herein define the relationship as, “Two individuals, irrespective of gender create bonds that lasts lesser than ‘a forever’ but fulfills all the intimate instruments in marriage other than commitments and retention of it depends on the circumstances of the complexities so created.” This westernized theory was a foreign concept in India until 1978. It was initially void-ab-initio but later via the decision of the Apex Court, such relationships are considered valid. The no-strings-attached arrangement does not include promises, trust issues, and responsibilities as such in its ambit. There is no piece of legislation in our country that governs it but we want a move in that direction.

INTRODUCTION:
Cohabitation is the term coined for ‘live-in relationships’. It primarily means living together by establishing an intimate relationship but avoiding the complications and obligations in marriage. This so-called family structure emanated from Western Countries and that facilitates it to be a walk-in and walk-out relationship. The easy-going tendency of individuals nurtures it and helps this hooking culture to bloom bigger and brighter. There is no issue of programmatic life with one permanent partner. The authors herein define the relationship as, “Two individuals, irrespective of gender create bonds that lasts lesser than ‘a forever’ but fulfills all the intimate instruments in marriage other than commitments and retention of it depends on the circumstances of the complexities so created.” This westernized theory was a foreign concept in India until 1978. It was initially void-ab-initio but later via the decision of the Apex Court, such relationships are considered valid. The no-strings-attached arrangement does not include promises, trust issues, and responsibilities as such in its ambit. There is no piece of legislation in our country that governs it but we want a move in that direction.

THE CEREMONIAL CONCEPT OF MARRIAGE:
The concept of marriage dates back to a period even before religious systems were established. In fact, we could say, man was born with it. Marriage was essentially a contract that provided for fecundity and continuation of a clan. It was motivated only for the purpose of satisfaction of urge and procreation. Uncivilized men lived in tribes and had several numbers of mates for the above-mentioned purpose. As they progressed into a society, the system of procreation transformed into an institution called marriage. It was equalized with trade wherein people entered into a contract and gave dowry as a consideration for marriage. The sole reason for mating was for triggering fertility. The arrangement in
marriage later involved the necessity for building a family by mating with an assigned individual. The ceremonial concept of marriage resulted in the family as an institution. Having said that, rules and regulations were brought in to foster people under the same blanket. Love and religion played a role in marriage only in later years. Before the advent of love, a woman was treated as a property of man. In the later years, a man was bound to protect his woman out of love and that was not an obligation then which previously was. With the onset of love, life became polished and a systematic ceremony came into practice. In the Indian background, owing to its diversity, every ethnic group has its own culture for marriage. The Hindus consider it to be a sacrament - “A holy alliance for the performance of religious duties” and not a contract while the Muslims consider it to be a combination of both; a civil contract and a religious ceremony. The ceremonial concept of marriage is coupled with ceremonies distinct to a particular culture. The value of ceremony is clearly laid down by the Courts wherein it held; “No marriage is valid unless it is solemnized with proper ceremonies and rites.”

THE EVOLUTION:
Marriage as a ‘contract’ remains the same to date but there are enormous changes brought in and about it to the extent that it has resulted in an evolution today. A strategic alliance was an atavistic approach used for securing properties by uniting empires. In today’s era, this is still followed within a family circle to retain homogeneity in their ties. This is a significant custom among the tribes. Since they have their own customs and usages they are not governed by Acts authorized to govern ethnic groups other than the tribes. Consent of the concerned parties did not play a role back then. Usually, women were obliged to marry men whom their father’s pointed to. This despotism of male members in families slowly accommodated changes with women exercising their ‘Right to Marry’. The Supreme Court viewed the right to marry as a component of the right to life under Art 21 of the Indian Constitution. The sacramentality in marriages evaporated when civil marriages came into the scene. Registered marriages popularized when love played a wider role than religion. Here, the contractuality in marriages became evident. Divorce as a means of escape from an unsuccessful marriage was not as easy as it seems today because it initially required an act of the Parliament. In 1670, Parliament passed an act allowing John Manners, Lord Roos, to divorce his wife, Lady Anne Pierpon. According to the National Archives of the United Kingdom, this created a precedent for parliamentary divorces on the grounds of the wife’s adultery. In India, the option of divorce was earlier available to men who belonged to the elite class. With the introduction of a private members' bill in 1923, women were also given the option for divorce but only on grounds of adultery essentially proven. Divorce Reform Act, 1969 made a huge impact by making marriages less complicated through its newly proposed changes. Religion definitely played and is still playing a role.

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in marriages and the same is proved by the prevalence of various personal laws in our country. Marriage has now evolved to a stage where even same-sex marriages are recognized worldwide and the Judiciaries also equally hear the interest of such couples. The freedom of choice is given priority. The underlying concept of marriage as a legal contract is more or less the same but the legal obligations are subjected to differences according to one’s preference. We are living in a time where marriages are allowed to be presumed. The transition in this trend is brought to light by live-in relationships.

THE CONTEMPORARY CONCEPT OF MARRIAGE:
The ceremonial concept of marriage has evolved to a stage where a presumption of a relationship defines the standard of marriage. As the authors have defined, the live-in relationship gets the standard of marriage depending on the time period; long term relationship. This type of relationship is seen as progress in society wherein people happily ignore the stigmatized unsuccessful marriage and they look life in a less complicated manner. On the other side of the mirror, the society looks at it as an immoral relationship having pre-marital sex as its only objective. The Judiciary looks the mirror as a whole from the outside and has concluded the image in the mirror to be legal by distinguishing legality and immorality. In the eyes of law, live-in relationships are seen as legal but in the eyes of society it still is seen as immoral and there’s a difference between the two. The society cannot be blamed for not accommodating drastic changes owing to its history and cultural diversity. The legitimacy of marriage was held as a question in a non-marriage relationship till it was clarified by the Supreme Court wherein it clearly pronounced, “With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.” There are laws that govern live-in relationships when it matures to be a marriage or is presumed to be but in the initial stage, it is open to exploitation. The contemporary marriage is prevalent only in the urban areas, which constitute 31.16% of the population as per the 2011 census. This unwelcomed concept is making its way throughout the country by upholding the ‘right to marry by employing the right to life’ strategy. The Supreme Court held that the act of two major living together cannot be considered illegal or unlawful and that it comes within the ambit of right to life under Article 21 of the Constitution of India.

THE INTERPRETATION OF RELATIONSHIP:
The description of a live-in relationship makes it clear that it’s a relationship between two people who eventually take the designation of husband and wife. There are instances where the existence of this relationship amounted to fifty years, which made all the difference, and instances where it did not end in the right way. To decide cases on this matter, the Judiciary looks into the term of such relationships and thereby it defines the same. In live-in culture, there are two possibilities; one that is presumed to be a marriage and the other one is termed as a “walk-in and walk-out” relationship. In any matter the presumption is rebuttable and the burden is on the person

who seeks to deprive the relationship of legal origin to prove that no marriage took place. The Courts opine that if the live-in relationship continued for a long time then it cannot be termed as a “walk-in and walk-out” relationship because a presumption of marriage between the parties enters the scene. The interpretation of the type and term of relationship significantly matters in this aspect because it should establish a real relationship and not concubinage. The interpretation of this relationship and equating it to a bonding in the nature of marriage is due to the definition of ‘domestic relationship’ under section 2(f) in the Domestic Violence Act, 2005 which states, “Domestic Relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. There are guidelines to identify these relationships and to bring it under one ambit:

- The expression ‘at any point of time’ under Section 2(f) of the Domestic Violence Act connotes a reasonable period of relationship depending upon the facts and circumstances of each case.
- The parties must have shared their household in other words they must have lived under the same roof.
- An amalgamation of the parties’ financial resources. Opening a bank account or acquiring properties in either of their names.
- Making domestic arrangements to maintain the household and thereby being a domestic engineer.

- Physical intimacy with the objective of giving emotional support and companionship.
- The procreation of children is a strong indication of a long-standing relationship.
- Creating the image of husband and wife in public.
- Giving chances to society to presume a legitimate relationship, marriage.

When a relationship is in the nature of marriage it is termed as live-in relationship and the same is interpreted with the above-mentioned guidelines.

DEVOIRS IN MARRIAGE:
Marriage is a confidential relationship. It has its entire foundation on trust, love and good faith. This contractual agreement comes with rights and duties just like all other agreements. However, the chief obligations are cohabitation and maintenance. This soulful relationship mandates selfless love. Either of the spouses, irrespective of gender, develops a relationship wherein one dwells in dark to light up the other, metaphorically, it is what a matchstick is to the candle. Physical superiority or capability is no bar. Majestically creating a household wherein it is filled with nothing but love and teaming up harmoniously to preserve the same, having supreme confidence in each other, taking pleasure in diligently serving each other, adequately spending time with each other to establish the language of love, generously honoring the spouse with the attention that she or he wants, being genuine without being a secret keeper, working congruously for a common future, devoird the reasonable apprehensions of cruelty, both physical and mental.

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procreating or adopting children and shouldering them, building up a family and nourishing its fidelity, maintaining the spouse and the children after divorce, letting love to live for eternity and cherishing the same are the obligations in marriage which are imposed on both the genders. These moral obligations are to mold the society at large. The trend of non-obligatory marriages is at peak and that has lead to a decrease in the standard of the above-mentioned obligations owing to impermanency in marriage. There are instances wherein a live-in relationship is equated to marriage; however, there is no guarantee that all live-ins will project a relationship in the nature of marriage. One’s duty becomes another’s right and vice versa. The conjoined interests of the spouses blend their respective obligations in the color of love and make marriage more than a mere contract.

DEVOIRS IN DOMESTIC RELATIONSHIP:
The obligations in a live-in relationship are only to determine the nature of such relationships. The Courts have framed various guidelines in this matter and that helps to interpret the persisting relationship. The live-in culture is generally seen as a less complicated one in comparison to marriage and that is one of the leading factors, which motivate people to adopt the culture. Despite this, there is a mandate for providing alimony or maintenance for female live-in partners on dissolving the relationship. The Protection of Women from Domestic Violence Act, 2005 confers economic rights on them. Section 2(a) of the Act, 2005 defines an “aggrieved person” which states, “Any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.” The definition of the above-mentioned word makes it evident that it includes female live-in partners. Adding on, section 125 of The Code of Criminal Procedure, 1973 also includes the female partners under the dependents category. There were instances where, when the partners had cohabited for a considerable period of time, a presumption that it is a valid marriage might arise. The Courts have repeatedly made it clear that women in a live-in relationship do have a claim under section 2(a) of the Protection of Women from Domestic Violence Act, 2005 and section 125 of Code of Criminal Procedure, 1973. This obligation only on the male live-in partners is arbitrary and unreasonable. The live-in culture in India has made sure that it is women-friendly. The reasoning is provided in the next section.

THE LACUNAE:
In our country, it is the men who are obliged to provide for maintenance after divorce according to section 125 of CrPC. In ordinary circumstances, considering the empowerment of women, it is well and good. The Apex Court held that “The first and foremost duty of the husband is to maintain the wife and the child. He may beg, borrow or steal.” Owing to illiteracy, cruelties, brutal and barbarous treatment to women, the decision of the Supreme Court is truly appreciative.

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versus Bidyut Prava Dixit, it was held that “the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offense under Section 494 IPC.” The provision under section 125 is not gender-neutral and that is explicit by the use of male gender denoting determinant – “his”. This obligation in marriage is justified because of its contractuality. ‘Capability to earn’ and ‘the act of earning’ differ from each other and so a woman cannot be denied of maintenance on the ground that she is capable of earning. Thereby, Courts have held that maintenance to wife can’t be rejected on the ground that she is earning. Again, this stands reasonable as imposed by the conditions in the contract. The Courts have followed the same logic in a live-in relationship and the same is certified by a number of legal pronouncements. For instance, the Supreme Court in Kamala v. M.R. Mohan Kumar held, “a strict proof of marriage is not an essential in a claim of maintenance under Section 125 of CrPC and that when the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance under Section 125 CrPC” The authors would like to deviate from that logic. In a live-in relationship among heterosexuals, the woman is definitely strong and independent. The unconventional attitude of hers motivated her to adopt this culture. She does not fall under the category of dependents and thereby the male partner should not be obligated to provide for maintenance. Both the parties enter into this relationship upon their free will and are not forced into unlike the occurrences in certain marriages.

Moreover, under section 125(1) (b), the term “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. Thus, a woman who is designated as a wife can claim maintenance on any ground. We must not fail to understand that there’s a significant difference between a wife and a woman who is presumed to be a wife. Accordingly, the provision for maintenance should be significantly different for the above two. Even though section 125 of CrPC is a measure of social legislation and is to be construed liberally for the welfare and benefit of the wife & children, in this aspect of live-in culture it would be a lot more considerate if a narrow reading of the provision is given. Instead of terming it as maintenance, it can be termed as compensation and should make the partners individually liable. The liability should be at the cost of love, which they allowed to disappear mutually.

INDIAN PERSPECTIVE:
Our country is phenomenally conventional owing to its history and heterogeneity. Cohabitation had been a taboo since British rule. But in recent years, there’s a steady increase in welcoming this culture of live-in especially in the metropolitan cities - Bangalore, Mumbai, Kolkata, Chennai and Delhi. The Courts have considered it to be legal primarily to protect the right to life under Article 21 of the Indian Constitution. It is to date seen as immoral by the society. While accepting foreign practices disturbs the sacramentality of marriages, it disturbs the society as well. Public awareness is also not very exhaustive. The backwardness of people always come forward and makes the

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whole of it to be judgmental. There is no legislation in this regard and that is the reason for the definition of this relationship to be unclear. A ruling on the guidelines has been given in the case of *Indra Sarma v. V.K.V. Sarma*272. The Apex Court held that the live-in relationship was permissible only between unmarried major persons of heterogeneous sex. If a spouse is married, the man could be guilty of adultery punishable under section 497 of the IPC273. Living together is considered to be an integral part of the right to life. It was also observed by the Courts that a man and woman living together without marriage couldn’t be construed as an offense since the matter in question was the liberty of an individual. Some people are reluctant to change because their prime motto is the preservation of culture and tradition. Per contra, some people readily accept change since they see it as an opportunity for a progressive society. We must remember that everything is tagged with both pros and cons.

**GLOBAL PERSPECTIVE:**

Live-in relationship as a culture originated in the western countries for securing equality since marriage bestowed only a secondary role to the females and to relieve oneself from the devoirs in marriage. It is termed as ‘civil partnership’ in the United Kingdom and ‘de facto relationship’ in the United States. This culture is radically increasing across the globe and is governed by legislation. The obligation in this non-obligatory marriage differs but the ultimate object of love remains the same. Every country has its own beautiful picture of history accommodating the evolution of culture and every culture makes the nations of the world significantly distinct. Celebrating their diversity, the gist of international laws on the live-in relationship is presented below:

**UNITED KINGDOM:**

A civil partnership is a relationship between two individuals recognized by law wherein they agree to lead a life in the style of a conventional marriage but without effectuating an actual marriage. The couple in this partnership is not addressed as husband and wife but as civil partners. Their rights and benefits are identical to the people united by wedlock. The major difference between civil marriage and a civil partnership is that the partners do not align themselves with any religious denominations. They are bonded to each other by a cohabitation agreement and declaration of trust makes each of them aware of their liabilities in acquiring properties. Same-sex marriage came into effect in the United Kingdom only in the year 2014. The same was introduced in the year 2004 by the Labor Government under the Civil Partnership Act applying to same-sex couples over the age of 16. The country recognized the civil partnership between heterosexual couples on 2nd December 2019. In June 2018, the Supreme Court ruled that allowing only same-sex couples to enter a civil partnership is incompatible with the European Convention on Human Rights. The dissolution of this partnership is similar to that of divorce. Civil Partnership Act 2004 governs this relationship.

**AUSTRALIA:**

De facto relationship is the phrase coined to people who live or have lived together on a “genuine domestic basis” irrespective of gender. The two conditions that act as an

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impediment for entering into this relationship are: should be unmarried and should not be relatives. The crucial aspect of this relationship is the lifestyle in a “marriage-like” way. A minimum period of two years of togetherness can be termed as a ‘De Facto’ relationship. It is defined in Section 4AA of the Family Law Act 1975. The criteria for tagging a relationship under the ambit of “genuine domestic basis” has been lied down by the Courts and the same has been enumerated under Sections 4AA (3) and 4AA (4) of the Family Law Act 1975. For that purpose, the duration, living arrangements, degree of financial dependence and interdependence, the existence of a sexual relationship, interest in bringing up of children, public image, registration with the state, ownership of property and degree of mutual commitment between the parties are taken into consideration. The rights of all the de facto couples is similar to that of married couples. For dissolution of the same, they have a De Facto separation agreement. This relationship in Australia is essentially governed by the Family Law Act 1975.

FRANCE:
Old-fashioned matrimony is shunned by the trending civil-unions. France created the system of civil unions in the year 1999 and called it a civil solidarity pact or ‘a pacte civil de solidarité’ in French. It has lead to a drastic change in the attitude of society at large. It is interesting to note the development of this culture to the extent that shopping marts offer gifts, travel agencies offer honeymoon packages and wedding fairs have been renamed to civil unions. It is celebrated parallel to a wedding. The National Confederation of Catholic Family Associations considered it to be a threat but now, it is in the jam and has said that civil unions are not real threats at all. Dissolving this relationship requires little more than a single appearance before a judicial official. All of it is governed by the Pact, 1999.

CHINA:
China mandates a contract between the people indulging in this type of relationship. Unlike the cohabitation contract, this contract does not look into the financial and other arrangements between the parties but focuses on safeguarding the rights of children born out of such relationships.

PHILIPPINES:
Live-in relationships are quite common in the Philippines since it is explicitly provided under Article 147 of the Family Code. It states, “when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership”. It clearly lays down the arrangement that has to be made under this form of relationship.

RUSSIA:
Russian law does not recognize any legal special regime for partnerships or other types of relationships. It, however, recognizes a specific matrimonial regime with respect to properties. Premarital sex and cohabitation are quite prevalent in the country but they value the institution of marriage more. In recent years, civil unions have gained popularity.

UNITED STATES:
The concept of cohabitation was not recognized legally but due to its enormous growth, laws and agreements have
governed it. U.S. state matrimonial laws differ from state to state. Some states criminalize cohabitation by aligning it to adultery. Mississippi, Michigan, Florida, and Virginia have laws banning cohabitation. The current rate is 6.8 per 1,000 residents, according to the Centers for Disease Control and Prevention. The live-in relationship culture in the United States is regulated by a prenuptial contract that defines the relationship of the concerned parties, financial and property arrangements between them, bestows rights and imposes duties on them. The arrangement is enforceable in a court of law. It provides security to both parties by including provisions pursuant to the Uniform Premarital Agreement Act. A domestic partnership is different from cohabitation or civil union. Such arrangements are undergoing a drastic change. The Domestic Partnership Act, Domestic Partner Registration Act, Domestic Partner Rights and Responsibilities Act govern it. Living together is recognized as “common-law marriage” by law in Canada and the same guarantees equal rights as married couples under the federal law of the country. Ireland has gone one step ahead wherein the public is demanding legislation to introduce legal rights for "separated" live-in couples. Live-in relationships are legalized under section 25(2) of the Family Law Act, 2006 in Scotland. Cohabitation is seen as a process of societal development and is very common in Germany. The same is not popular in Luxembourg, Andorra, and the Netherlands. The Middle East and other Islamic Countries prohibits this type of relationship and considers it to be an offense.

LEGAL STATUS:
The legal status of the live-in relationship in our country is zero. There is no law in this regard to govern it. There is only judicial pronouncement, which guides it for the purpose of fixing the quantum of maintenance. There are certain laws, namely, Protection of Women from Domestic Violence Act, 2005, Criminal Procedure Code, 1973, and Evidence Act, 1872 which when deeply interpreted gives a meaning for live-ins and recognizes the same. We must remember that change is the only constant in life as quoted by Heraclitus, a Greek philosopher. When we are well aware that we must shelter the changes by framing laws that would prevent unprecedented occurrences. The authors herein propose for a legislation that will regulate live-in relationships in India. We want an Act of the parliament that will provide for the following:

- The definitions of individuals covering all genders, the agreement between them, their relationship, compensation, custody, arrangements, property, public.
- A provision that mandates an agreement before entering into this type of relationship.
- A provision for agreements to be issued by a specific registry for this purpose.
- A provision that mentions a reasonable period for presuming a relationship in the nature of marriage.
- Provision for determining the degree of commitment in all aspects.
- A provision specifying a procedure for dissolving the relationship.
- A provision that allows compensation by both the parties on the dissolution of this relationship.
- A provision for custody of children.
- A provision preventing domestic violence and other related cruelties.
- Provision with regard to non-interference in ownership of partner’s properties.
- Provision with regard to non-interference in possession of partner’s properties.
• Provision with regard to financial arrangements.
• Provisions relating to inheritance.
• A provision that distinguishes live-ins from marriages.
• A provision mandating the acknowledgment of this relationship in public.
• Provision highlighting the temporariness in this relationship.

The above-mentioned provisions might seem knotty and that an Act would make the whole of this relationship way more complicated. But without an Act, as what it is right now, there are chances of serious consequences. By legislating, we are sure to direct these relationships in the direction where the grass is always green.

CONCLUSION:
The live-in relationship has made its way in our country. There is no point in worrying that “our culture is being disturbed.” These disturbances mold our culture and that will help it to evolve through ages. We will have to equate our culture and values to the quasi-federal constitution of ours. It is neither too rigid nor too flexible. It accommodates decent and ‘the need of the hour’ changes. By incorporating all of it, our constitution has only grown bigger. The 70-year-old document keeping pace with today’s generation is a fact to be awed at similar to our culture. Certainly, there is a difference in the age of it. By accommodating new trends in culture, we are actually appreciating it. The authors would like to conclude by saying that mere regulation does not connote to the idea of encouraging live-ins rather it will prevent substantial deviations from culture.
THE HYDERABAD VET MURDER CASE

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Abstract
Rape is one of the most prevailing crimes occurring in India. It includes sexual violence and sexual abuse with women without her consent. It gives physical and psychological injury to women and sometimes leads to death. Hyderabad vet case is one of the most brutal case that led to murder of a rape victim as well.

This paper discusses about the facts of the case, encounter of the four accused, relevancy of fast-track courts and suggestions to eliminate these kinds of crimes from society.

Keywords- rape, fast-track court, encounter, justice.

Introduction
The Telangana Police stated that the victim had parked her scooty near a toll plaza, which brought the attention of two lorry drivers and their assistants. According to police, they punctured her tire and pretended to help her, then pushed her into nearby bushes, where they raped her. Then they allegedly loaded her corpse onto a lorry and threw it on the roadside. The police arrested four men based on the evidence gathered from CCTV cameras and from the victim's mobile phone. The accused were taken into judicial custody for fourteen days. All four accused were killed in a police encounter on 6 December 2019, under a bridge on Bangalore Hyderabad national highway, while they were in police custody. According to the police, the suspects were taken to the place for a reconstruction of the crime scene, where two of them allegedly snatched guns and attacked the police. In the sudden shootout, all four suspects were shot dead. Police demanded strict and organized fast-track court laws against rape and rapist.

Encounter of four
The four suspects274 united together and began attacking the officers with stones and sticks, they also took away weapons from the officers and started firing. The officers tried to maintain peace and asked them to surrender but they continued their firing. Lastly, the police had to respond and the four were killed. News of the police action led to the celebration all over the country, many went to twitter and Facebook to applaud the police.

People who supported the encounter were- Akhilesh Yadav, Mayawati, Jaya Bachchan, Saina Nehwal, Vivek Anand Oberoi. And who spoke against the encounter are- Sitaram Yechury, Yogendra Yadav, Vishal Dadlani, whereas Shashi Tharoor, Rajeev Chandrashekhar and Arvind Kejriwal took the middle ground.

Laws
Section 375 of Indian penal code provides for rape, according to the first clause, sexual intercourse by a man with a woman against her permission leads to rape if it does not fall under the exception given in the section. The expression ‘against her will’ means that the act is done in spite of opposition on the part of the woman. An element of force or compulsion is present. It imports that the victim has been forced by the man. It shows that the man has used

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coercion against her. Where the accused had sexual intercourse with the woman victim by overpowering her and while the other accused had held her hands tightly, it was held to be a case of rape.

If the sexual intercourse by a man with a woman is without her consent, it amounts to rape under the second clause if it does not fall under the exception given in this section. According to section 90 of the Code, consent given under fear of injury or under a misconception of fact is not a valid consent if the offender is aware or has reason to believe that the consent was given in consequence of such fear of injury or misconception, or, if the consent is given by the victim who because of unsoundness of mind or intoxication is not able to understand the nature and consequences of the act to which she gave her consent. The third part of the section that the consent is not valid if it is given by the victim who is under twelve years of age, unless the contrary appears from the context, does not apply to rape cases because the contrary does appear from the context in the form of the sixth clause as well as the exception given in section 375 wherein consent given by a girl under sixteen years of age is immaterial, and sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape respectively.

A sleeping person cannot give consent.

Where a man performs sexual intercourse with a woman with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of injury, he is guilty under the third clause of committing rape. Under this clause the prosecution must prove that the offender had put either the victim or any person in whom she is interested in fear of death or of injury and her consent was obtained because of this fear. Section 376 provides for the punishment of rape, it says he shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which extend to ten years and shall also be liable to fine unless men raped his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both. The Supreme Court clarified that consent is great defense for accused and he has to place materials to show that there was consent.

Fourthly, where a man has sexual intercourse with a woman with her consent when he knows that he is not her husband but she has given her consent because she believes that he is another man to whom she is, or believes herself to be, lawfully married, it amounts to rape under the fourth clause. Knowledge on the part of the man that he is not the husband of the woman with whom he is having sexual intercourse and that she has given her consent because she believes him to be another man who is her husband is the essential requirement of this clause. Fifthly, a man is guilty of committing rape if he has sexual intercourse with a woman with her consent, when, at the time of giving such consent, by reason of either unsoundness of mind or intoxication or the administration by him either personally or through any other person of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. The sixth clause of the section states that a man is guilty of

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committing rape who has sexual intercourse with a woman with or without her consent when she is under sixteen years of age. This clause specifically makes consent given by a woman under sixteen years of age of no importance at all in rape cases.

The exception to this section provides that sexual intercourse by a man with his own wife is not rape if the wife is not under fifteen years of age. This age limit was first raised to thirteen years by Act XXIX of 1925, and then to fifteen years by Act XLII of 1949. This exception has been added with a view to keep a check on husbands who may be inclined to take advantage of their marital status prematurely. A husband should not have a right to enjoy the person of his wife without taking into consideration her physical safety first. It was held that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. In other words, it is not necessary for this offence that there must be a complete sexual intercourse. The private part of a man must penetrate the private part of the woman; it is not mandatory to know as to how far it has entered.

Relevancy of fast-track courts
It was introduced in the year 2000 in order to decrease the burden of high courts and district courts. These are the special kind of courts having additional jurisdiction over sexual offences and children cases. The aim of the fast-track court is to resolve huge number of cases in a limited period of time. The 11th Finance Commission had suggested a scheme for the establishment of 1734 fast-track courts for the quick disposal of cases pending in the lower courts. In this regard, the Commission had allocated Rs 500 crore. FTCs were to be established by the state governments in consultation with the respective High Courts. An average of five such courts was to be established in each district of the country. The judges for these courts were appointed on an adhoc basis. The judges were selected by the High Courts of the respective states. There are primarily three sources of recruitment. First, by promoting members from amongst the eligible judicial officers; second, by appointing retired High Court judges and third, from amongst members of the Bar of the respective state. These courts were initially established for a period of five years (2000-2005). However, in 2005, the Supreme Court directed the central government to carry on with the scheme, which was extended until 2010-2011. The government discontinued the FTC scheme in March 2011. Though the central government stopped giving financial assistance to the states for establishing FTCs, the state governments could establish FTCs from their own funds. The decision of the central government not to finance the FTCs beyond 2011 was challenged in the Supreme Court. In 2012, the Court upheld the decision of the central government. It held that the state governments have the freedom to decide whether they want to continue with the scheme or not. However, if they decide to continue then the FTCs have to be made a permanent and stable feature. As of September 3, 2012, some states such as Arunachal Pradesh, Assam, Maharashtra, Tamil Nadu and Kerala decided to continue with the FTC scheme. However, some states such as Haryana and Chhattisgarh decided to discontinue it. Other states such as Delhi and Karnataka have decided to continue the FTC scheme only till 2013.

Conclusion
There is no justification and applicability of the notion of rape in current fast evolving world. This can be destructive as well as fatal for the women’s mental and emotional
state of mind. Rape and sexual assault are amongst the most injurious crimes a person can do. The effects are devastating including unwanted pregnancy, sexually transmitted infections, sleep and eating disorders etc. Exact information about the extent of sexual assault and rape is difficult to obtain because most of these crimes remain unreported. If we put light on Hyderabad rape case then encounter like this is not a solution to deal with the crime and it will not decrease the crime rate. If we will encourage this kind of encounters then one day innocents will get trapped in it surely.

Suggestions
Some of the preventive methods through which these kinds of crimes could be eliminated are as follows:

- Students must be taught in the school about sexuality and sexual intercourse.
- Laws for rape and sexual assault should get strict and more humiliating.
- Fast-track courts must be established in each and every district to deal with such heinous crimes rapidly.
- Women today who suffer from such crimes must be made aware about their rights and remedies made available to them.
- Women should raise their voice against such inhuman treatment backed by support from the society. Indian culture has always given importance to equality, strength and not to abuse and control.
- The legislature must look into the problem of enacting fresh laws for crimes as devastating as rape.
CLIMATE EMERGENCY - CAN COMPANIES AROUND THE GLOBE ACHIEVE A CARBON-NEUTRAL FUTURE?

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Abstract  
This article investigates on how companies are being affected by the complication of climate change across the globe since past decade and how they take action by identifying this emergency as the ‘need of the hour’. The paper mainly focuses on companies’ shift from traditional investing methods to Sustainable Responsible Investing (SRI) methods. It also highlights the importance of International Economic Law in formulating multiple strategies towards promoting and achieving a green economy. It reveals how companies need to take collective action in the investment value chain with respect to the financial aspect to deal with the quandary of climate change. It also focuses on how the assets of the firms, in India and abroad, are being shifted into climate-friendly investments such as wind and solar energy through various investment instruments such as green bonds. It throws light on how investors now have a number of new options for shifting their portfolios from high-risk industries towards an Environmental, Social, and Governance (ESG) and forward-thinking industries at home and abroad, helping in reshaping the global economy. An explorative and field based research methodology was adopted to write the paper.

Keywords – Sustainable investing, carbon tax, green bonds, renewable investing, disinvestment, Environmental, Social and Governance (ESG) goals, Indian companies, green economy.

Introduction  
“We’re in a giant car heading towards a brick wall and everyone’s arguing over where they’re going to sit.” – David Suzuki, Canadian academic.

With climate emergency being the word of the year in 2019, it is evident that climate change is the biggest threat in the contemporary period. Humans have destabilized the biological system of the entire planet on multiple fronts. Human activities in order to meet the need of the hour, such as CO₂ emissions, burning of fossil fuels, clearance of forests and the list goes on, poses a huge risk to humanity. If this continues in the same pattern, it is leading to an irremediable cataclysm. Not only the climate change is being discussed on the aspects of environmental challenges, but also, first time in the history of mankind, climate change is causing a new type of psychological disorder known as ‘eco-anxiety’. While the term eco-anxiety was introduced relatively recently, the point that it is based upon is not new. An interesting version of the term eco-anxiety is ‘pre-traumatic stress disorder’—a term coined by Lise Van Susteren, a psychiatrist who specializes in the psychological effects of climate change. While the term eco-anxiety was introduced relatively recently, the point that it is based upon is not new. An interesting version of the term eco-anxiety is ‘pre-traumatic stress disorder’—a term coined by Lise Van Susteren, a psychiatrist who specializes in the psychological effects of climate change. It is not solely enough only to acknowledge this challenge, it is critical that we act upon it now. According to the World Trade Organization (WTO), International economic law has a prominent role to play in the regulation of climate change, with respect to technology.
diffusion and unilateral, bilateral, regional and plurilateral responses to multilateral negotiation failure and this law places limitations on the right of national and sub-national governments to deal with climate emergency. Given the present issue in reaching multilateral agreements, mostly countries will have to develop and implement climate change policies and laws in the constraints of the existing legal, economic and financial framework. Multilateral negotiation dysfunction, and the changes in the economic growth, technological capacity and Green House Gases (GHG) emissions of developing countries since 1992, has made the United Nations Framework Convention on Climate Change (UNFCCC) approach ineffective and out-dated to alleviate the problem of climate change. To satisfy the different approaches to stricter international mitigation requirements and to address their own adaptation needs, low- and middle-income countries must solve supply-side constraints in a very manner that meets their obligations in numerous areas of international economic law.

**Economic Outlook of Lucrative Industries**

Why do modern industrial economies pollute so much? Essentially, because it is more expensive to clean up the pollutants, than it is to dump them into the environment. Nobody wants to pollute, but environmental protection, like all other economic decisions, comprises an economic trade-off. Companies, countries and consumers now need to decide how much they are ready to pay to keep the environment clean and healthy. And this decision, essentially, must be an economic one. According to International Energy Agency (IEA), energy-related greenhouse gas emissions will continue rising through at least 2040, due to absent effective new policies. A carbon tax or carbon pricing is insufficient to deal with the challenge of climate change as it does little to stimulate investment in alternative sources of energy while leaving corporations and company’s free to continue polluting. Hence, addressing climate requires collective action and collaboration across the investment value chain and financial industry can be used as a lever for environmental action by investing in new technologies.

**Sustainable Investing**

Research suggests that opportunities arising from the energy transition will actually outweigh climate-related risks in the long term. Individual firms also have a steward duty to address climate-related opportunities to enhance the value of investment. Furthermore, financial institutions are realizing that the transitions to the lower-carbon future, including understanding which assets are to become stranded, will also create investment opportunities. An alliance of corporations known as “we mean business coalition”, is advocating businesses to adapt sustainable practices in kind. The coalition has organized more than 400 businesses such as IKEA, Sony, and Coco-Cola etc; to commit

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to sustainability\textsuperscript{281}. Betwixt adopting science-based emission curtailing targets and increasing credence in renewable energy sources, firms are striving to be a driving force towards a carbon-neutral future. According to a Morgan Stanley equity search report, five out of 10 companies have identified climate change as a risk factor. Ergo, what can investors do to orient their portfolios with sustainable businesses? The simplest method would be disinvestment: avoid investing in the least sustainable companies that are contributing to climate change and economic damage that comes along with it. Recent survey shows that more than 400 institutions across 43 countries representing US$2.6 trillion in assets have already committed to disinvestment strategy. Yet avoiding unsustainable companies is just part of the investors duty to consider, and may not be the most strategic approach an investor can take. Nevertheless, big risks come from big opportunities. As stated by Bloomberg Business, investors with nearly $800 million in assets have concurred to shift money into more climate-friendly investments such as wind and solar energy\textsuperscript{282}. Investors now have a number of new options for shifting their portfolios from high-risk industries towards an ESG (Environmental, Social, and Governance) goal, sustainable and forward-thinking industries at home and abroad.

PART 1: WHERE TO INVEST

**Investment Instruments**
- Green bonds – Green bonds are designated bonds aimed at encouraging sustainability and cultivate environment friendly technologies. Green bond markets have grown significantly in recent years, with a record US$41.8b issued in 2015\textsuperscript{283}. Compared to other taxable bonds, green bonds comes tax incentives like tax exemptions credits which makes them more attractive and also provides a monetary incentive to tackle climate change. The scope for growth is enormous, given the potential for green bonds to finance the infrastructure, such as low carbon transport, required to achieve an energy efficient transition.
- Listed equities – Equity investment is the major source of capital to the company. Though it involves high risk, it assures significant capital or yield upside in the long run when issued by high growth companies.
- Equity Mutual Funds – Sustainable equity mutual funds has equal or lower volatility than traditional mutual funds and also has equal or higher median returns creating a positive relationship between corporate investment in sustainability and stock price and operational performance.
- Asset-backed securities (ABS) – Securitization offers growing scope for large asset owners to invest in small-scale assets, such as rooftop solar or wind. Residential solar ABS has been issued in markets including the US and China.
- Property and real estate – One third of global greenhouse gas emissions are a result of energy use in construction, presenting large opportunities for climate change mitigation.

\textsuperscript{281} Retrieved from https://www.wemeanbusinesscoalition.org/
The above mentioned are some of the investment instruments used to deal with the challenge of climate change. The below mentioned examples are some of areas where investors can invest seeking both competitive financial returns and positive societal impact.

**PART 2: INVESTING IN RENEWABLE MARKET**

1. **Renewable Energy Sources**
   The future is leaning toward renewable energy. According to research by McKinsey and Company, 77% of the new global electrical generation from now until 2050 will come from Wind and Solar energy.

   - Wind and Solar Power
     The product manufacturing companies of wind and solar are usually growth-oriented, don’t pay dividends and often have high valuations which may or may not be profitable at the present time. However, long term potential of solar power is the real thing. First Solar (FSLR) is an Arizona-based solar technologies company focused on R&D. As a dominant player in the solar panel space, and in light of the fact that First Solar is excluded from tariffs on solar panels, this company is poised for continued success going forward. Vestas (VWS) is a leading Danish maker of wind turbines, employing over 20,000 people with revenues of nearly 10 billion Euros.

     - Hydropower
       In the current economic climate, investing in hydropower is one of the few areas where a secure long-term income is available. Provided that good quality sites are selected and developed using good quality hardware, the returns can be extremely attractive. Aquila Capital, the investment company specializing in alternative investments, is in agreement with Portugal’s largest utility EDP to acquire a portfolio of 21 operational small hydropower plants with a capacity of around 100 MW in northern and central Portugal.

2. **Infrastructure, Buildings and Smart Mobility**
   The GHG emissions from buildings contribute almost 20% of global emissions. Sidewalk Labs, part of Alphabet Inc is harnessing digital technologies to solve today’s pressing urban problems such as solutions to hectic traffic congestions and traffic flows which helps reduce pollution dramatically.

   - Electric Vehicles
     The market for Electric Vehicles keeps on improving thanks to advances in technology (batteries, light materials) and government support across countries.

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287 ‘What is ETF trading?’ Retrieved from https://www.iforex.in/what-is-etf


289 Retrieved from https://www.sidewalklabs.com/
the globe (anti-pollution regulations, subsidies). In 2020, yearly sales of Electric Vehicles are to represent 3.9 million of new vehicles, or 3% of the global vehicles market. Investment opportunities related to smart mobility will also include specific commodities for car batteries (lithium, nickel, and cobalt), suppliers of electrical equipment and software or other innovative services for consumers such as carpooling.

3. Carbon capture and storage
The Intergovernmental Panel on Climate Change (IPCC) estimates that we will need to remove massive amount of CO₂ to avoid the worst of global warming. New research has shown different ways of capturing carbon from our atmosphere. New technology allows the capturing of CO₂ in power plants and even the use of CO₂ to grow plants. The iPath Global Carbon ETN allows you an exchange-traded product that invests in Intercontinental Exchange (ICE)-listed carbon futures. Europe currently has a robust market for carbon futures thanks to mandatory emissions programs and this year the benchmark for European carbon hit a 10-year high.

Can India pull off sustainable investing?
India accounts for just 0.1% of the overall global market for sustainable investment. However, investors are now looking at the Indian market from the ESG perspective. The emerging trend of sustainable capital flow makes it necessary for Indian corporates to accept the change. Currently, low demand for ESG in the Indian market is an important factor for India’s slow motion but supportive regulatory measures, increasing awareness, and push from investors can help boost India’s sustainable investment footprint. India has enacted regulations on improving corporate governance, with requirements to have independent directors, more accountability, transparent boards, etc., addressing potential conflicts of interests of stakeholders apart from the Corporate Social Responsibility (CSR) programme in section 135 under the Companies Act 2013.

Norway’s Government Pension Fund Global (GPFG), the world’s largest sovereign wealth fund, managing around $1 trillion—put many Indian metal, coal and thermal power companies on its exclusion or watch lists, citing environmental and climate fluctuation distress. In April 2016, GPFG divested from 13 leading Indian coal firms and made sturdy observations on ongoing transgressions in operations and increasing unaddressed human rights risks in a large Indian natural resource company. Several other top-league funds such as T-Rowe Price and Blackrock are also moving their portfolio to only include ESG-compliant firms.

A growing trend within in the sustainable investment space is thematic investment.

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Capital deployed for specific theme related investments have seen an increase globally within the previous couple of years. In India, an emerging trend of investment in clean energy space, water management etc. segment has been seen. For instance, the KBI Institutional Water Fund concentrates on investing mainly in securities of companies comprised in the water sector. The rising interest of investors in thematic investment in India is catalyzed by the fiscal policies of the country to a large extent and also the increasing demand for development of green infrastructure to attain its renewable energy target of 175 GW by 2022. Niche thematic investment is an agreeable investment opportunity which might potentially increase the probability of delivering high returns over time by investing in well-researched segments after reviewing of the sector exposure. Various initiatives in India like ‘Extension Scheme for Generation Based Incentive for Grid Connected Wind Power Projects’20, which intends to broaden investor base and facilitate Foreign Direct Investment (FDI) in the wind energy sector, inclusion of renewable energy under India’s central bank (RBI) revised guidelines for all scheduled commercial banks on priority sector lending21; and ratification of the Paris Climate Accord has made the investment landscape beneficial for investors intending to call on capital in thematic streams and hence growth potential for thematic investment strategy is foreseen for the country. Till now, approximately $40 million is deployed through niche themed investors in India. In 2015, India committed a concept to pull off 175 GW of renewable infrastructure by 2022. This can be enumerated as part of its commitment in the INDC (Intended Nationally Determined Contribution) and part of its drive toward energy security. Financing this outcome requires long-term capital that’s searching for infrastructure returns296. Estimates show that capital requirement is in the range of $2.5 trillion to $2.7 trillion between now and the year 2030. An advantageous policy landscape further makes funding of low-carbon transport, renewable energy projects, smart city project, energy efficiency projects etc., an attractive opportunity for investors. Green bonds are an effective tool to potentially provide long-term source of low-cost capital. The flourishing of green bonds is probably to continue and thematic investors may subscribe to green bonds in India. India projects manager, a green bond focused catalyst said, “There is a good growth potential of the green bonds market in India majorly driven by India’s renewable energy targets, smart city mission, etc. but significant hurdles exist in terms of financing mechanism, quality of projects structuring, financial health of Municipal Corporations/ULB’s, etc. which needs to be catered to so as to catalyse the market.” Some leading Indian business firms have begun to incorporate sustainability into their core functions. Conglomerates like Aditya Birla Group, Mahindra Group, Tata group etc.;

corporates such as Wipro, Infosys, Yes Bank etc.; Public Sector Undertakings such as SAIL (Steel Authority of India), GAIL India etc.; have all developed sustainability visions. The vision is typically tracked at a board level; and is operationally implemented by sustainability teams. Investor relations work to capture the actions and disclose ESG information within the sustainability reports and business responsibility reports. However, all of this is limited only to some Indian corporates and firms. Investors have a positive outlook towards India with respect to sustainable and responsible investing. Until recently, application of such investment strategies was thought to be a non-viable option in India for manifold reasons including low availability of data and low focus on corporate responsibility and governance. However, now with companies reporting on various ESG related frameworks such as Business Responsibility Reports, Global Report Initiative (GRI) reports etc., Indian businesses have become relatively more forthcoming on ESG data. Some companies are also positively responding to global standards and demand for corporate accountability, and hence to the present attractive investment opportunities. That trend is likely to continue.

Outcomes
Here are some of the beneficial outcomes of sustainable investing for tackling climate change.

- First and foremost, it slows down the effects of global warming by reducing CO₂ emissions, promoting a green economy.
- Increases the capacity for innovation and enhances competitiveness in Green Technology, thus creating employment globally.
- Sustainable investing is beneficial for investor, company as well as the environment, bringing a positive impact.
- The opportunity to maintain strong financial performance coupled with values-based investing is extremely attractive to many types of investors, especially millennials.

Conclusion
Overall, the future is bright for sustainable investing. Financial institutions around the world have a unique opportunity to shape the global transition to a low carbon economy helping clients to optimize climate-related risks and opportunities. If companies and firms adhere to the policies and laws in a responsible manner, we are not far from reaching the status of green economy globally. Sustainability should be viewed as a key commercial driver that can lead to improved financial and reputational outcomes, reducing the risk of a systemic financial crisis and helping in reshaping the global economy.


https://www.yesbank.in/pdf/esg_investing_scenario_in_India

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BLOCKCHAIN, CRYPTOCURRENCY: IS STATE REGULATION NECESSARY?

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ABSTRACT
Cryptocurrencies like bitcoin and Ethereum are decentralized, digital currencies relying on a peer-to-peer network which operates without the need for a third-party intermediary. Coupled with the lack of regulatory guidelines and its unique technical aspects create huge complications as well as more scope for research. The blockchain concept reflects the changing views and ideologies of society in terms of systems established on the basis of trust, especially the legal system. With the rise in market for use of cryptocurrencies throughout the world in the recent years, it is imperative to understand how blockchains work, their technology and future. Part A of this article begins with an introduction to blockchains which have heterogeneous and technical characteristics. The article goes on to explain the various costs and risks involved in transacting with cryptocurrencies. Part B of this article deals with the Howey test, and the current regulatory mechanism prevalent in the US and in India and best practices for cryptofunds.

PART A
BACKGROUND
Crypto currencies are created through a process called ‘mining’ which is characteristically a mathematical process, i.e., hash function. A ‘miner’ who has particular hardware processes the transaction. With every next set, it keeps getting difficult to solve and hence it’s supply is assumed to be constant. From an economics point of view, in the recent times, we see that the supply remains constant and there is a rise in demand which causes the price to keep increasing.

By solving the hash function, i.e., solving the puzzle, the node that receives the transaction authenticates it. Each network of nodes (computers) receives a certain amount of crypto currencies as a reward for authenticating. A ‘ledger’ is maintained to keep a record of each transaction and it can be of two types: centralized or decentralized. Centralized is when there is a single party who controls the database and software is run by him. Decentralized is when there is no single party and multiple nodes run the software. Once the transaction is verified, a ‘blockchain’ is formed. Blockchain is created when a block is added to the chain after verification by thousands of computers and is stored as a unique record. Each block contains a hash function, data of the previous block and transaction data. To falsify a single record would mean to falsify the entire chain of instances, which is near to impossible. Bitcoins work on proof-of-work basis where puzzle is solved and the property rights are assigned by that person who solves it first in the new block. Thus, in a decentralized setup, increase in capital investment can be helpful in acquiring control. 298

Once a bitcoin is formed, it can be traded for regular currency prevailing in the current market exchange rate and the

money is transferred to the purchaser’s wallet which has two keys. A private key is used to decode the bitcoins transferred to the wallet of the recipient. Private key remains only with the recipients. The payer can use his public key to encode payments. A ‘fork’ can be installed which can create modifications to the software. When a blockchain is “diverged into two paths forward” it is called a fork. It can be hard fork which means the software validating according to the old rules will render the news as invalid. Soft fork on the other hand, would be recognized as valid though there is change in rules. Thus, fork can either improve or upgrade the existing one or it could be to create a rival blockchain.

Hence, blockchain technology works by :
1. The means of creating virtual assets - "tokens," or "cryptocurrencies" - and assigning such assets an underlying value implemented through code, contract
2. A quantitative methodology for allocating ownership in these virtual assets and representing it publicly on a ledger
3. A platform for trade in these virtual assets, in exchange for Bitcoins, Ether (ETH), or other cryptocurrencies, all easily exchangeable for U.S. dollars (USD) and other major international currencies on the internet.

The value of the blockchain is represented by the intrinsic value of the block itself, i.e., the technological merit or the size of the users of the blockchain. It can also be valued based on the underlying assets which are dependent on performance of goods or services in the entrepreneurial sector.

Tokens are placed in the public domain through an Initial Coin Offering (ICO) which is similar to the initial public offering, IPO in the traditional market. The key difference between the crypto market as compared to the traditional one is that, in the traditional market, that is the IPO the number of units (shares) being offered to the public are specified whereas in the crypto market, the unit size keeps growing as mining process constantly and continuously keeps occurring. In the crypto market there is no underwriter, credit rating, intermediaries and the transaction is carried out through a ‘smart contract’. The legally binding contract of the blockchain is given in its code which is the software. It is not easily comprehensible to the layman as it requires technical knowledge of programming and hence companies create a ‘white paper’ to provide details about the offering. The white paper makes the functioning of the blockchain understandable to the common man by limiting the use of technical jargons. This is a part of their marketing initiatives and is in English. However, it is often noted that there are significant differences between the code of the blockchain and the white paper offered to the public.

THE IDEA OF TRUST IN CRYPTOCURRENCY
Let us consider the examples of Bitcoin and Ethereum.

- Bitcoins were created by Satoshi Nakamoto who released a white paper "Bitcoin: A Peer-to-Peer Electronic Cash System" in 2008 and implemented the same software. The concept of trust is not present as there is no institution like a centralized bank to regulate. This also gives rise to the problem of double spending where it is hard to prevent people from spending the same digital cash twice.

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To tackle the issue of trust, bitcoins follow the proof of work approach which involves solving a mathematical algorithm function within a specified amount of time. Timestamp server is another way to tackle this issue by "taking a hash of a block of items to be timestamped and widely publishing the hash, such as in a newspaper of Usenet post. The timestamp proves that the data must have existed at the time, obviously, in order to get the hash."

- Ethereum is another blockchain and the cryptocurrency is Ether. It deals with a concept wider than trust- the problem of having an agency to regulate the blockchain. In order to make it decentralized, ethereum works based on 'smart contracts' which has programmed rules as to how the block will function. However, in 2016, DAO-Decentralized Autonomous Organization faced a loss of $50 million due to hack in the ‘smart contract’ which had an error. Since such a contract is a “one-way train”, the only way to remedy this was to create a ‘fork’, thereby splitting into Ethereum Classic- the original Ethereum blockchain that continues to run alongside the fork, Ethereum Hard Fork (ETH) created.

COSTS AND RISKS INVOLVED

- Controlling costs: Controlling occurs when a person significantly influences the blockchain and its operation. In a decentralized setup of blockchain, it is not possible for a single party to have control as there is no intermediary. However, in reality, the controlling costs occurs on various degrees and is based upon any party exerts any control, whether such control involves cost, i.e, diverting cryptocurrency to himself or agent, and whether ultimately, this leads to an abuse of the other token holders.
- Monitoring costs: An ex-ante evaluation of the merit of the investment and an ex-post evaluation of its performance is involved in monitoring costs. An on-chain blockchain does not involve monitoring costs as it has automated verification. When the token is dependent on underlying assets or technologies which are subject to future market transactions are called off-chain transactions. Such transactions require high monitoring costs as they are prone to manipulations.
- Technological risk: Blockchain is exposed to risks of bugs, manipulation, coding mistakes and cyber-attacks. Unlike traditional contracts, bitcoin contract cannot be altered as they are to a large extent immutable. They do not have ex-post remedy of approaching the court.
- Systemic risk: Blockchains involve technical jargons which a common investor will not be able to process at ease and hence there is a lack of well-informed investors. Another systemic risk is with regards to forks being created with new currency being created on top of original blockchain stakeholders. The third risk is related to the ‘stickiness’ of the contracts, i.e., rigidity of the contracts which makes it extremely difficult to alter.

PART B

WHETHER THESE ARE INVESTMENT CONTRACTS? - HOWEY TEST

Under Sec 2(1) of the Securities Act, 1993 of the US defines securities and it includes ‘investment contracts’. SEC v WJ Howey

Co.\textsuperscript{302} is the case that laid down the test for whether a particular transaction can be classified as an investment contract. The test is four-fold: (1) investment of money (later interpreted to include other considerations as well) (2) in a common enterprise (3) with an “expectation of profits” (4) with the efforts of others. There are three ways through which court can determine whether the investment is in a common enterprise. Under horizontal commonality, unlike stock of a company, bitcoin fund is not polled together into one entity. However, though there is no pooling of funds, the investors share the risks and rewards of their investments. Vertical commonality is not satisfied as there is no “direct correlation between the promoter’s success or failure and the investors’ profits or losses.” Finally, the broad vertical commonality is also not satisfied as the investors of bitcoins contracts do not rely upon the promoter’s managerial proficiency and efforts. In addition to this, the profits are not dependent upon the efforts of others as the ability to mine, control and sell one’s own coins remains with the investor itself. Hence, bitcoins do not satisfy the Howey test.

No comprehensive federal regulation exists for virtual currencies.\textsuperscript{303} Securities law and other forms of regulations in the cryptocurrency regime are subject to international law and policy theory. There would be a conjuncture globalization and state laws, free markets and regulation and capitalism and anarchy. The questions over extraterritorial jurisdiction of states also come into question. The justification for applying securities laws to blockchains would be that it ensures mandatory disclosures thereby protecting the vulnerable investors by removing information asymmetry between them and the offerors. It ensures standardization and provides a benchmark based upon which investors can make decisions rather than just providing raw data. Corporate governance and transparent system is one of the other benefits of regulation.

This makes policy-making to reach a conflicting position. On one hand there is investor protection which is the prime aim of securities laws and on the other, the risk of limiting innovation and technological advancements which thereby hinders the growth of start-ups that use bitcoins for raising capital, through tedious disclosure and registration requirements. \textsuperscript{304} Cryptocurrencies pose political constraints as by making it subject to regulations made by the Securities Exchange Commission (SEC) [a regulatory body in USA enforcing securities laws] the very core of the blockchain system which is to detach the intervention of states and regulators, is lost. SEC would ultimately extend its reach to ascertain power over these private markets as well.

\textbf{CURRENT REGULATORY MECHANISM IN INDIA}

Though at present, there is no regulatory framework governing bitcoins it has not been declared to be illegal to be transacting with them. The Serious Fraud Investigating Office (SFIO) under the Ministry of Corporate Affairs has been directed to collect data regarding the use of bitcoins in corporate entities. The versatile nature of

\textsuperscript{302} SEC v. W.J. Howey Co., 328 U.S. 293, 297 (1946).
\textsuperscript{303} Trevor I. Kiviat, Beyond Bitcoin: Issues in Regulating Blockchain Transactions, 65 Duke L.J. 569 (2015)
cryptocurrencies leads to a difficulty in classifying it into a computer programme or a security or derivatives or, goods and services, or a currency. If it is to be classified as a good or service it would be drawing tax implications under the relevant GST Acts. If it were to be treated as a currency it has to satisfy the criteria as given in the Foreign Exchange and Management Act (FEMA), 1999. Foreign currency must satisfy the definition as laid in the RBI Act and it must be legally accepted as unit of account in some other country. If bitcoins are to be classified as currency, then there would not be any tax implications. Furthermore, as cryptocurrencies are expressed in codes providing a scope of interpreting them as computer programmes thereby making them eligible for protection under the Copyrights Act, 1957.

The traditional securities market as regulated by SEBI is extremely volatile in nature. Similarly the volatile nature of cryptocurrencies gives an impression that they are securities or derivatives. Sec. 2(h) of Securities Contracts and Regulations Act (SCRA), 1955 defines securities. The central idea is that it must be issued by an ‘issuer’. Cryptocurrency, on the other hand, is not issued by any authority, hence is decentralized. Thus unless it is issued by Central government, cryptocurrency will not fall within the ambit of the definition of securities. Derivative is a contract to hedge risk and derives its value from an underlying asset. It does not hold an independent value. Cryptocurrency is not a contract per se and are independent in nature. Hence, they are not covered under the definition of derivative as well. 305

Various contracts and consumer laws are not sufficient enough to encompass the needs of the issues arising out of misuse of cryptocurrency. The remedies offered by contract laws such as damages, restitution, specific performance, rescission will not be wide enough to mitigate the damage caused. Consumer welfare legislations provide ex-post remedy by making a representation in courts. Moreover, courts are institutionally ill-equipped with the relevant technical knowledge about blockchains and cryptocurrency.

In order to bypass securities laws regulation and rather than being termed as an investor, issuers concentrated on channelizing purchase motivation to that of consumers who are only protected by contractual rights. Returns are distributed in assets and are popularized by websites. The open platform for discussion among the crowd ensures that only accredited investors may invest and there is a cap on the maximum amount that can be raised. Some precautions must be taken by investors such as never transmitting the keys electronically through email, upload, etc. Managing keys with a secure electronic wallet and limiting trading authorization are some other methods to ensure investor protection. 306

CONCLUSION

With the huge uncertainty lurking around use of cryptocurrency, the legislators and courts all around the world have a unique policy decision to make. The challenges faced to render it beyond scope of securities regulation and the risks involved in investing in cryptocurrencies have been discussed. There is a need for India to decipher the nature of cryptocurrency and

305 Hatim Hussain, Reinventing Regulation: The Curious Case of Taxation of Cryptocurrencies in India, 10 NUJS L. Rev. 792 (2017)

classify it into a security, currency or commodity or any other definition in order to decide upon the tax implications of the same.

The thin line between adequately regulating this market and ensuring a decentralized platform must be constantly balanced. Another delicate issue which must be considered by regulators is hindering the growth of entrepreneurs who could raise capital at ease by using cryptocurrency. The current public enthrallment and increasing demand, regulators are bound to tailor the scope of regulation appropriately with the risks in mind.
Indian Lawyering Association & Ors v The State of Kerala & Ors

By Kirti Goyal and Simran Arora
From Ideal Institute of Management and Technology and School of Law and Asian Law College; respectively

Introduction:
It is the international accepted certainty that the denomination and divinity do not mug discrimination but religious practices are sometimes seen as eternalize thereby nullify the basic holder of denomination and of gender justice. The socio cultural attitudes are recognized as too revolving around the devoted patriarchal mindset thereby diminishing the status quo of women in the social and religious context. Religion is basically a step of life to realize ones identity with the divinity. Nevertheless, certain percepts and privileged practices and rituals have resulted in inconsistency between the true essence of denomination or divinity and its practices that has come to be perpetuated with devoted patriarchal impairment. Sometimes, in the name of essential and integral facet of the faith, such practices are zealously cultivated.

FACTS:
1. The speedy writ petition would rather have under Article 32 of the Constitution seeks issuance of directions against the Government of Kerala Devaswom and Board of Travancore.
2. Chief Thanthri of Sabrimala Temple and the District Magistrate of Pathanamthitta to set the restriction on entry of female devotees between the age group of 10 to 50 years to the Lord Ayyappa Temp-le at Sabrimala which has been denied to them on the basis of certain custom and usage.

ISSUE:
2. The expression “morality” or “constitutional morality” has not been defined in the Constitution. Is it overarching morality in reference to preamble or limited to religious beliefs or faith.
3. Whether Ayyappa Temple has a denominational character and, if so, is it permissible on the part of a “religious denomination” managed by statutory board and financed under Article 290-A of the Constitution of India.

Arguments:
Petitioner:
- Sabrimala pilgrimage was to be undertaken (41 Days ceremony) and all the customs and rituals must be full filed.
- Naishik brahmchari.
- There is no violation of Article 14, 15, 25 and 26 of the Indian Constitution as the restriction is only in respect of women of a particular age group and not women as a class. If the practice of restriction to the entry of women is made for women as a class, then only it will violate the above-
mentioned Articles of the Indian Constitution.\(^{307}\)

**Respondent:** Petitioners in their arguments stated that menstruation is not impure, and the women should have equal rights to enter into a sabrimala temple. In a Devaru case, it has been submitted that a religious denomination cannot completely exclude or prohibit any class or section for all times. All that a religious denomination may do is to restrict the entry of a particular class or section in certain rituals.\(^{308}\)

**The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):**

It is adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination and India is also part of this conventions.

The international conventions must follow when there is a void in the domestic law or when there is any inconsistency in the norms for constructing the domestic law.\(^{309}\)

**Judgement**

1. The restriction imposed on women aged between 10 to 50 from entering into Sabrimala temple and offering worship in the temple. It is in accordance with the usage prevalent from time immemorial. Such restriction is only in respect of women of a particular age group and not women as a class. If the practice of restriction to the entry of women is made for women as a class, then only it will violate the Articles of the Indian Constitution. (Held by 9 Judges Bench of Supreme Court).

2. Review petition:

It was held that the women aged between 10 to 50 years were also to offer worship. Constitution says ‘all people’ are ‘equally’ entitled irrespective of their caste, colour, religion, gender, etc. Constitution of India is given more importance to the fundamental rights of a person other than the customs and usages. Hence, it was held that Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 is violative of Article 25(1) of the Constitution of India and ultra vires Section 4 of the 1965 Act.\(^{310}\)

**CRITICAL ANALYSIS:**

Article 25[1], by employing the expression ‘all persons’ demonstrate that the freedom of conscience and the right to freely profess, practice, and propagate religion is available, though subject to the restrictions delineated in Article 25[1] itself, to every person including women. The exclusionary practice being followed at the sabrimala temple by virtue of Rule 3[b] of the 1965 Rules violates the right of Hindu women to freely practice their religion and exhibit their devotion towards Lord Ayyappa and stipulates exclusion of entry of women of the age group of 10 to 50 years, is a clear violation of the right of Hindu women to practice their religious beliefs which is consequence, makes their fundamental right of religion under Article 25[1] a dead letter.

\(^{307}\) S. Mahendra V. The Secretary, Travancore Devaswom Board, Thiruvananthpuram and others (AIR 1993 Kerala42)

\(^{308}\) Sri Venkatramana Devaru V. State of Mysore (1958) SCR 895 : 1958 AIR 55

\(^{309}\) Vishaka and others V. State of Rajasthan and Others (1997) 6 SCC 241

\(^{310}\) Doctrine of severability.

www.supremoamicus.org 151
De Jure, the judgement should be within the lines of the Constitution must not the intention to harm. [Animus Nocendi] and what is needed to be changed has to be changed [Mutatis Mutandis] as said by the Constitution of India.

*****
FREEDOM OF SPEECH V/S FREEDOM OF DISSENT

By Liza N. Vanjani
From GLS Law College

INTRODUCTION:

Article 19. Protection of certain rights regarding freedom of speech etc
(a) All citizens shall have the right
(b) To freedom of speech and expression;

Article 19 of Indian Constitution, 1949:
Freedom of speech and Expression

The main elements of right to freedom of speech and expression are as under:
1. This right is available only to a citizen of India and not to foreign nationals.
2. The freedom of speech under Article 19(1)(a) includes the right to express one’s views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc.
3. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.
4. This restriction on the freedom of speech of any citizen may be imposed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of Article 19(1)(a).

The Grounds on Which This Freedom Could Be Restricted

Clause (2) of Article 19 of the Indian constitution imposes certain restrictions on free speech under following heads:
1. Security of the state
2. Friendly relations with foreign states
3. Public Order
4. Decency and morality
5. Contempt of Court
6. Defamation
7. Incitement to an offence
8. Sovereignty and integrity of India

CASE LAWS:
In the case of Indian Express v. Union of India, it has been held that the Press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of Press includes freedom of publication, freedom of circulation and freedom against pre-censorship.

1. (1985) 1 SCC 641
2. 1995 SCC (5) 139
4. 1989 SCR (2) 204
5. 1978 AIR 597
6. 1986 3 SC 615

In Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd., the Supreme Court held that a commercial advertisement or commercial speech was also a part of the freedom of speech and expression, which would be restricted only within the limitation of Article 19(2). Supreme Court held that advertising, which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product-advertised. Public at large are benefited by the information made available.
available through the advertisements. In a democratic economy, free flow of commercial information is indispensable. The Supreme Court observed in *Union of India v. Assn. for Democratic Reforms*3, "One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions".

In *S. Rangarajan v.P. Jagjivan Ram*4, everyone has a fundamental right to form his opinion on any issues of general concern. Open criticism of government policies and operations is not a ground for restricting expression. Intolerance is as much dangerous to democracy as to the person himself. In democracy, it is not necessary that everyone should sing the same song.

In *Maneka Gandhi vs Union of India*5, the Supreme Court considered whether Article 19(1)(a) of Indian Constitution was confined to Indian territory and held that the freedom of speech and expression is not confined to National boundaries.

In the case *Bijoe Emmanuel v. State of Kerala*6 regarding National Anthem, three students were expelled from the school for refusal to sing the national anthem. However, the children stood up in respect when the national anthem was playing. The validity of the expulsion of the students was challenged before the Kerala High Court and they upheld the expulsion of the students on the ground that it was their fundamental duty to sing the national anthem. However, on an appeal being filed against the order of the Kerala High Court before the Supreme Court, it was held by the Supreme Court that the students did not commit any offence under the Prevention of Insults to National Honour Act, 1971. Also, there was no law under which their fundamental right under Article 19(1) (a) could be curtailed.

**RIGHT TO DISSENT**

In any secular democracy, the right to equality, the freedom to practice one’s faith and the right to life with dignity go hand in hand with the freedom of expression which includes the right to dissent. If minority rights are inconceivable except in a democracy, democracy itself is unimaginable without the freedom of expression. The freedom of expression in turn is meaningless without the right to dissent.

“Mujh ko to sikhadi hai afran ne zandaqi
Is daur ke mulla hain kyun nang-e-mussalmani?
(The West may have taught me faithlessness,
But why are the mullahs of this age a disgrace to Islam?)

Mohammed Iqbal, renowned poet.

**Dissent**

Women’s organizations, students, trade unionists and some sections of the Bangladeshi academia have strongly condemned this “fundamentalist attack on an individual’s freedom of expression”. Internationally, hundreds of renowned writers led by the post-war novelist, Gunter Grass, have risen to Nasreen’s defence and have launched strong protests with the Bangladesh government.7

7 https://cjp.org.in/freedom-to-dissent/
An issue that has lately gained traction is the argument made by proponents of an absolute and unfettered right to free speech and expression. In light of the recent booking of an assistant professor of a Delhi University college for an alleged Facebook post (later deleted) on Goddess Durga that hurt the sentiments of many, there is an urgent need to examine where to draw the line whilst upholding our fundamental rights.

Article 19(1)(a) of the Indian Constitution grants every individual the fundamental right to freely speak and express opinions. But even fundamental rights are not absolute. Article 19(1)(a) comes along with reasonable restrictions under Article 19(2) in which Clause IV rightly mentions of adopting decency and morality in one's speech. The other equally significant restrictions are for securing the safety of state, friendly relations with foreign states, public order, sovereignty and the integrity of India, and preventing contempt of court, defamation and incitement to an offence.

But under the garb of free speech, abusive and indecent language has commonly become an unquestionable part of one's communication. It seems the right to freedom of speech and expression has given way to the right to freedom to abuse another's beliefs. Violence of language and language of violence has become the norm. Sheer abuse never makes it to the cut when it's about free speech and really has no place even in dissent. Of course, the right to dissent verily makes Article 19(1)(a) healthy, prosperous and democratic.

India, since ancient times, has placed great emphasis on the tradition of shastrath. The Constitution-making debates and early post-Independence parliamentary debates, reflect the good health of our tradition to deliberate, discuss, and dissent. India has always boasted of its debate tradition, as it were, but dissent these days is largely becoming synonymous with filthy, hurtful and abusive language.

Unhindered flow of free ideas can only be maintained when a certain level of decency and decorum is maintained in speech. Abuse is an act that is carried out not with the objective to have a reasoned debate and discussion and come to an agreeable solution. Rather, the participant becomes an opponent in an act of abuse and the sole purpose then becomes to degrade, humiliate and deliberately attack the other's self-worth. In this process, the executor elevates his position by assaulting others' images, symbols and signs of belief. So, the abuser is not engaging in any discussion, rather s/he is spewing invectives and diluting the real essence of free speech.

The maturity and development of any civilised society is gauged by the decency and moral approach adopted in communications to resolve a crisis. Decency is the basic tenet of communication. It is the sign of a patient person who has the qualities of valour and grit. And when an abuser violates basic norms of decency, it is fair to assume that s/he has an approach predicated on not an intention to communicate and engage but to domination and/or humiliation. The short-term benefits of abuse may lead to immediate gains by mocking others' symbols or gaining cheap popularity but in the longer run it hollows out trust and
confidence. Such an attitude also smacks of regression and deters peace and prosperity of society. But sadly, abuse has become a part of popular culture.

Right to dissent walks closely with duty to be decent. Dissent or free speech can only be accepted if it’s decent in language. And decency is not a contested term. No one can claim abuse to be decent. Speaking of the case of the Delhi University professor, he has abused a tradition that showcases one of the most tolerant and inclusive religions of the world. The very fact that he has been able to make a derogatory statement on a public platform shows the golden virtue of tolerance in Hinduism. Hinduism itself has been premised on the rich liberal philosophy of each pursuing his or her faith in their own individual and convenient manner. 8


“Right to dissent is a core principle of democracy”: Romila Thapar

“The right to dissent is a core principle of democracy and the State must acknowledge the validity of this right. In a true democracy, the right to dissent and the demand for social justice are core concepts. Since it includes all citizens, its inclusiveness requires it to be secular,” she said, delivering the 12th V.M. Tarkunde memorial lecture on the topic — Renunciation, Dissent and Satyagraha. She said the lecture was also being held on the anniversary of the demolition of the Babri Masjid, “an important symbol of our civilisation reduced to rubble. The rubble remains as a reminder”. Having tracked the continuity of dissent and counterculture through Indian history and linked it to the overwhelming response to Mahatma Gandhi’s call for satyagraha, Prof. Thapar said the right to dissent remains important in modern times. “It remains open to the citizen immersed in the ideology of secular democratic nationalism to articulate this new relationship by reiterating the right to dissent,” 9

NEW DIMENSIONS:

Government has no monopoly on electronic media: The Supreme Court widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen has under Art. 19(1)(a) a right to telecast and broadcast to the viewers/listeners through electronic media television and radio any important event. The government can impose restrictions on such a right only on grounds specified in clause (2) of Art. 19 and not on any other ground. A citizen has fundamental right to use the best means of imparting and receiving communication and as such have an access to telecasting for the purpose.

Telephone Tapping: Invasion on right to privacy: Telephone tapping violates Art. 19(1)(a) unless it comes within grounds of restriction under Art. 19(2). Under the guidelines laid down by the Court, the Home Secretary of the center and state governments can only issue an order for telephone tapping. The order is subject to review by a higher power review committee and the period for telephone tapping cannot exceed two months unless approved by the review authority.

Commercial Advertisements: The court held that commercial speech (advertisement) is a part of the freedom of
speech and expression. The court however made it clear that the government could regulate the commercial advertisements, which are deceptive, unfair, misleading and untruthful. Examined from another angle the Court said that the public at large has a right to receive the “Commercial Speech”. Art. 19(1)(a) of the constitution not only guaranteed freedom of speech and expression, it also protects the right of an individual to listen, read, and receive the said speech.10

EXECUTION OF DEATH PENALTY; A MERE DREAM FOR THE PEOPLE OF INDIA

By Liza N. Vanjani and Kavita Narottamdas Dubay
From GLS Law College and Saurashtra University; respectively

INTRODUCTION:

Indian Criminal jurisprudence is based on a combination of deterrent and reformative theories of punishment. While the punishments are to be imposed to create deter amongst the offenders, the offenders are also to be given opportunity for reformation. The courts while imposing death sentence has to record its special reasons as to why the court came to the conclusion. The actual pronouncement is no big deal but the actual execution is the real disaster.

The Death Penalty India Report (DPIR) was launched on 6 May 2016 and contains the findings of the Death Penalty Research Project (DPRP) which was conceived in June 2013, with an aim to address the glaring absence of empirical research on the death penalty in India.

Capital Punishment is laid down as a penalty in several legislative Acts, such as:

- Indian Penal Code, 1860
  - Under the IPC eleven offences are punishable by death. For ex-Murder, Abetment of suicide by a minor or insane person, Dacoity with murder etc.

- Army Act, 1950, the Air Force Act, 1950 and the Navy Act 1956
  - A death sentence may also be imposed for a number of offences committed by members of the armed forces.

- The Commission of Sati (Prevention) Act, 1987

- Prescribes punishment by death for any person who either directly or indirectly abets the commission of sati (immolation of a widow).

- The Narcotics, Drugs and Psychotopic Substances (Amendment) Act, 1988
  - Introduced the death penalty as a punishment for financing, or engaging in the production, manufacture or sale of narcotic or psychotopic substance of specified quantities (e.g. opium 10 kgs, cocaine 500 gms) after previous convictions.

- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
  - Introduced the death penalty for fabricating of providing false evidence that results in the conviction and execution of an innocent member of a scheduled caste or scheduled tribe.

INTERNATIONAL SCENARIO:

At the end of 2014, 98 countries were abolitionist for all crimes, 7 countries were abolitionist for ordinary crimes only, and 35 were abolitionist in practice, making 140 countries in the world abolitionist in law or practice. 58 countries are regarded as retentionist, who still have the death penalty
on their statute book, and have used it in the recent past.  

DEATH PENALTY IN INDIA:

HISTORY:

- The Government’s policy on capital punishment in British India prior to Independence was clearly stated twice in 1946 by the then Home Minister, Sir John Thorne, in the debates of the Legislative Assembly. “The Government does not think it wise to abolish capital punishment for any type of crime for which that punishment is now provided”.  

- At independence, India retained several laws put in place by the British colonial government, which included the Code of Criminal Procedure, 1898 (‘Cr.P.C. 1898’), and the Indian Penal Code, 1860 (‘IPC’). The IPC prescribed six punishments that could be imposed under the law, including death.  

- For offences where the death penalty was an option, Section 367(5) of the CrPC 1898 required courts to record reasons where the court decided not to impose a sentence of death:

  If the accused is convicted of an offence punishable with death, and the court sentences him to any punishment other than death, the court shall in its judgment state the reason why sentence of death was not passed.  

- In 1955, the Parliament repealed Section 367(5), CrPC 1898, significantly altering the position of the death sentence. The death penalty was no longer the norm, and courts did not need special reasons for non-execution of the capital punishment.  

- The Code of Criminal Procedure was re-enacted in 1973 (‘CrPC’), and several changes were made, notably to Section 354(3):  

  When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

ESSENTIAL LEGAL DEVELOPMENT IN 2018:

- 162 persons were sentenced to death by trial courts in 2018 and 426 prisoners were under the sentence of death as on 31st December 2018. In 2018, the Supreme Court confirmed 3 death sentences under its review jurisdiction in the December 2012 Delhi gangrape case.  

- After taking over as the Chief Justice of India in October 2018, Justice Ranjan Gogoi made hearing of death sentence cases a priority and constituted four 3-judge benches towards that end of 2018 also saw the legislative expansion of the death penalty for non-homicide offences.  

- The Parliament amended the Indian Penal Code (IPC) through the Criminal Law Amendment Act of 2018 (CLA) in August, 2018 to provide for the death sentence as a possible punishment for rape and gang-rape of girls below the age of 12 years.  

- In January 2019, the Union Cabinet approved and introduced in the Lok Sabha
amendments to the Protection of Children from Sexual Offences Act, 2012 (POCSO) which brought in the death sentence as a possible punishment for penetrative aggravated sexual assault with children below the age of 18 years.

- In August 2018, the Cabinet also approved a bill providing death penalty or life imprisonment for crimes involving maritime piracy or piracy at sea. In contrast to the legislative expansion of the death penalty, the Supreme Court indicated its growing concern with the judicial administration of the death penalty by commuting 11 death sentences between November - December 2018.

- Law Amendment Act, 2018 by introduction of the death sentence as a possible punishment for rape of girls below 12 years. This was followed by amendment of Protection of Children from Sexual Offences Act, 2012 in January 2019 which brings in the death sentence for aggravated penetrative sexual assault with children below the age of 18 years.

- These concerns found their sharpest articulation in Justice Kurian Joseph’s dissenting opinion in Chhannu Lal Verma v. State of Chhattisgarh313 where he observed that the time had come to reconsider the need for the death penalty as a punishment, especially its purpose and practice.

- The Supreme Court moved in the opposite direction. Out of the 12 death penalty cases heard in the Supreme Court in 2018, death sentences were commuted in 11 cases to life imprisonment of different kinds.314

### PROCEDURE WHEN DEATH SENTENCE IS IMPOSED315

The court has to record special reasons for imposing death sentence.

1. **Confirmation by High Court:**

   Court of session after passing a death sentence shall submit the proceedings to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. The court passing the sentence shall then commit the convicted person to jail custody under a warrant.

2. **Enquiry and Additional Evidence:**

   The High Court while dealing with confirmation may order further inquiry be made into, or additional evidence taken upon, any point bearing upon the guilty or innocence of the convicted person.

3. **No order for confirmation:**

   No order for confirmation shall be made until the period allowed for preferring an appeal has expired, or if any appeal is presented within such period, until such appeal is disposed of.
   - In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall when such court consists of two or more judges, be made, passed and signed by at least two of them.

4. **Copy of Order Sent to Court of Session:**

313 Nov 28, 2018 - 5898-5899 OF 2014
314 https://static1.squarespace.com/static
315 http://www.legalserviceindia.com/articles/dsen.htm

www.supremoamicus.org
160
In cases submitted by the court of session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the court of session.

Where a person is sentenced to death and an appeal from its judgment lies the execution of the sentence will be postponed until the period allowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposed of.

Mode of Execution
The issue regarding the constitutionality of hanging as a mode of execution came up before the Supreme Court in Deena v. Union of India\(^{316}\), though the court asserted that it was a judicial function to probe into the reasonableness of a mode of punishment, it refused to hold the mode of hanging as being violative of Article 21 of the constitution.

This issue was once again raised in Shashi Nayar\(^{317}\) the court held that since the issue had already been considered in Deena, there was no good reason to take a different view.

Legality of Death Sentence:
In the case of Jagmohan V/s State of U.P\(^{318}\), the question of constitutional validity of death punishment was challenged before the SC, it was argued that the right to live was basic to freedom guaranteed under Article 19 of the constitution. The S.C. rejected the contention and held that death sentence cannot be regarded as unreasonable per se or not in the public interest and hence could not be said to be violative of Article 19 of the constitution.

Grounds when Death Sentence be granted:
As have been stated earlier, after Cr.P.C. , 1973, death sentence is the exception while life imprisonment is the rule. Therefore, by virtue of section 354(3) of CR.P.C., it can be said that death sentence be inflicted in special cases only. The apex court modified this terminology in Bachan Singh v. State of Punjab\(^{319}\) and observed- "A real and abiding concern for the dignity of human life postulates resistance to taking a life through W's instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

‘Rarest of rare cases’
To decide whether a case falls under the category of rarest of rare case or not was completely left upon the court's discretion. However the apex court laid down a few principles which were to be kept in mind while deciding the question of sentence. One of the very important principles is regarding aggravating and mitigating circumstances. It has been the view of the court that while deciding the question of sentence, a balance sheet of aggravating and mitigating circumstances in that particular case has to be drawn. Full weightage should be given to the mitigating circumstances and even after that if the court feels that justice will not be done if any punishment less than the death sentence is awarded, then and then only death sentence should be imposed.

\(^{316}\) [1993] 4 SCC 645  
\(^{317}\) 1992 SCC (CRI) 24  
\(^{318}\) 1973 SCC (CRI) 169  
\(^{319}\) AIR 1980 SC 898
Again in *Machhi Singh vs. State of Punjab* 320 the court laid down: - "In order to apply these guidelines inter alia the following questions may be asked and answered: -

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are there circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favor of the offenders?"

**Mitigating Circumstances for the accused:**

The court in its discretion, may take into consideration, the following circumstances as mitigating, on the basis of which the lesser punishment can be imposed:

1. That the offence was committed under the influence of extreme mental or emotional disturbance;
2. If the accused is young or old, he shall not be sentenced to death;
3. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society;
4. The probability that the accused can be reformed and rehabilitated; The state shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above;
5. That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence;
6. That the accused acted under the duress of domination of another person;
7. That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

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320 [1983] 3 SCC 470

**Conviction of a minor:**

The ordinary sentencing applicable to adults will no longer be applicable in the case of juveniles. The Juvenile Justice Act defines the term juvenile as a boy who has not attained the age of 16 years, or a girl who has not attained the age of 18 years. As per sec. 22 of the said Act, no delinquent juvenile shall be sentenced to death.

**Conviction of a pregnant woman:**

Section 416 of Cr.p.c. provides if a woman sentenced to death is found to be pregnant, the High court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to imprisonment for life.

**Lesser Sentence To Co-Accused:**

In cases where there are more than one accused, and murder has been committed by several persons, under section 34 of IPC, the act done by one will be considered to be acts done by all. So if a lesser sentence of life imprisonment is awarded to one accused, then the co-accused should also generally be given the same sentence, unless it can be established that the role of any one of them in the commission of the crime is more that of others.

**Delay in execution of the death sentence**

Delay in execution of death sentence is a factor which may be taken into consideration for commuting the sentence of death to life imprisonment. If upon taking an overall view of all the circumstances and taking into account the answers to the question posed by way of the test of rarest of rare cases, the
circumstances of the case are such that
death penalty is warranted, the court would
proceed to do so.

6. Judicial Discretion

The ultimate discretion to decide whether
death sentence is to be imposed or not, have
been vested in the court. There is a debate
going on about the extent of this judicial
discretion.

A brief analysis of the cases decided by the
SC. Regarding the question of death
sentence over last 25 years, will reveal how
differing/dithering the judgments have
been.

In the case of Mohd. Chaman321, on the
question of extent of judicial discretion the
court observed :-

"Such standardization is well nigh
impossible . Firstly degree of culpability
cannot be measured in any case. Secondly
criminal cases cannot be categorized there
being infinite , unpredictable and
unforeseeable variations . Thirdly , such
categorization, the sentencing procedure
will cease to be judicial. And fourthly , such
standardization or sentencing discretion is
policy matter belonging to the legislature
beyond the courts functions"

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321 2000 SOL CASE NO 705
## CONCLUSION:

- The table clearly states the ground reality of all kinds of cases tried, accused convicted, the examination-in-chief and cross examination everything is the procedural aspects that the courts are complied to follow.

- However, playing court tactics has never been a new thing especially when it comes to the trial of Indian Courts. Filing lately the petition earlier to the courts and last and final result of filing of the Mercy Petition is mostly observed to be filed only after it gets rejected or accepted of either of the co-accused. The recent scene has been observed in the Nirbhaya Gang Rape Case of 2012 where the people of India have been long waiting for the execution of death penalty.

- The reason of setting up of the Fast Track Courts was for easy and corrective disposal of the pending cases in the criminal courts.

- The accused is also granted with Article 21 i.e. Right to life and liberty. The accused also has his/her powers which he can gain grounds for his eviction and then play with the court tactics in order to delay the execution of the mitigating factors.

- Thus, the pronouncement of death penalty > execution of death penalty > reduction in fear of people committing crimes.

### Source:
India, Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.188-189

### Table:

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CAPITAL PUNISHMENT:
RETHINKING THE NEED IN INDIAN
JUDICIAL SYSTEMS.

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ABSTRACT

Death penalty is essentially the legal process of punishment wherein an individual is awarded with the gravest punishment of death by the State. Considered the ultimate denial of human rights, the process is not only fundamentally incoherent, but also encompasses various practical blemishes existent in our society. From improper representation of the accused to abuse of the due process, this punishment is considered to be the premeditated and cold-blooded killing of a human being by the State in the name of justice. The Indian jurisprudence lacks on a well-defined legislation leading to ambiguity on the Country’s stance. With the global trend moving towards an abolitionist stance, this practice is considered to be desecrating to the right to life. Contended as deterrent, capital punishment has proved to be inefficient in preventing crime. While the retributive nature of this punishment is compelling, retributive justice, however, invalidates the very basis of human rights. Since the rationality of punishment is reformation, execution cannot be considered anything less than State sanctioned murder. The author endeavors to study the legislations and decisions of the courts, heeding the international jurisprudence and attempts to make a case for a complete abolition of death penalty in India.

KEY WORDS: Capital punishment, judicial trends, comparative, reformation, deterrence

INTRODUCTION

“Criminals do not die by the hands of the law. They die by the hands of other men.”
- George Bernard Shaw

Capital punishment, also referred to as death penalty, is essentially the execution of an offender sentenced to death after conviction by a court of law for a criminal offense. The disparity between the two terms, however, is that imposition of the penalty may not always be followed by execution (despite being upheld on appeal), due to the possibility of commutation to life imprisonment. The most severe form of punishment, irreversible by nature, this punishment is to be awarded for the most heinous, grievous and detestable crimes against humanity. The definition and purview of such crimes may vary, depending on the legal code of each country. For instance, capital punishment can only be used by a State, hence the use of a non-state organization through 'execution' of a person, is actually the commission of a murder. However, under common jurisprudence, penology


325Nobel prize winner, author, critic, polemicist and political activist.
and criminology, capital sentence denotes a sentence of death.

The objective of capital punishment is said to be two-fold: instilling fear in the minds of others, by putting the offender to death; and/or prevent the repetition of the crime by that person on a permanent basis in case of an incorrigible offender. This form of punishment is fundamentally not reformative in nature. Instead, it appears to be a step in the direction of State despair.

The instance of a man killing constitutes of actions to be breaking of the law. Contrarily, the same act resulting in death, in the form of punishment by the State establishes upholding the law. The principle at play here is that the man murders and the State executes. The resultant of one is death and the same comprises to be a reward for the other. While murder annihilates life, capital punishment ceases the right to life. The rationale behind both the actions might be widely divergent, but the aftermath remains the same- a carcass in place of a life. Indian jurisprudence however finds itself at an ambiguous position, wherein it is unsure of the deterrent effect of the death penalty as well as when it is ought to be awarded.

Regardless of the abovementioned issue, it is pertinent to note that death penalty does not serve any reasonable penological resolution. At the very most, it appears to fulfil the aberrant sense of catharsis that maybe offered to the public in order to bay for blood.  

The recent global trend reaffirms the stance of countries towards abolition of death penalty. A recent survey states that 106 countries have abolished the death penalty in law for all crimes and about 142 countries had abolished the death penalty in law or practice. India, nonetheless, is positioned on the two edges: to end capital punishment or be a nation that continues to execute. Although the judicial precedent has focused on a decrease in the number of executions carried out, the judicial trend for death penalty restricts it to the "rarest of rare" cases, inevitably injecting an element of subjectivity in the decision. However, this instruction has been practically contradicted by the legislature widening the ambit for number of offences punishable by death.

The objections hence behind the abolishment of death penalty appear to be well founded. Apart from the contemporary juristic thinking being against death penalty, the main contention that prevails is related to the irreversible nature of such a punishment. The fallibility of human judgment, evidenced by reversal of judgments by appellate court and irrevocability of the death sentence- give factors enough to not promote state sanctioned killings, especially in a country such as India wherein the maximum population lacks the resources (economical as well as social) to even adequately represent themselves. A victim of such execution due to miscarriage of justice and criminology, capital sentence denotes a sentence of death.

327 GOPALKRISHNA GANDHI, ABOLISHING THE DEATH PENALTY, Aleph Book Company.

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which is subsequently discovered cannot be led to a path of restoration.

CAPITAL PUNISHMENT: PENOLOGICAL ASPECT

The problem faced by the dialectical nature of capital punishment does not merely encompass the rights under state policy, but also the profound question of moral values in a civil society. Additionally, the heterogeneity, intrinsic alienation and individualism of the modern society become hindering factors when a common culture with shared values is envisaged.

DETERRENT FORM OF PUNISHMENT

It is pertinent to note that the primary objective of punishment is infliction of a deterrent effect by creating an apprehensive consequence so as to circumvent the repetition of crime for the offender himself as well as others. Historically, these punishments were of a rigorous nature—chopping off hands of thieves or robbers, castrating organs of sexual offenders etc. The rationale behind such severity is that only the punishment that is unsympathetic or hardhearted would serve the deterrent effect. The infliction of fear amongst the population should operate as a restraining factor for the commission of such grievous offences. However, the shortcoming of the deterrent theory is that it diminishes to have its effect on hardened criminals as they are accustomed to such severe punishment. With regards to first time offenders, this theory is in the least, not very effective as most of those crimes are committed in a non-premeditated, unplanned manner. Hence, practically, the implementation of the deterrent punishment is usually blended with other punishments for reformative purposes in case of a non-habitual offender, since the very determination behind punishments is reformation and rehabilitation. The Apex court upheld this view in the case of *Phul Singh v. State of Haryana*, wherein it was observed that “the incriminating company of lifers and others for long may be counterproductive and in perspective, we blend deterrence with correction, and reduce the sentence to rigorous imprisonment for two years.”

PREVENTIVE THEORY OF PUNISHMENT

Preventive philosophy of punishment is based on the proposition of ‘not to avenge crime but to prevent it,’ by removing the danger from the society and placing the offender under imprisonment. The offender is hence, prevented from committing the crime by either being imprisoned or being inflicted by death penalty or by culminating the modes which steered the commission of the offense, hence eliminating the re-occurrence of crime by the same offenders, in the very least. Derivation of the offender is the ultimate remedy in the principle of this theory. By abstaining the criminal from the society, prevention of crime is palpable. However, a critical angle of this theory is that preventive punishment may lead to the detrimental effect of desensitizing first time

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335N. V. PARANJAPE, CRIMINOLOGY AND PENOLOGY, 9th ed., p. 145.
offenders, or juveniles by associating them with gangs of hardened criminal, hence ceasing to be an effective form of punishment.  

REFORMATIVE THEORY OF PUNISHMENT

The reformative theory advocates moral reforming of criminals by sensitizing them towards their “human” side. The criteria for awarding punishment encourages the judge to consider factors such as the character, age of the offender, family background, education and environment as well as the circumstances under which the crime was committed. The objective ultimately is to met out the punishment to serve the ends of justice. Therefore, this reformative view of penology is only justifiable if the future is considered and not the past conducts of the offender. The aim of rehabilitation is to re-socialize and reintegrate the offender by ingraining the motivation to obey the law into their psyche.

THE RETRIBUTIVE THEORY OF PUNISHMENT

An archaic theory in nature, this form of punishment has prevailed since the time of private vengeance. Based on the principle of “eye for eye”, “blood for blood” or “life for life”, the state takes over the dispersion of justice. However, this method of punishment has not been advocated by criminologists. The rationale behind this form in itself is flawed as it aims at restoring the social balance disturbed by the offender, equating the amount of pain that the offender should receive with the suffering inflicted by him on his victim to assuage the angry sentiments of the victim and the community. Punishment of this sort is merely vindictive as it gratifies the instinct for revenge, not only in the victim but society at large. In the recent times, however, the notion of private vengeance has been forsaken and punishment in itself considered malevolent and is only justified if it concedes better results. Revenge, therefore is justice gone wild.

Owing to the difficulties in the practical implementation of a single theory, it can be safely said that no theory in itself is sufficient to curb crime and hence mostly a combination is employed to have a deterrent effect on the society that will prevent the commission of crime. In the landmark case of Narinder singh & Ors. v. State of Punjab & Anr, it was observed that:

“Firstly, there are certain acts which are prohibited by the law. Such prohibited acts are offences. Whoever commits an offence has to face the consequences of his wrong doing. Such consequences are in penal form. It may be an imprisonment, monetarily or both and for serious offences capital punishment. In fact event imprisonment has its gravity. It may be simple one or rigorous. Secondly, the question arose as to why the persons who commit crime have to be subjected to the penal consequences. Many

336 The library of criminology, Elizabeth Orman Tuttle, London Steven’s sourcruit, Chicago Poured, Book 1961
337 K. D. GAUR, COMMENTIARY ON THE INDIAN PENAL CODE, p. 162.
338 N. V. PARANJAPE, CRIMINOLOGY AND PENOLOGY, 9th ed., p. 14
340 POOJA SOOD, CONSTITUTIONAL CHALLENGES IPC PROVISIONS JUDICIAL APPROACH, Deep and Deep pub.pvt.Ltd.2007
Philosophies/jurisprudence justify the penal consequences as having retributive, rehabilitative, deterrence or restoration effects. Any or combination of this is the ultimate goal of sentencing. Thirdly, sentence guidelines are provided to guide the judges in awarding sentences in various countries. Such guidelines are provided statutorily or otherwise. Whereas till date in India we do not have such policy.

The aim of such policies might not only aim at achieving consistencies in awarding punishment but to prescribe sentence policy or purpose for awarding it, like whether deterrence, retribution etc. In India the courts go by their own perception on awarding sentences. If the nature of a judge is to give punishment in form of retribution he’ll grant that. If other judge is of different outlook and believes in rehabilitation he’ll follow that. It depends on all the philosophy of the judge. However, in cases wherein crime has been committed against the society, the deterrent theory of punishing the offender becomes relevant. The stance of Indian jurisprudence was given a clearer interpretation in the case of Hari Singh v. Sukhbir Singh and Ors344, wherein it was observed that: “The 154th Law Commission Report on the CrPC devoted an entire chapter to “Victimology” in which the growing emphasis on victim’s rights in criminal trials was discussed extensively as under:

“I. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied............ The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want.” So also Article 51-A makes it a fundamental duty of every Indian citizen, inter alia “to have compassion for living creatures” and to “develop humanism”. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.”

It can therefore be articulated that the deterrent and the reformative theories coincide; however, there also exists conflict between the two. The deterrent theory imposes the punishment of imprisonment, fine, or even death-penalty (retributive in nature), but according to the reformative theory, all modes of punishment other than imprisonment are barbaric. The Indian jurisprudence hence is facilitative with a blend of reformative and deterrent theories. Herein, while the objective of punishment is to deter the offender, it is also an inalienable part of the system to provide the offender with an opportunity to reform.

344 Hari Kishan & Anr v. Sukhbir Singh & Ors 1988 AIR 2127
LEGAL STANDING IN THE INDIAN JURISPRUDENCE SYSTEM

The basis of awarding capital punishment is determined through judicial pronouncements. Based on the facts and circumstances of each case, it is at the discretion of the court to decide whether the case presents a situation calling for death penalty or life imprisonment. The Constitution of India provides its citizens with the right to life and personal liberty under Article 21. However, according to this article, no person shall be deprived of his life and personal liberty except rendering the procedure established by law. Therefore the state has the right to abridge this right by law for maintaining public order following the procedure established by law. Being a fundamental right representing the sacrosanct life of a human being, this can only be curtailed by "due process" which must be just, fair and reasonable.

One of the most discussed cases in the study of capital punishment, especially in the wake of circumstantial evidence was the case of Dhananjay Chatterji v. State of west Bengal wherein the accused was convicted and awarded death penalty in the case of rape and murder of a minor from the trial court to the Supreme court on the basis of circumstantial evidence. Relying on dubious inputs, a lack of proper representation for an individual from an economically weaker background and the absence of coherent evidence, the courts failed to establish guilt beyond reasonable doubt. Several speculations regarding this judicial murder were subsequently raised.

It was however in the landmark case of Bachan Singh and Machhi Singh v. State of Punjab wherein the issue of constitutional validity of death penalty was raised. The Apex Court herein discussed the aggravating and mitigating circumstances, laying down the principles to serve as guidelines for deciding the sentence to be awarded in murder cases. Justice Bhagwati however gave a powerful dissent, observing that the death penalty is in gross violation of Article 19 and 21 of the Constitution.

RAREST OF RARE DOCTRINE

Article 21 of the Indian Constitution is legally construed to connotate that if there is a fair and valid procedure, then the state by framing a law with due process can deprive a person of his life. While the executive limb has consistently maintained that death penalty is to act as a deterrent for those who are a threat to the society, the judiciary has upheld the constitutional validity of capital punishment in "rarest of rare" cases. The "rarest of rare" doctrine has transfused death penalty literature in India like a ruminating omnipresence. The doctrine's foremost proposition is that capital punishment ought to be awarded sparingly. The case of Bachan Singh and Machhi Singh v. State of Punjab deduced an unambiguous definition of a "rarest of rare" case by stipulating concrete instances of diverse categories of cases wherein the collective conscience of the community is shook to the extent that for the sake of justice, holders of judicial power are expected to inflict death penalty. These categories (namely, "manner of commission of murder", 'motive for commission', the "anti-social or socially

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343 Maneka Gandhi v. Union Of India 1978 AIR 597

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abhorrent nature of the crime", the "magnitude of crime", and "personality of victim of murder") are however crime focused as opposed to the criminal, or even his reformation. Therefore, in practice, instead of the death sentence being awarded only in cases where the alternative choice was foreclosed by a supposed incapability to reform the offender, capital punishment was also painstaking the appropriate penalty for murder purely on the basis of the nature and characteristic of the crime.  

349 The doctrine laid down by this case, however, ingrained a perplexity in the jurisprudence of death penalty. The Supreme Court finally in the case of Swami Shraddananda v. State of karnataka, 350 recognized the shortcomings put forth in the Machhi Singh's decision. Hence, the abovementioned case ruled that the categorization put forth in Machhi Singh's, although useful, cannot be strictly construed as it is 'inflexible, absolute or immutable.' Subsequently, in another case, the incoherence bred by Machhi Singh was pointed out asserting the uncertainty in capital sentencing law. Despite the latest judicial precedents, in practice, courts continue to apply Machhi Singh’s requisites as a litmus test, giving the ‘rarest of rare’ doctrine a complete go-by, making this subject pertinent to be addressed.

In another landmark case, Bariyar v. State of Maharashtra, 351 the Supreme Court expressed its concern over the constitutional implications including the arbitrariness that pertains in the legal system while ruling on capital punishment.

It was observed that the rarest of the rare doctrine is being applied by various courts wherein the paucity of a standard rule has compelled the courts to give their own meaning to the doctrine. A variation in a matter that interferes with the fundamental right to life amounts to constitutionally infirmity. This concern was also highlighted in Mohd. Farooq Abdul Gafur and Anr. v. State of Maharashtra. 352

In the recent case of Ajit Harnamsingh Gujral v. State of Maharashtra, 353, the Apex Court confirmed the death sentence of the accused solely on the basis of the nature of the crime, without taking in consideration the social and economic status of the criminal. The opinion neither cited Bariyar nor the justification of the offender being incapable of reform.

This incoherence that is deep rooted in the death penalty jurisprudence of our country was further exacerbated by a series of verdicts by the Apex Court. In the case of Gurvail Singh v. State of Punjab, 354 a new interpretation was given to Macchi Singh and a new system was deduced wherein the “crime test” (aggravating circumstances) and the “criminal test” (no mitigating circumstance favouring the accused) had to be fully satisfied for the grant of death penalty. Essentially, unless it is corroborated that the crime is particularly reprehensible and immoral and the criminal’s background suggest that he is fully incapable of reform, death penalty is

349 Justice P N Bhagwati famously dissented from the majority's decision in Bachan Singh. However, his opinion was rendered nearly two years after the majority's verdict was announced. In his dissent, he held that the death penalty violates both Articles 14 and 21 of the Constitution.


352 Mohd. Farooq Abdul Gafur and Anr. v. State of Maharashtra
353 Ajitsingh Harnamsingh Gujral v. State of Maharashtra, AIR 2011 SC
ought to not be awarded.\textsuperscript{355} This principle has been ostensibly amplified by the Court through several of its decisions. However, in the case of Shankar Khade v. State of Maharashtra,\textsuperscript{356} Justice Radhakrishnan interpreted the Macchi Singh’s dictum differently. He held that the “rarest of the rare” test does not seem to consider the socio-economic aspect of the offender. Although there ought to be no mitigating circumstance that favours the accused whilst the awarding of death penalty, the “R-R test”, nonetheless has to be conducted in order to respect the society’s abhorrence and hence the demand of death penalty. This conclusion controverts the central thesis around the Macchi Singh doctrine indicating the ambiguity in the legislation pertaining to capital punishment in our system. Subsequently, in the case of Mahesh Dhanaji Shinde v. State of Maharashtra\textsuperscript{357}, the mandates of Macchi Singh were treaded beyond, not only leaving the jurisprudence at a questionable position, but also in a perplexing position. Therefore, the jurisprudence regarding death penalty stands at an abstruse position whereby we are unsure of its deterrent effect as well as the requisites to follow before granting this irreversible condition. It is hence apparent that apart from fulfilling the aberrant sense of catharsis to a public baying for blood, there is no reasonable penological purpose of capital punishment. When the State decides to please the anger of the public by ignoring the rights of another citizen, it does not act as a state but a biased authority. The death penalty, howsoever implemented, can never fulfil the demands of constitutional due process.

The report presented by the Law Commission\textsuperscript{358} on this matter however stressed on the abolishment of the death penalty in all cases except for those relating to terror cases and waging war. The rationale presented by the Commission weighs in on the “deep crisis” that the administration of criminal justice in India is suffering from. Citing a lack of resources, an overstretched police force and ineffective prosecution, amongst other reasons, has resulted in misapplication of administration of capital punishment. Additionally, even the mercy powers have been unsuccessful in being a final safeguard against miscarriage of justice. This has also been corroborated by the Apex Court wherein the court has also pointed out gaps and illegalities in discharging of these powers.\textsuperscript{359}

INTERNATIONAL LEGAL STANCE

Another important facet in the jurisprudence of capital punishment is the violation of human rights. The stance of United Nations High Commission for Human Rights has been published in its 1997 resolution wherein it stated that progressive development of human rights and enhancement of human dignity can only be done through the abolition of the

\textsuperscript{355} A G Noorani, \textit{Death Penalty and the Constitution}, EPW, Vol XVII, No 36, 4 September
\textsuperscript{358}Law Commission of India, Report No. 262, The Death Penalty, August 2015, Govt. of India; available at: http://lawcommissionofindia.nic.in/reports/Report262.pdf
Currently, more than two-thirds of the countries in the world have abolished death penalty.\textsuperscript{362} It is, however, difficult to divide all the countries of the world into two groups of abolitionists and retentionists. Hence this has to be approached from the point of view of the actual practice of various jurisdictions. There are countries that are abolitionist de jure while on the other hand there are countries that are abolitionist de facto.\textsuperscript{363} According to the International Amnesty report,\textsuperscript{364} 106 countries had abolished the death penalty in law for all crimes by the end of 2018 and 142 countries had abolished the death penalty in law or practice. These figures reaffirm the global trend towards abolition of the death penalty. Only a few countries carry out executions. Just four countries were responsible for 84\% of all recorded executions in 2018.

**RECENT INDIAN JUDICIAL TRENDS**

In India, however, the legislative development on the concept of death penalty has introduced capital punishment for rape of minor girls (under 12 years) through Criminal Law Amendment Act, 2018.\textsuperscript{365} The amendment of Protection of Children from Sexual Offences Act, 2012 in January 2019 also brought upon the imposition of death sentence for aggravated penetrative sexual assault with children below the age of 18 years. The recent judicial trend, however, due to ambiguity in law has been indefinable in its stance towards capital punishment. 2018


\textsuperscript{361}William A. Schabas, *The Abolition of the death Penalty in International Law*, OUP, OXFORD, 1997

\textsuperscript{362}Amnesty International; available at: https://www.amnesty.org/download/Documents/AC5066652017ENGLISH.pdf

\textsuperscript{363}Clarence H. Patrick, *The Status of Capital Punishment: A World Perspective*, JOURNAL OF

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\textsuperscript{364}Ibid

\textsuperscript{365}https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf

\textsuperscript{366}https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf
witnessed trial courts imposing the highest number of death sentences in nearly two decades.\(^{367}\) The Apex Court however moved in the contrary direction. In the recent case of \textit{Chhannu Lal Verma v. State of Chhattisgarh}\(^{368}\), in a minority judgement, Justice Kurian Joseph called for the reconsideration of the constitutionality of the death penalty. It was however also laid down that a proper psychological or psychiatric analysis of the accused must be done by courts in order to assess the possibility of reformation of the criminal. Nonetheless, the Supreme Court even in the recent years has not been able to establish an invariable doctrine on this issue. In 2019, the Court confirmed death sentence in five cases.

In the infamous Nirbhaya case, wherein the victim was brutally raped and murdered in an unnatural way, Supreme Court dismissed the last review plea filed by one of the four convicts in the case of \textit{Akshay Kumar Singh v. State}\(^{369}\) on the ground that no apparent error in the judgement. One of the accused, Vinay, who was 19 at the time of the commission of the offence, also filed a curative petition pleading mitigating circumstances (poor socio-economic background) and the precedent of 17 other cases wherein the Apex Court commuted death penalty to life imprisonment. The same has however been dismissed on the lack of a new ground.

In the case of \textit{Manoharan v. State}\(^{370}\), the Supreme Court upheld the death sentence awarded to the accused whereby he was involved in the gang rape and murder of a 10 year old girl and her brother. In a powerful dissent, Justice Sanjiv Khanna opined that the case cannot be categorized as 'rarest of rare' and falls into the special category of cases where the appellant should be directed to suffer sentence for life i.e. till his natural death, without remission/commutation.

In the case of \textit{Ravi v. State of Maharashtra}\(^{371}\), the Supreme Court by a ratio of 2:1 upheld the death penalty for a person found guilty for murder and rape of a minor, with a dissent by Justice Subash Reddy.

In another case, \textit{Khushwinder Singh v. State of Punjab}\(^{372}\), the Supreme Court confirmed the death sentence given to a man accused of killing six persons. Ironically, however, in the case of \textit{Santosh Maruti Mane v. State of Maharashtra}\(^{373}\), the Supreme Court bench commuted the death sentence and deputized it with the sentence of life imprisonment observing the scope of reform. The Court stated that the appellant might already be a reformed person as the Court was informed that the appellant is regretting the action undertaken by him under unwarranted palpitation.

In the case of \textit{X v. State of Maharashtra}\(^{374}\), the Supreme Court commuted the death penalty of an individual convicted of rape and murder of two minors. The Court gave an interesting interpretation to Mental Healthcare Act, 2017 and used the “test of severity” stating that post-conviction mental illness will be a mitigating factor while considering appeals of death penalty.

convicts. The convict had been on death row since 17 years. The Court was, hence, called upon to decide on the culpability for sentencing those with mental illness and if the treatment is better suited rather than punishment. Recognizing no set disorders/disabilities for evaluating “severe mental illness” for exemption, the Court stated that a “test of severity” can be a guiding factor in such a case:

“The test envisaged herein predicates that the offender needs to have a severe mental illness or disability, which simply means that a medical professional would objectively consider the illness to be most serious so that he cannot understand or comprehend the nature and purpose behind the imposition of such punishment. These disorders generally include schizophrenia, other serious psychotic disorders, and dissociative disorders with schizophrenia.”

In another case, Nand Kishore v. State of Madhya Pradesh, the Apex Court commuted the death sentence which was confirmed by Madhya Pradesh High Court. The accused was convicted for the rape and murder of a minor girl wherein the appellant was charged with Section 5 and 6 of POSCO, 2012 and Section 302, 363, 366 and 376(2)(i) of the Indian Penal Code, 1860.

In the case of Yogendra@ Jogendra Singh v. State of Madhya Pradesh, the bench commuted the death sentence of the accused, convicted of murder of a woman by pouring acid on her, stating that a second conviction for murder would warrant the imposition of a death sentence only if there is a pattern discernible across both the cases.

Even in the case of Digamber Vaishnav v. State of Chhattisgarh, the Court acquitted two men whose death sentence had been confirmed by Chhattisgarh High Court in the case of robbery and murder of 5 women.

In the case of Anokhilal v. State of Madhya Pradesh, the Supreme Court bench issued guidelines while setting aside the death penalty awarded in a case of rape and murder in a trial that was concluded in 13 days. It was emphasized that the expeditious disposal of a case must not be pursued at the cost of a burial of the cause of justice. The attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed.

Essentially, the jurisprudence regarding capital punishment seems to be arbitrary and haphazard. In the above cases, it appears that the judicial precedents have also not reached a static conclusion. The commutation of death penalty has been on a subjective case to case basis, depicting a weak and uncertain legal system. Apart from the humanitarian facet, the problem with having an ill-defined capital

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punishment system is that it is irreversible in nature. The judges are prone to human errors and an error in the said arena cannot be fixed. The fundamental issue with regard to judicial condemnation of a man to death is regarding the degree or errors and omissions that the trial process is susceptible to. Additionally, considering the practical intricacies of this problem, in a country like India, most persons accused of such grievous offences hail from poor socio-economic backgrounds. More often than not, such persons do not receive proper and efficient representation and are often victims of abusive and corrupt police system. Furthermore, trial delays as well as execution delays make the death sentence ineffective and result in protracted waits for the accused and their families subjecting them to a lifetime of torture. Interfering with the fundamental right of life of an individual, considering the extenuating conditions present in our system seems to be a gross violation carried out by the State.

CONCLUSION AND FINDINGS

The penalty of death does not differ in degree, but in kind from all other forms of criminal punishment. Its total irrevocability makes it treacherous and grave. The absolute rejection of the possibility of rehabilitation of the convict, which is the paramount purpose of criminal justice, makes it inane. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of human. India’s stance on capital punishment cannot be said to be absolute abolitionist but the situation does endure a need to address the ambiguous stance. Despite being retentionist in practice, India voted against a motion which sought prohibition of death penalty as a mode of punishment at the 42nd Session of the United Nations Human Rights Council, hence depicting its nebulous standpoint. With a plethora of conflicting judgements this very year, the promotion of this state entitled murder, especially in a democratic institution, not only is against human rights but also defies the logic of reformation. In lieu of the growing modern conviction and the new penological school of thought, the principal object of punishment is the reformation of the offender so as to restore him into the society. Unfortunately, in the Indian society, the risk of jeopardizing the life of an innocent person who may be condemned to death on vicarious or constructive liability, or a lack of proper representation, or abuse of due process is far more. The very foundation of the Indian Constitution of “presumption of innocence” often fails in such scenarios. Subjecting such individuals to incalculable harm goes against the very spirit of a democratic institution.

The very jurisprudence of capital punishment is against the rationale of punishment itself. When the state takes a step as drastic as death of an individual, it undertakes the role of an angry citizen and neglects to function as an institution. By killing a prisoner, vindication is not restored as no one’s life, liberty or limit is pressurized, saved or restored. A practice that involves the destruction of a human being is cruel and degrading. A state sanctioning such an act, even if legalized, seems to be unjustified.

380 Justice Potter Stewart, Furman vs Georgia, 408 U.S. 238.
Additionally, a human being with abilities, capacity for autonomous conduct and moral development is killed. Moreover, when the state decides to determine a punishment such as this, an alternative (incarceration, isolation, temporary sedation), which is usually more effective in terms of reducing the risk of harm to others is always available. The contention of death penalty being “painless” contains no merit. The most efficient methods of execution also do not result in instantaneous death. In addition to that, the mental agony of a prisoner during the period of pronouncement of the sentence and the execution is incomparable. Life in a death cell is no life but death itself. Instead of doing away with the criminal, the State’s responsibility is to devise other effective prophylactic methods of nipping the crime in bud to protect the society.

The very concept of a social welfare state goes against the practice of capital punishment. With a complete paradigm shift in the social conditions, from the time when death penalty was considered indispensable to curb crime, to protecting the human and social rights of the citizens, this punishment seems inept and unnecessary. It has to be stressed that the victim’s anguish and the cruelty of death are two independent truths. Hence this State sanctioned “quid pro quo” for death serves only the purpose of vengeance.

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383 K.S. Ajay Kumar, 1980 (Ja) 4 CUCL p. 175.

HUMAN RIGHTS OF THE DEPRIVED SEXES: WOMEN AND MEMBERS OF THE LGBTQ COMMUNITY

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ABSTRACT
“ We declare that human rights are for all of us, all the time; whoever we are and wherever we are from; no matter our class, our opinions, our sexual orientation.” – Ban Ki-moon

The presence of human rights signifies the absence of fear. Fear of losing your life, losing a loved one, fear of justice being denied, fear of being discriminated on the bases of caste creed or sex. Human rights tell us humans that we don’t deserve to live in this fear, that is what it aims for. Everyone has the right to freedom of expression and opinion, this is human rights. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Setting human rights for our diverse and varied population is a tough task.

Women and the members of LGBTQ community were compelled to live a life full of fear of reprisal and persecution. Justice Indu Malhotra shared her opinion on the atrocities faced by the LGBTQ committee saying in reference to Navtej Singh Johar v. Union of India that, “History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries.” But do they still get equal rights? Apparently not. They still don’t have the right to marry their partner and neither can they adopt a child. Women too face injustice in many ways. Did the stove really burst? Or was it dowry death?

This research will further study issues such as NRI men abandoning their wives, glass ceiling, abortion rights and transgender participation in the military. The researcher will also discuss about The Transgender Persons (Protection of Rights) Bill, 2019 and the unacceptance of the transgenders in Hindu Marriage Act, 1955.

If we promise ourselves to take a stand for justice and fight against injustice, we could make the world a so much better place to live in as Martin Luther King said, “Injustice anywhere is a threat to justice everywhere.”

Keywords: sexual discrimination, LGBTQ, glass ceiling, abortion rights, dowry death

INTRODUCTION
We are all humans
No sex is better, wiser, stronger, more intelligent, more creative, or more responsible than the other. Likewise, no sex is ever less. Equality is a given. We are all humans
1 Vera Nazarian
2 Chimamanda Adichie
3 World Bank
4 Thomas Reuters Survey 2018

India is a diverse country. It has people of different sexes, religions, castes who have different customs and beliefs. This is what makes setting up human rights really hard in our country. But culture does not make people. People make culture. If it is true that the full humanity of any particular sex is not our culture, then we can and must make it our culture2. People being discriminated on
the basis of sex and sexual preferences is a very common scenario in recent times. This has also increased hate crimes against some sexes such as acid attacks on women and violent crimes or sexual exploitation of the members of LGBTQ community. It is high time for people to understand that there are more than two sexes and that gender inequality is not just a problem of women. Between 1994 and 2012, 133 million Indians were bought out of poverty. This achievement was cherished not only by Indians but by the whole world, but this success could have been at a greater extent if more women could contribute to the work force. According to world bank, in 2012, only 27 percent of adult Indian women had a job, or were actively looking for one compared to 79 percent of men. In fact, almost 20 million women had dropped out of the workforce between 2005 and 2012. This is equivalent to the entire population of Sri Lanka. India ranks 120 among 131 countries in female labour force participation rates and rates of gender-based violence remain unacceptably high.

India was also ranked the most unsafe country for women, ranking above countries like Afghanistan, Democratic republic of Congo, Pakistan and Somalia. The people of the LGBTQ community (Lesbian, Gay, Bisexual, Transgender, Queer) face similar problems in our country. According to the world acceptance index if 155 countries, which Iceland has topped with a high score of 7.37, India has a very low score of 2.99 and lies below countries such as Thailand, Vietnam, Hungary, Israel and China. After analysis of the survey for a few years it was known that 80 countries which amount to around 57% show growth in acceptance of the people from LGBTQ community, 46 countries which constitutes to around 33% experienced a decline in the acceptance of people from LGBTQ community and 15 countries, which constituted to 11% of the total countries had no change in the acceptance of people from the LGBTQ community.

RIGHTS OF WOMEN AND THE MEMBERS OF THE LGBTQ COMMUNITY ACCORDING TO OUR CONSTITUTION.

The constitution to our country ensures and guides us to a society where there is no discrimination on the basis of sex and all sexes are thought to be equal. Article 14 of our constitution ensures equality among all sexes. It says, “Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”. Many clauses of article 15 also talk about gender equality and women empowerment. Article 15 (1) says, “ The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth”. Article 15 (2) prevents people from stopping people of any particular sex from using wells, bathing ghats, roads, shops, public restaurants or resorts maintained partly or wholly by the government of our country. Article 15 (3) states that, “ Nothing in this article shall prevent the State from making any special provision for women and children”. Article 16 (2) of our constitution prevents denying employment or any office under the state to a particular sex. This prevents glass ceiling and also lead to opportunities to the deprived sex such as Joyita Mondal became the first transgender judge in West Bengal Lok Adalat. Article 39 (a) says that the state shall direct its policy towards securing that men and women should have the right to an equal and adequate means of livelihood and article 39 (d) ensure equal pay for equal
work done by any sex. Article 42 of our constitution talks about provisions for just and humane conditions such as maternity leave for women. Article 46 of our constitution promotes educational and economical development of weaker sections of our society. This also includes promoting the interests of the deprived sexes. Article 51 A (e) states that it is the fundamental duty of every citizen of our country to renounce practices derogatory to the dignity of women. Article 243 D (3), 243 D (4) and 243 T (3) suggests that at least one-third of members of panchayat of different constituencies, chairpersons of panchayats and members of municipalities of different constituencies respectively should be women.

5 The word ‘sexes’ here include men, women, lesbian, gay, bisexual, transgender and queer.

RIGHTS AND PROTECTION OF WOMEN AND THE MEMBERS OF THE LGBTQ COMMUNITY ACCORDING TO THE INDIAN PENAL CODE (IPC)

There are various provisions for the protection of women in the Indian penal code (IPC). Section 375 of the Indian Penal Code deals with rape. The word ‘rape’ is derived from Latin term rapio which means ‘seize’ as forcible seizure without consent is an essential characteristic of rape.

Section 354C of IC deals with the offence of voyeurism. It is a non-compoundable offence and a person is liable for conviction if the woman’s picture is taken in a private space or while the complainant is engaged in a private activity which is not usually done in a public space or even if the woman consented for pictures to be clicked but not to show it to some third party. Under section 372 of Indian Penal Code states that if any person sells or disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to ten years, and shall be liable to fine. There are also many sections to protect women from cruelty after marriage as women have been subjected to it for centuries. Section 498A of IPC prevents the husband or his relatives from subjecting the woman to cruelty. The consequences of such act could lead to a punishment of imprisonment which could be extended to three years and fine. Section 304B of Indian Penal Code mentions the offence of dowry death. If the cause of death of the woman is burns, injuries or by any other unnatural reason within seven years of her marriage and the woman was treated with cruelty before the death, connects her husband and his relatives to dowry death.

After Navtej Singh Jauher v. Union on India case the part of the section 377 of IPC, that stated homosexuality as a crime was removed but the part that criminalizes bestiality is still enforceable. Earlier section 377 of IPC termed homosexuality as ‘unnatural offences’. It stated that, “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” The K.S Puttaswami v. Union of India case or the ‘right to privacy’ case acted as precedent of this case and ended the long struggle of the LGBT community for recognition. In the reading of the verdict of section 377 of IPC,
Justice Indu Malhotra said that, "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries."

THE STRUGGLES OF WOMEN BECAUSE OF GENDER INEQUALITY

We Indians have idolized and put women on the pedestal since time immemorial. We have countless goddesses and even go so far as to call our homeland 'Bharat Mata'. We rhapsodize such moral platitudes and pride ourselves on our rich culture which tell us to respect and protect women. We are also the world's biggest democracy that enshrines women's rights in its Constitution. All this paints a pretty picture of what life of women must be in India but in reality, even though our constitution grants all men and women equal rights, gender disparities are still rampant. Gender inequality has been a social concern in India for many centuries. The most apparent portrayal of it can be seen in our ancient custom of Sati pratha, wherein when a man died, his widow had to sacrifice herself by burning herself alive in her deceased husband's funeral pyre, as it was thought that after the death of her husband, a woman's life serves no purpose. Although Sati pratha has become a thing of the past, some isolated incidents were recorded even in the 20th century which led the government to implement the Sati (Prevention) Act, 1987. And even though Sati pratha has been discontinued, we still follow the ancient tradition of dowry exchange in India. Even though the dowry system is condemned by a lot of well informed people, it is still unfortunately very prevalent. The dowry system puts huge amounts to financial pressure on the bride's family to fulfill the groom's demands. In many cases when such demands are not fulfilled it leads to a wide range of crimes against the innocent bride and sometimes even her family. One of the most predominant forms of dowry crimes is fraud, where Indian men from foreign countries deceitfully marry Indian women to procure dowry and when they acquire it, they return to their countries, abandoning the woman. Women are often subjected to cruelty in the form harassment in milder cases or in the form of domestic violence and abetment to suicide in more severe cases. Retressive and aggressive mentality in people also causes them to kill the bride when she is unable to pay the dowry. Such killings have become a widespread phenomenon and are usually done under the guise of 'stove bursts'. According to the Indian National Crime Record Bureau, India has the highest number of dowry deaths in the world with around 8000 dowry deaths every single year. Although anti-dowry laws have been in effect for decades, these statistics show that there is still room for improvement. The first dowry prevention act that was included in the Constitution of India was the Dowry Prohibition Act, 1961. According to this act, if anyone is caught engaged in the act of giving or receiving dowry, the punishment could be imprisonment for up to 5 years and a fine more than Rs.15000 or the value of the dowry received. Section 304B of the Indian Penal Code states "Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ?dowry death?, and such husband or relative shall be deemed to have
caused her death. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. What's more, the disrespect and inequality against women start right from their conception where they are deemed an 'unwanted burden' and are subjected to heinous acts such as infanticide or foeticide. The Indian government enforced Pre- Conception and Pre- Natal Diagnostic Techniques Act in 1994 to outlaw and penalize pre-natal sex screenings leading to selective abortions. And yet as per the Population Research Institute, at least 12,771,043 sex-selective abortions have taken place in India between 2000 and 2014. This cultural preference towards male has also led India to have one of the worst sex ratios in the world, with only 940 females for every 1000 males. According to recent government surveys this ratio is still declining which is a worrisome point of contention. Gender inequality in the modern world is no longer just a social issue but also an economic one. According to the World Bank India has one of the lowest female labor forces in the world. Less than one-third of women are working at a job. The women who do work find it incredibly difficult to break the metaphorical 'glass ceiling'. The 'glass ceiling' is an analogy used to portray the invisible barrier that is faced by minority demographics, including women. This 'glass ceiling' hampers women and other minorities to rise above a certain level in the corporate hierarchy. They are rarely ever given promotions that let them achieve a spot in the upper echelon of an organization. The Indian Constitution sanctioned the ideology of ‘Equal Pay for Equal Work’ for both men and women, and ‘Right to Work’ through Article 39(d) and 41. These Articles are interjected as Directive Principles of State Policy. Henceforth, they will serve as guidelines to the Central and State governments of India, to be kept in mind while formulating laws and policies. Equal Remuneration Act, 1976 by means of Section 4 not only accentuates on equal pay in return of equal work but even prohibits the employer from reversing the pay scales so as to attain equilibrium. Despite these laws, in 2018, the median gross hourly salary for men was Rs.242.49 while that to women was Rs.196.3. The gender pay gap was still very high at 19% in 2018. The reason why India still lags in equality for women in the corporate sector is because Indians still comply to the traditional gender roles where the women is the primary caregiver of the house. Companies are not ready to give women proper health benefits or paid maternity leaves or even flexible working hours. Even though in 2017, the government passed the Maternity (Amendment) Bill that lengthened the right to paid maternity leave for working women from 12 weeks to 26 week, which is the third highest in the world, statistics show that this law only helps less than 1% of working women. About 10 million people enter India work sector each and every year and nearly half of these people are females, thus we need to make some major changes in regards to the payment and rights of women in the work sector so that more women feel encouraged to take up jobs and contribute to our GDP. Another reason that hinders the rise of women in the work sector is the disparities in the achievement of education. Only 65% of women in India are literate, whereas, the literacy rate among men is 80%. Thus we need to educate our women and give them the resources they need to make it in the corporate sector. Also
we need to spread awareness in our society as a whole. Democratization of the message of women's equality is the only way of dismantling the patriarchal foundation of our society. We need to make people more educated so that they stop seeing women empowerment as vandalism of our culture, only then will our country change for the better.

STRUGGLES OF THE MEMBERS OF THE LGBTQ COMMUNITY

The LGBT community have been facing many hardships just for recognition. I has been a year since homosexuality was decriminalized but the people of the LGBTQ community is still deprived of many rights. They still don’t have the right to get married and are not recognised in acts such as Hindu Marriage Act, 1955. “Marriage equality is one of the most basic rights for a citizen and the LGBTQ+ community is still devoid of it. Though reading down of section 377 was historic, we have just scratched the surface yet marriage is still a far-fetched dream. There have been cases where lower courts in India have given protection to some same sex couples. We have to work towards building an egalitarian society. I was lucky that my husband is French and we could marry in France, where it is legal. But there are millions who cannot. Whilst organizations are talking of support, it is time for affirmative action from one and all. It is time to give the community equal rights – marriage equality, work opportunities for us to be able to live a life of dignity. My foundation is working towards skillling and mainstreaming people from the community. We are also getting equipped to fight for marriage equality”. They can’t adopt a child as an LGBT couple but a single person from LGBT community can. There is no representation of the LGBT community in the army and there is also no bill pending which allows them to serve openly. They also face problems during succession planning as no succession act is amended to include the rights of the LGBT community.

AFFECT OF THE SOCIAL STIGMA ON THE HEALTH OF THE LGBT

According to the minority stress model, developed by psychologist Ilan Meyer, we can say that the stigma and prejudice experienced by sexual and gender minorities, specially the members of LGBT community, produces stress and anxiety that is different than the types of stress faced by most people in their everyday life. In response to events of prejudice in their life, sexual and gender minorities frequently develop a fear and expectation that such events will happen again. This expectation leads to hypervigilance in one’s surroundings, relationships, and interactions with others, even when stigma and prejudice may not be in operation. The individual begins to develop additional coping mechanisms, such as identity concealment or other strategies to mitigate the negative consequences of stigma and prejudice. These processes can lead to internalization of social stigma, in the form of internalized homophobia or transphobia, where individuals begin to devalue themselves in a manner consistent with the prejudice being directed at them by others. The impact of minority stress on LGBT people is reflected in poor health outcomes. A systematic review of 199 studies in the Global North and South showed that sexual minorities were at increased risk for depression, anxiety, suicide attempts, or suicides. However, such global reviews are rare. Though the connection between
stigma and health outcomes is well established, there is still a great need to understand how stigma impacts specific populations at the national level. Establishing the GAI will enhance the ability of researchers to examine the stigma/health connection on a country-by-country basis, as well as across countries.

8 David M. Frost and Meyer, l.H., “Internationalized Homophobia and Relationship Quality Among Lesbians, Gay Men, and Bisexuals,” Journal of Counselling Psychology


10 The study included 199 studies which had a heterosexual comparison group. 26 studies had nationally representative studies using clinical interviews. Martin Ploderl and Pierre Tremblay, “Mental Health of Sexual Minorities. A Systematic Review,” International Review of Psychiatry

11 Liliana il Graziosco Merlo Turan, a law student from Bengaluru.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

“This Bill exists to erase us. By having complete control over us from the way we identify to what socioeconomic opportunities we should get and condoning violence against us, it places us in a vulnerable position11”.

The Transgender Persons (Protection of Rights) Act, 2019 was meant to help and protect the transgenders but it only outraged them and snatched away more rights from them. The bill was drafted and passed without approaching anyone from the community. The assumptions were made only on basis of stereotypes as no one from the community was asked about their needs and requirements. According to the act a transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed and in the case of a minor child, such application shall be made by a parent or guardian of such child12. The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender13. This certificate will confer rights and be a proof of he person’s identity as a transgender person. After the issue of a certificate, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed14. The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed15. These sections of the Transgender Persons (Protection of Rights) Act, 2019 imply that for a transgender person to be considered as male or female they have to go through sex change to be considered as male or female. Not all transgenders want to go through sex reassignment process and neither something that all of them can afford as it is a very expensive process. This is also
violation of the right to privacy of the transgenders. This also contradicts the 2014 judgement of NALSA (National Legal Services Authority of India) by the Supreme Court, which gave transgenders, right to self-identify and did not mandate surgery to attain that right. According to the bill "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta. The fact that the Bill conflates transgender people with intersex people proves that it was not thought through and has been made with inadequate knowledge. Not every intersex person identifies as transgender, and not every transgender person is intersex. The Transgender Persons (Protection of Rights) Act, 2019 does not punish people who bully or harass transgender people at educational institutes or workplaces, and neither did it introduce provisions related to adoption rights, transfer of property and marriage rights of the transgenders. According to the act a transgender person can be placed in a rehabilitation centre, with orders from the court if the person’s family is unable to take care of them. This denies the right of a person to join other transgender communities. The act does not even provide reservation to the transgenders which would ensure their survival and also give them opportunities to progress. The act made sexual offence against transgenders a crime but in a gender biased way. If a cisgender woman is raped, the punishment for the rapist is imprisonment for seven years which can also extend to death penalty whereas in the case of rape of a transwoman, the punishment is only for six months and

12 Section 5, Chapter III of Transgender Persons (Protection of Rights) Act, 2019
13 Section 6(1), Chapter III of Transgender Persons (Protection of Rights) Act, 2019
14 Section 7(1), Chapter III of Transgender Persons (Protection of Rights) Act, 2019
15 Section 7(2), Chapter III of Transgender Persons (Protection of Rights) Act, 2019
16 Section 2(k), Chapter II of Transgender Persons (Protection of Rights) Act, 2019

can extend to a maximum of two years. This showed the shallow mindedness of the government and showed that the government does not think the impact of sexual abuse on a transgender woman is as impactful as on a cisgender woman. This made not only transgenders but people of all sexes furious. Many people took the street and fill the internet with the hashtag ‘#RapeIsRape’.

CONCLUSION

I will conclude my paper in reference to the butterfly effect. The butterfly effect is based on the analogy that if a butterfly flaps its wings in Chicago, a tornado occurs in Tokyo. In simpler words, small actions can have great consequences. We should start taking baby steps by doing the best in our individual ability so that women and the members of the LGBTQ community can have the human rights that they deserve. With constant efforts biasness on the bases of gender and sexual preferences will be gone forever. We live in a country where we worship women in the form of goddesses such as Laxmi, Durga and Saraswati. We live in a country which had accepted lesbians, gays, bisexuals and transgenders way before many other countries and our ancient texts, architecture and statues and Khajuraho statutes are a
proof of that. According to Nāradasmṛti there are 14 types of panda or men who are impotent with women. A few of these are the mukhebhaga or the men who have oral sex with other men, the sevyaka or the men who are sexually enjoyed by other men, and the irshyaka or the voyeur who watches other men engaging in sex. The Kama Sutra uses the term tritiya-prakriti to define men with homosexual desires, lesbians as svairini, bisexuals as kami or paksha, and also talks about transgender and intersex people. Let's not move backwards and make Bharat a country where all genders are treated equal.
PROGRESSION OF ALTERNATIVE DISPUTE RESOLUTION

By Manisha Sudarshan
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Before the beginning of the rule by British in India indigenously there was village level panchayats comprising 5 elders of village used to decide matters which were getting implicitly obeyed for fear of reprimand, repudiation, ex-communication, or debarment from religious and social affairs. So wide spread is the impulse to sue that litigation has become nation’s secular religion.

“Ten States have had to close their Court house doors at least temporarily to civil cases because of the huge case loads. And we in the legal profession have to shoulder some of the responsibility for the mindset of turning to the Courts as a panacea for every dispute”385.

There is a need of new institutions like ADRs which must be put to optimal usage to be used as beneficial mechanisms or tools for unresolved and future discourses which cannot be resolved by courts alone. From the lot of numerous adjudicative mode of absolution of justice, interceding methods are known to be furnishing circumstantial justice and also designated as distributive justice patterns. Therefore they are accepted as “benign solvent of disputation”.

Therefore there is nothing wrong to pronounce that they are alternative dispute resolution systems because in their truest value and perception they are preferred substitutes to juridical pronouncement.

Legal service institutions around the globe so as to rejuvenate must endeavor and should serve and foster the legitimate needs of the poorest of the poor. Therefore, our legislators very suitably perceived how crucial and pertinent law reforms and experimentation is, on the agenda of our nation. Thus this strand came on the Indian horizon – and got included as a plan item pervaded in ADR mechanisms. Lok Adalats, legal aid clinics etc which thus got implanted and envisaged as national high priority policy matters.

On that note in galloping paces arbitration and other ADR mechanisms came on to the Indian perspective which brought the finest hour of sweetened justice prefigured an era of remedial estimates. Justice P.N Bhagwati professed that the “the finest hour of justice is when foes compose their fight through fair settlement to become friends”.

In order to ascertain equivalent justice to all nationalities the state should provide affordable, trustworthy, equivalent and pragmatic justice to every man adapted by diverse arbitrary devices and by fabricating favorable arbitrary backdrop.

Arbitration –“considerate solvent of discourse” or “situational justice” is a customary alternative dispute resolution method reinstating the conventional juridical, adjudicative and courtroom related judicial proceeding.

Fundamental rights which accelerate sovereignty and secures autonomy to individuals is a requisite and sufficient gist to secure tantamount justice.

385 “ADR, What it is and how it works “by P.C Rao & William Sheffield, Reprint 2009, p.107)
The ruling realm is supposed to dispense reasonable, genuine, proportionate justice to one and all arranged by differing arbitrary mechanisms and by erecting propitious arbitral vicinity. Guardians of our legal system very wisely ascertained how drastic and cardinal law reform and analyses is on the agenda of our nation. Thus this strand emerged on the Indian perception, incorporated as a strategy saturated in ADR mechanisms, Lok Adalats, legal aid clinics etc which got implanted and proposed as national high priority policy concern.

The nation convoyed disparate codification at the state and central level for the successful composition of legal assistance and ADR mechanisms to triumph endure and enlarge their foundation. Thus the arbitral proceedings procured propulsion in India and also around the global economic transformation demanding prompt deliberation to the complications opposed by them for uncovering fastback solutions. Evidently the foremost propel and focus displaced as regards to renounce setbacks and long procedures, suppressing dispensable and sluggish censure procedure laws.

Fast track arbitrary strategies like ADR were accompanied to the anicient and fortified by and large by all echelon of brotherhood, including in the legitimate arena. On that account the hunt to procure various methods of ADR spruced up and started getting acquired as feasible mechanism to the judicature in innumerable circumstances and in miscellaneous matters. This paramount culture in search of compromise through arbitral methodologies generated convenient and arbitral ambience leading to a proliferate growth of compositions on alternative, complimentary, and expeditious channels of justice portage vehicles. The modern society develops in a high tide flow which ultimately requires speedy justice delivery systems to meet the dynamic needs of the society.

As per the commandment of Justice V.R Krishna Iyer “Access to justice is basic to human rights which poor masses must get”.at state expense expeditiously”.

**A. REQUIREMENT OF SPEEDY TRIAL**

Speedy trial – the righteous of procuring free legal aid and speedy trial are inferred in Article 21 of the constitution of India. Delayed court proceeding hinders the fundamental rights of the citizens. Indian legal system had undergone severe complications due to the engrossment on Indian freedom struggle and also owing to downswing trends that plunged. Appropriately led to depression in legal jurisprudentia they give no prominence for conferring its due supremacy to the legal profession at any point of time then. The intact masses in defiance of the disdainful credence of sovereign, the civic contexture in the entire country became increasingly turbulent and vulnerable to that instigating freedom movements but led to the fall in of the legal framework.

“Lawyers ad a pivotal role to play in a developing society presenting unending challenges of evolutionary and revolutionary changes”. VR Krishna Iyer also added to the comment that “The legal profession should be the midwife of the ‘big change struggle’ to be born indeed, independence of the judiciary.

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386 Dayal.S.1978,”Legal Profession and legal education”,in Minnatur(ed) The Indian Legal system,[NM Tripathi ,Bombay ,P148].
and fearlessness of advocacy are conceptually close cousins. The legal profession has a cause and should bear the cross” [387]. Indian juridical conventional hierarchy is such that it’s inadequacy results in enormous accumulation of cases, oppressed by extravagantly prolonged litigation antiquated judicial proceedings and escalating costs. Earlier the monarchs, in those epoch descend to compromise of altercation by means of panch, mediation, and reconciliation for fast track and appropriate means of indubitable dispensation of justice. Coming down to today’s circumstances, India approbated itself the execution of diverse rectification in varied domains of legislation and also in the arbitration law, as a fragment of P’s reforms which were commenced prior to 1991 and has synchronizing taken on the authority of judicial reforms too with much prominence on the complete curtailment and denigration of court’s intercession and participation in the arbitration procedure by embracing UNICATRAL replica regulation on domiciliary and international business arbitration matters

When the commensurate ratio of jurist should be 65 judges for citizens of one million citizens, we have only 25 judges and this appends to the distress of juridical organization in our nation.

As enunciated by justice Anand “people want justice, pure, unpolluted and they have every right to receive the same” and he further add specifically “comprehensive steps are required for providing quick and inexpensive justice to people“.

“Legal literacy spreads the cynicism that judiciary is not doing its role” – Indian nation awoke to work, now on, ceaselessly to attain jural order. [388]

Although Indian law approve dispute resolution by arbitration, but Indian sentimentality has always detested the decisiveness affixed to arbitral accord. Actually informal dispute resolution has a long tradition in many of the world societies dating back to 12th century in China, England, and America. The business world has rightly recognized the advantages that ADR in one form or the other is a right solution.

To day of all the familiar procedure of retrieving atrocity and resolving contention, propelled conflicts, rampage, combat, interceding, fall of the cards, prosecuting only the latter has constantly triumphed in the day even in the United States. So all inclusive is the stimulation to sue, that ‘litigation has become nations secular religion’. “It is clear that establishing new institutions is one thing but we must also try to carefully nurture them and make them useful tools. It is accepted today that all pending or future disputes cannot be resolved only through courts. It is, therefore hoped that all these centers will work in a highly professional manner and will help in the resolution of domestic as well as international disputes” [389]

“Any democracy worth the name must provide for adequate and effective means of dispute resolution at a reasonable cost; otherwise, the rule of law becomes a platitude and people may take law into their

388 All India Reporter and the ICFAI Journal and Alternative Dispute Resolution, Volume II, No 3, July 2003
389 ADR, What it is and how it works “by P.C Rao & William Sherffield, Reprint 2009,p.107)
own hands, disrupting peace, order and good government. Effective dispute resolution is also necessary to secure the smooth functioning of trade and commerce.\(^{390}\)

To steer clear of lampooning and legitimate prolonged hindrances and also to discharge all the courts from docket briefs eruption and docket homicide. Such remarkable commitment taken by legal professional with an overt virtuous mission to contemplate ADRs as a preferred substitute.

The 77\(^{th}\) report of the law Commission of India indicate very clearly in its report “Delays and Arrears in Trial Courts “this became an epiphany to bring in ADR mechanisms to annihilate obstructions in justice.

The Supreme Court of India in Hussainara Khatoon\&Ors v Home Secretary , State of Bihar\(^{391}\) observed: “There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases...Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice....

Due to the intense wave of legal assistance in the indigenous perspective and engrossment in it storming across the country, the nation brought diverse codifications at the territory and central level for the victorious methodology of legal aid and ADR mechanisms to overcome, endure and thus then diversify their foundation. Thus the probe, the requirement, the gravity, the focus and a sheer requisite emerged to explore for a corresponding and complementary procedure to the bench proceedings for rapid perseverance of altercations in many ostentatious approaches.

A compilation of propositions from legal expert, bench and the bar, freshly spurting in of juridical pronouncement and resolute eagerness from not only the merchandising section but the brimming millions of penury afflicted deprived in India, led to the enlargement of the arbitrary stratagems, and thus arbitrary tribunals and arbitrary accords came into the front –“because arbitrary awards can straight away be executable as a decree in India which becomes binding, even before their being enforced”.

As per the data available with National Judicial Data Grid way back as on December 31, 2015, there were a summation of 2,00,60,998 cases unsettled over the district courts in the disparate states India. Nonetheless, there are only 15,340 judges in the district judiciary courts to apprehend and determine the subsisting as well as new cases, which call attention to the deficiency of the jurist in the Indian courts.

Though it is a recapitulate from the earlier pages the view of Justice M.N Venkatachaliah (former chief justice of India) that are replicated who manifested in these locution “Judicial delay is a major handicap of the Indian judicial System “During his tenure as CJI he came across a suit coming up filed up by his father during Justice Venkiachaliah’s childhood.

A legal expert F.Nariman exclaimed. “Although Indian law favors dispute resolution by arbitration, (but) Indian sentiment has always abhorred the finality attached to arbitral awards”.

\(^{390}\) Ibid ,p.100,101

\(^{391}\) 1980 SCC (1)98

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The cases that successfully put up by the footing laid by Hussainara Khatoon\textsuperscript{392} intricate concrete instances of persons agonizing from dreadful inequities; torment inmates as is perceived in \textit{S.P Gupta v Union of India}.\textsuperscript{393} In this case the judicature expressly deserted conventional status prerequisites when public interest litigation is escorted prior to the court not for the objective of implementing the right of one discrete in opposition to other but to prosecute and redeem collective scrutiny which command that contravention of fundamental or civil liberties of a jillion, who are impecunious, benighted or ethically and reasonably in handicapped state, should not proceed unheeded, worsened – for that would be “detractive of the rule of law.”\textsuperscript{394} Habitants of shanty towns demolished in the midst of the monsoon.\textsuperscript{395} These cases is a manifestation of circumstances which only divulge in adequate measure the distressing predicament of under trials.

\textbf{B. PRE-EMINANACE OF ADR IN CORPORATE WORLD}

Arbitration has been mostly favoured in demand in international commercial settlements which include countries like UK, where the parties are able to determine on their choice of rules and regulations by which they want to be regulated and the jurisdiction in which they need to take part in the discourse. Arbitrators are persons with substantial proficiency in a specified sphere predominantly where the decision maker needs to be erudite about a certain content or business practice or it’s professional competence. The arbitrators while determining the price see how much hour the case has get hold of and how composite the case and then only, he arrives at the charge. This amenity is unavailable in judicial proceedings in the court room.

“No, arbitrator is an advocate for any particular party, he acts as judge in the ‘cause’; No arbitrator identifies himself with the interests of a particular party just for the reason that a particular party appoints him,”\textsuperscript{396} hence his mantle can be regarded highly. In the corporate world the arbitration elements also prosecute both the employer and his employees. It also intercept litigation of prejudiced claims and assist employers to reserve finance and time. Article 14 of the Indian constitution, in the matter of equality before law and equal protection of laws, provides the court of law the capability to expunge out the appalling inconsistencies and unfairness epidemic in India. The Chief minister and chief justices were of the perspective that Courts were not in a disposition to hold up the complete onus of justice procedure and that a number of contention impart oneself to resolve by alternative means alike arbitration, mediation and negotiation. They accentuated the preferableness of litigants taking dominance of alternative dispute resolution, which dispensed strategical elasticity extricated beneficial schedule and finances and steer clear of the trauma of a typical trial. In this guidance even if it is our constitution or International Covenant on civil and political rights or the 14\textsuperscript{th} Report of law Commission of India or Universal Declaration of human rights of all these endeavored, purported and manifested these very same epitome of propositions. The same is called

\begin{itemize}
\item \textsuperscript{392} Hussainara Khaton\& Ors v Home Secretary, State of Bihar 1979 AIR 1369
\item \textsuperscript{393} AIR 1982 SC 149 at p 192
\item \textsuperscript{394} Khatri v State of Bihar AIR 1981 SC 928
\item \textsuperscript{395} Bhandhua mukti morcha v Union of India AIR 1984 SC 802
\item \textsuperscript{396} Oswwald v Earl Grey (19850 23 LJ QB 69-Russell 20\textsuperscript{th} Edn.p.233)
\end{itemize}

\textbf{www.supremoamicus.org}
“efficacious remedies and processive equity”.

The common man who was seeming to be astrayed in the entanglement of legal jargons timely with legal verbose and legal testament and jeremiad amplification of lawsuit and unfavorable legal glossary which was not easily accessible is now coming to normalize to the latest circumstantial integrity structure of law and its distinctive specification. This fabricated the circumstances completely dissimilar generating explications admissible to the parties without the requisite to go through high priced legal action all of which commensurate with that every one of them will cohere to the proposition of “arbitral conscience”. This is the saga of arbitration journey and arbitrations chronicles, though turbulent decades progressing all the while. In today’s era of technological sweeps, ADRs and such fast track justice delivery procedures became the welcome remissions. Thus dawned ADRs in Indian hemisphere and in the year 2015 amendment came into existence. The use of arbitration for settling issues in the commercial sector is useful as it saves ample time and energy this can be strongly proven in the following case laws:

In Guru Nanak Foundation v Rattan Singh & Sons 397 case wherein it was held that Court –fed litigation has plethora of “procedural claptraps “ when correlated to other system which is more prompt, less approved and efficacious as scrutinized to compound, extortionate, time consuming and undefined court procedures where ‘lawyers laugh and legal philosophers weep’.

Also in Menaka Gandhi’s case 398 the Supreme court laid down under Article 21 “a procedure prescribed by law “. It further laid down new and more liberal norms consistent with human rights. By embracing a established role Supreme Court held that “legal aid is implicit in Article 21 which includes legal aid and speedy trial and right to human dignity”. It is by this prolific elucidation only that Supreme Court held the “right to legal aid as a fundamental right under Article 21 Supreme Court held “legal aid is a positive obligation imposed on the state by Article 21”. So there was a significant exigency for the entire society and people in different sectors to conclude the disputation in a whisk formula there the demand of ADRs come to the fore.

C. CONCLUSION

Since commercial arbitration no longer remains as an unambiguous procedure it requires an efficient and speedy trial, informal, economical and constructive mechanism. It means law needs reforms, hence 2015 law came into force rightly. Newly flourished 2015 law plays a exceptional role world over and offers considerable choices to parties involved as compared to the 1996 enactment.

397 AIR 1981 SC 2075
398 Maneka Gandhi v Union of India 1978 AIR 597

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BIOTERRORISM: NAV YUGAM NAV YUDDHAM

By Mansi Singh and Apurva Dixit
From Banasthali Vidyapith

ABSTRACT
“Bacteria’s don’t respect borders” very well embodies the dilemma of the present era. The Nations today are so immense in their personal development and economic race that they seem to forget that like humans bacteria does not respect the divisions that are made in this world. That the problem we are facing is not some personal affair of any nation but a global situation which requires efforts on national as well as global level. It tends to forget that the science which helps us in our development can also be the reason behind our doom. This past decades were all for Medical science, as many major inventions and development were seen. The diseases which were considered incurable are now easily cured. Development of new vaccines and their ease of availability was main objective. All of which seems to be achievable today, but as the saying goes “if there is honey the bees will come from nine mountains away” it seems that all these facilities has allured some uninvited guests one of which is what we are discussing further, also known as Bioterrorism. The incidences of same has been recorded in past, but what will be the aftermaths of such attack in this globally connected world with no obligations? Medical preparedness is basic necessity, but what are global efforts against these inhumane practices? And what else should be prepared? Are some questions discussed in the paper.

INTRODUCTION

As the title goes Nav Yugam Nav Yuddham. In this striving sphere of all the new achievements and tremendous establishments of mankind along with comes the dark side or we can say improved dark side cause terrorism is a problem which this world has faced from far many decades and is still facing but an updated version famously know to all as Bioterrorism. This is a kind of terror which can be spread through various forms in different means and most importantly is hard to detect. It has all the features which were lacking in the older version. Thus we can say, in this era along with advance technologies and innovated inventions we have invented a newer and improved version of terror.

In Hindu mythology it is believed that Shrimad Bhagwat Geeta has the solutions to all the problems of human kind. Looking at the current scenario a popular verse of Geeta strucked down my mind which we have all grew up listening to….

“यदा यदा हि धर्मस्य र्नानिर्धवति भारत न अध्युत्वानमपि दत्तात्यां सुजाम्यहम्॥
परित्राणाय साधूनाम् विनाशाय च दुष्कृताम्।
धर्मसिध्यपानथिय सम्बाधि पुरुषः पुरुषः॥”399

I think they always knew that human kind will lead themselves to the path of self-destruction where they themselves will be the reason for destruction of their kind, there have been numerous methods but the one main cause of concern today is BIOTERRORISM. The reason behind this being main cause of concern is, in the present years where we are facing the consequences of decades of our negligence in terms of extreme natural disasters. Mankind itself is trying to create an

399 Bhagwat Geeta, chapter 4 verse 7-8
epidemic catastrophe which the world is not ready to face. Yet for the fulfilment of their diminutive ambition of satisfying their evil motives or to parch their desire to see fear, pain and terror among the society. The traces of such incidences can also be seen in the history when microbial species outbreak against homosapiens has killed far more people than war. In the primal time from Greeks in 300 BC when they befouled the well and drinking water supplies of their rivals from animal corpse to the recents in world war I and II when Germans and Japanese used various infected pathogens and fleas against Europe and China to cause germ warfare in former and plague outbreak in later also in this decade when post mails infected with anthrax were used in Washington, 2001 after one week of September terrorist attack.

The idea behind stating all these incidences was to draw your attention to this unmasked demon of terror. Because we are very well versed with the term terrorism which is always related with the incidences like suicide bombers, plane hijack, crashing famous buildings, which has created fear among all. But unaware with the fact that how this advancement of technological development has also gifted us with this upgraded unmasked demon of terrorism known as bioterrorism. This is that uncovered face of terror which will horrify the people and the nation with the inimical consequences of it.

But the question which emerges is what exactly is Bioterrorism? As it is mentioned above bioterrorism in an advanced form of terrorism where instead of using technologies of weapons, biotechnology and nanotechnology are used to create such viruses which once infected are hard to conquer. Or in adroit terms has been defined as “Intentional use of Pathogen or biological product to cause harm to human, animal, plant or environment, or to intimidate a society or influence the conduct of a government”\[400\]. The use of such products as weapons by a nation against other or by undermining group within nation is called bio warfare while use of such kind of weapons for a terrorist activity is known as bioterrorism. For instance we are all well aware with the HIV virus which is dangerous to our health because the primary functions which it does is it destroys the alarm cells of the immune system which prepares our body to fight against any disease and because of the damage caused to these cells the immune system of our body becomes weak and thus get attacked by any disease which result in death of the person. In the same manner this weapon can be used to ruin the functioning of the country. The people, trade, business, economy etc. are considered as the immune system of the country which being attacked by the bacteria’s can demolish the nation. This biotechnology is just like a termite which eats the wood from inside and mould it to be hollow. It has become a pertinent to understand and make a dent in its progress. Bioterrorism is a futuristic aspect with historical traces. In earlier times it was use to win war against enemy monarch or country and in present time its resourcefulness to create immense hysteria and incomprehensible fear has always enchanted terrorist. If we take a look at past incidences, from the middle ages when diseased cadaver and bodies were precipitated over enemies walls in attempt to induce sickness to the French and Indian war where small pox infected blankets were provided by britishers to Indians. Even in World War II biological weapons were

\[400\] Shodhganga.inflibnet.ac.in
experimented on prisoners by Japanese unit 731 in Manchuria. In modern times, there was a suspicious outbreak of scrub typhus in North-eastern Indian during Indo-Pakistan war 1965, as well as in 1995 after the gulf war when Iraq was found developing aircrafts and bombs containing Bacillus anthracis and botulinum toxin. But the US anthrax mail incident should be considered as tip off iceberg to reignite biological warfare research and preparedness. In the current highly technological and connected world the results of such attack can be more severe. To fathom the degree of destruction it may cause we can take a look into the present scenario in Wuhan, China. Where the 2019-nCoV virus also known as novel coronavirus was identified. The mortality rate in the province has gone up to 3.16% in comparison to the rest of china’s 0.16%. The capital Hubei of population around 60 million in province Wuhan is landlocked. Not only this but china has faced loss of around $62 billion in growth just in weeks of virus being identified due to; lack in tourism this Lunar New Year, shutting down of various international retail centres. International sale of Chinese products is diminishing due to fear of its transfusion. China has a major role in integrated international supply chain which is a major cause of concern for international trade. If happened such kind of pandemic not only impacts the attacked country or region but globally. As we can see this virus has affected almost all the nations around the world and the increasing number of death rates are terrorising the people all over the world. This type of hysteria is what terrorist look out for. whereas if we take a look at the impact of a terrorist attack though it is disastrous but cannot cause such a large scale mortality and morbidity in large population and create civil disruption in shortest time possible. Also the fact that these agents are highly infectious, easy to disperse and are accessible without a hitch due to their use in development of vaccines and anti-biotic is just a cherry on the cake for terrorist groups. We live in age where we prepare to protect ourselves from the fear of unknown. The reason behind discussing the impact of 2019 n-CoV was to give an abstraction of a bioterrorist attack aftermath and to raise the concern of conscience towards this fear. Furthermore the World Health Organisation based on scientific calculation has also given estimation of probable causalities through an experiment, that if around 110 pounds of dried anthrax powder is released in atmosphere by aerosolisation for around 120 minutes in a city of half a million inhabitants which resulted in death of around 19% of total population with 25% of population being incapacitated. It also says that the tremendous strain on resources for providing medical facilities, anti-biotic, and disposing of death bodies will lead to rapid breakdown in medical and civil infrastructure. During such time vigilance in medical preparedness for surveillance, diagnosis and implementation of treatment is essential but the intriguing question is what is the advancement of law in this scientific or more specifically biotechnological dilemma?

There is a thriving organisation of international law which provides a platform on a global level to combat against bioterrorism. The different approaches have been done in various dimensions to overcome the fear of this attack. The international law specifically covers the law regarding the criminal attacks against the humanity in the world where public interest is hindered at large. The acts of bioterrorism is such heinous that it should be criminalise by imposing heavy punishment on a global level. With the
intention to work on the implementation of law relating bioterrorism they came up with a treaty of Geneva Protocol which was signed in 1925 which prohibited the avail of deleterious gases and use of bacteriological tactics of warfare in international armed conflicts which had 38 signatories. The first multilateral disarmament treaty signed by 170 nations is Biological and Toxin Weapons Convention 1972 whose agenda was to impede the use of certain class of weapons which has no justification for vigilant or tranquil use. This treaty restricts the nations from accumulation, stockpile, production or transposition of biological agents and toxins. As we move forward in 2001, the terrorist attack by Al-Qaeda on September 11 which involved hijacking and crashing of passenger jet airliner due to which 2996 people were killed. After this incident US legislature by amending their public health laws introduced “Model State Emergency Health Powers Act (Model Act)” and “USA PATRIOT ACT” the former to control epidemics and respond to bioterrorism and the latter to substantiate US by providing appropriate tools required to intercept and obstruct such attacks. In March 2007 the Indian National Crisis Management Committee approved a model of standard operating procedures for prohibiting and responding to bioterrorism attack. In 2002 “Public Health Security and Bioterrorism preparedness and response act” was introduced. In 2004 project BIOSHIELD was also passed by the US government. The United Nation Organisation on a global level combat laws on terrorism. The role which an international organisation like the United Nations play is very significant and extensive in such matters. As it mandates and is ingenious in various aspects of security, development and international cooperation. The agenda which it propagates is to maintain the harmony and peace in the nations at global level by enacting different laws and regulations in relation to terrorism. The UN has signed a number of treaties, protocols and conventions related to terrorism that obliged state to criminalize specific declaration of terrorism at the international level. The penal code at international level provide with some sections which deals with the offences related to terrorism activities in chapter 18.

CONCLUSION

यहद न प्रणयेद्व राजा दण्डं दण्ड्येष्विन्द्रििः
शूले मत्याविवप्स्यानुः दुर्मलाि् र्लवत्तराः
॥

If the person deserving punishment are not punished than the stronger will boast the weaker section in the society just like fish on the spit. Grams for gram biological weapons are most destructive weapons mankind has ever made. Criminalizing such activities on the global level should be the first step. The number of times when countries were alleged using biological weapons even after Geneva protocol were astonishing and eye opening for the UN to make some rigid system against such practices and it introduced BWC biological warfare convention in 1971 and is still in action after all these years. But for bioterrorism there are no such laws or conventions. Which is real threatening. There is a list of blacklisted countries which do not follow the rules against terrorist financing and activities known as FATF BLACKLIST introduced by OECD. This increase the threat of future happening of such biological intelligence attack. And in the earlier hypothesis of coronavirus it was seen that even the second largest economy like China whose basic administration system is socialist is unable to combat the aftermaths of such outbreak on the citizens
and the economy than what will the underdeveloped countries do. The preparedness against such attacks can be distributed in two levels. First the global level and second on national level. To deal with problems which affects us on ecumenical level there always has been formation of regional groups from petroleum to trade routes so why not in epidemic crisis. Formation of groups of nation with unified rules against bioterrorist activities will increase the efficiency to whiff out such operations can strengthen new allies and reduce the threat of such attacks. On ecumenical level a committee should be form to keep a close eye on the blacklisted countries and the terrorist groups like Al QAEDA, ISISI whose interest lies in such conveyance. Just like the concept of international laws internationally unified licensing laws and restrictions on vending and obtaining of biological agents should be enforced on all three categories listed by CDS. Universally recognised committees like WHO, UNICEF should be encouraged to establish conversational programs to ensure the delivery of accurate information. Nations on domestic level should build a two way system in public administration for coordination and Cooperation between the medical and legal department. Both of which plays important role during and after such onslaught. Just like the US enforcement of acts and laws like BIOSHEILD and PATRIOT for empowerment and protection from such intrusions after 2001 other nations should also authorise laws for the same. Enhanced bioterrorism related education and training for health care professionals should be facilitated.

With the developing era we are indulging ourselves in creating such an atmosphere were not only the human beings are effected but the influence is on the surrounding and resources too. This unmasked demon is leading its footprint in each and every aspect of life and society. It has become a powerful instrument of destruction which can be easily used by anyone to destroy the harmony among the people globally. This is our society and we only have to take steps towards its protection and it’s high time that we owe to our responsibilities towards the mankind.

“Strong people stand for themselves, but stronger people stand-up for the others”

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ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE

By Manu Sharma
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I. Abstract

Independent directors have played an emerging role in the world wide corporate governance movement. This increased presence in the boardroom has effectively worked as harbinger for striking a fair balance between individual, social and economic interest. Moreover, their presence has been hailed as a deterrent to fraud, mismanagement, inefficient use of resources, inequality and unaccountability. However there is a lot of criticism pertaining to the performance of independent directors attributing to their inability to indulge with full potential to the lack of a conducive ‘boardroom atmosphere’ and the presence of some people who are unlikely to raise their voices against the flow of the current. This paper shall bring into the light the concept of independent directors and it’s inter relation within the framework of corporate governance in Indian business culture; their appointment, their duties, liabilities and the evolution of this concept and practical experiences. It shall attempt to outline the loopholes in the current approach and provide for recommendations which not only include structural changes but also a change in the attitude of corporate India.

II. Issues

1. What is the relationship between Independent Directors (IDs) and Corporate Governance?
2. How has the concept of relation between IDs and Corporate Governance developed in India?

III. Analysis

A. Who are Independent Directors?

According to the International Finance Corporation (IFC), an independent director must fulfill certain prescribed minimum requirements. It mandates that only such people must be considered for appointments who have not been employed by the company or its related parties in the five preceding the date of appointment. Moreover, they should not have affiliation with a company that is a consultant or advisor or significant customer or supplier to the company. They should not have any personal service contracts with the company or its related parties or senior management or affiliated with a NGO that receives a significant funding from the company. Ideally, IDs should not be employed as executives of another company where any of the company’s executives serve on the Board of Directors or are members of the immediate family of an individual who is, or has been during the past five years, employed by the company as an executive officer. On the same line in India the Securities and Exchange Board (SEBI) has issued similar guidelines for the appointment of IDs. However the standards incorporated by SEBI are less stringent than what is considered by IFC. As per SEBI, ‘independent directors’ refers to a non-executive director who does not have any material pecuniary relationships or

401 IFC, Indicative Independent Director Definition International Finance Corporation, available at http://www.ifc.org/ifcext/corporategovernance.nsf/AttachmentsByTitle/Independent+Director+Definition.doc/SFILE/Indep

402 Securities and Exchange Board, Equity Listing Agreement, 2000. cl.49 (A) (iii)

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transaction with the company or its promoter or director or senior managements or any other alliances, apart from receiving the director’s remuneration, which may affect independence of the direction. They must not be related to the promoters or persons holding management positions at board level or one level below the board or an executive of the company in the preceding three financial years. Furthermore, they should not have been a partner or an executive or involved with audit firm associated with the company at any time in preceding three years. They should not be the supplier of material or the provider of any servicer or customer or lessor or lessee or a substantial shareholder in the company.

B. Independent Directors & Corporate Governance

Governance, as it is said is about steering a company in the right director. Mr. M. Damodaran, former SEBI chief, described corporate governance as a continuing process beyond the scope of mere legislation. By this he implied that governance requires practices for which the legislative mandate should only be a starting point. Companies must follow these practices not because of fear of sanction, but because the absence of such governance will lead to decline in its potential to achieve true profitability. Other thinkers have described corporate governance differently; some believe that is a journey and not a destination, while some compared it to “trusteeship”. But irrespective of different approaches, the subject matter and purpose of corporate governance remains undisputed - even more so vis-a–vis the role played by independent directors. The IDs broadly fits into the overall structure of corporate governance. They are appointed to ensure an effective and balance board. There is no denying to the fact that the board of directors (BoDs) is the most significant instrument of compliance with corporate governance and its supervision is of utmost importance. The IDs contribute to the board by constructively challenging the development of policy decisions and strategies. Moreover they ensure accountability by scrutinizing the performance of the management. Their independence, on account of lack of affiliation which is likely to prejudice their decisions, allows them to fulfill these tasks more efficiently. While, they are answerable for the actions of the company, they are less likely to be affected by self-interest in these actions. The above-mentioned characteristics put them in a unique position to question the company’s practices as they have been conventionally been viewed as “adversaries” within the board. However, their position has been gradually become more acceptable with the realization that independent directors bring something more to the table which implies that in a long run independent directors bring with themselves a more balanced perspective.

It is an interesting point to note that considerable effort has been made via institutional guidelines, to encourage the appointment of independent directors. For e.g. the New York Stock Exchange regulations provides that majority of board of directors of a listed company should comprise independent directors, for which

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there is a stringent qualification. Additionally, companies listed on exchange must compulsorily have committees such as Corporate governance committee, audit committee etc, which must only consist of independent directors. Ever since the practice of appointment of IDs has been recognized as a legitimate means to bring about more transparency in corporate governance, increasingly more countries have adopted the similar guidelines. Let us discuss it in the context of Indian Corporate business.

C. The Indian Context
a. Conventionally Wrong: The Past Record
Indian Corporate sector has faced a major criticism for its poor record in complying with norms of corporate governance as the presence of large-family dominated business has posed serious threats to accountability and transparency. Traditionally, in most of these enterprises, majority stakeholders have been the family members who did not find it compelling to disclose sufficient information to the IDs and hence it became an arduous task for them especially considering the fact that they used to attend very few meetings per year which were ceremonial to a large extent. This made it impossible for independent directors to comprehend fully the issues before the boards and to be accountable in large business structures. This was in total contrast with the more efficient western enterprises where IDs are viewed as partners of management and ‘outside guardians’ whose job is to ensure that the management stays focused on delivering shareholder value.

b. Clause 49: Independent Directors get a Boost
In India, the SEBI monitors and regulates the corporate governance of listed companies through clause 49 of the Listing Agreement. SEBI in 2003 launched this landmark initiative towards achieving higher corporate governance after being influenced by the Sarbanes-Oxley Act of 2002 in USA and the New York Exchange regulations in 2003. After introduction cl. 49 was to apply to companies in a phased manner, firstly it applied to all Group-A companies and then to other listed companies with a minimum paid up capital of Rs. 1 cr./ net worth of Rs. 25 cr. Later it was amended and issued with several new changes.

The new clause lays down more stringent qualification for independent directors than the previous one and most prominent is that it took away discretionary powers conferred upon the board to decide whether the independent director’s material relationship with the company had affected his independence apart from increasing the number of mandatory board meetings from 3 to 4. The clause lays down an inclusive definition wherein independent directors are not supposed to have any kind of pecuniary relationship with the company, its promoters, management or its subsidiaries, which may affect the independence of their judgment.


D. Resistance to the Change: Do we really need Independent Directors?

The new guidelines by SEBI faced stiff resistance. The foremost argument that was presented against its implementation was the paucity of the qualified personnel. The clause mandates that independent directors should constitute 50% of a company’s board, the omission of which can lead to imposition of severe penalties. Furthermore, it was argued that such directors who would attend only a few board meetings and may tend to be obstructive to the functioning of the board as they will profess their expertise without fully knowing the conduct of the affairs. Besides, in the context of family dominated business, the independent directors may not be in a position to exert requisite influence. The first argument may be outright dismissed as it is unimaginable to think in a country like India, finding a qualified person could prove to be too onerous. Arguendo, if it is so, there is still no reason to suggest that there is sufficient talent to appoint directors but not independent directors. With the appropriate training, this paucity could easily be overcome and pave the way for better governance in the corporate regime. As for the second argument, it may be turned around on itself. India must continue to strengthen the institutional support the independent directors, they must be allowed to participate more with the board of directors and be more vocal with their contributions to play an effective role. It has been shown that the only reason why independent directors have successfully averted the potential fiascos and promoted accountability towards shareholders has been on the account of their considerable involvement within the company. Such kind of support must continue. Therefore, while it can be a matter of debate as to what percentage of board must be constituted by such IDs, the importance of having a considerable number is definitely not.

E. The New Experience: Any Benefits?

An analysis of the Sarbanes-Oxley effect in NYSE suggested that the compliance towards the corporate governance standard have increased substantially due to these regulations, but at the same time the cost for companies to list with it by hiking their compliance cost has also increased. For e.g. if the compliance cost for a company with its total revenue is $50 million, then the compliance cost alone is $3 million. Therefore the compliance may, in fact land up serving as a hurdle for listing. Some studies also suggested a positive interaction between stronger share holder rights and higher profits and sales growth & lower capital expenditure and corporate acquisitions. In fact, the investor are more inclined to invest in those share which offer them the strongest democratic rights and dispose off their investments in those with the weakest rights. A US study also suggested a link between the increased sensitivity of CEOs towards the performance of the company and the

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408 Id/¶ 12.

409 supra note 5.

increased representation of IDs on the board.\footnote{Hermalin & Weisbach as quoted in Kothari, supra note 4.}

### F. The Committee Reports and Suggestion

In 2004, the \textit{J.J. Irani Committee}\footnote{Report of the Expert Committee on Company Law, available at http://ficai.org/resource\_file/10320announ121.pdf (Last visited on January 20, 2020).} recommended that the provisions of cl.40 of the Listing Agreement should be extended to all ‘large’ companies. The committee reaffirmed the belief that the concept of corporate governance and the principle of independent directors are closely intertwined and presence of such directors in considerable amount would improve governance.

With respect to widening the scope of cl. 49, the committee suggested a sensitive approach to the specific kinds of companies and disagrees with the philosophy of ‘one shoe fits all’. Wherever a company involves the interest of the public, at least one-third of the board must consist of IDs. On the issue of nominal directors on the board who are representative of institutions, Committee recommends to not equate them with IDs since they represent only the interest of one section.

The Report of \textit{Kumar Mangalam Birla Committee}\footnote{The Report of the Kumar Mangalam Birla Committee on Corporate Governance, available at http://www.sebi.gov.in/commrreport/corpgov.html (Last visited on January 22, 2020).} in 1999 on Corporate governance criticized the traditional practice of hand-picking of the IDs as such selection itself takes away the independence of the directors. This loophole still remains as a paradox; how independent can a director be if he is dependent on the promoters for his job?

Another loophole which has been sufficiently looked into is the remuneration offered to the IDs. The Birla Committee was of the view that adequate compensation packages must be provided to the independent directors to make their positions more financially attractive to draw talent and ensure integrity in their working.

In 2002, \textit{Naresh Chandra Committee}\footnote{The Report of the Naresh Chandra Committee on Corporate Audit and Governance, available at http://finmin.nic.in/downloads/reports/chandra.pdf (Last visited on January 22, 2020).} reiterated the need for the expansion of companies under Clause 49 of the Listing Agreement. Through the course of all three of the herein mentioned reports, the scope of independent directors in the context of Indian business has become more cleared and widened.

### G. The Companies Act, 1956 and Independent Directors

The Act looks at all kinds of directors in the same light. While the provisions of extra compliances are provided for the full time directors, it does not exempt IDs from any of the duties, responsibilities or liabilities of the board. As a result of this the IDs are included into the corporate governance team as any other director and are bestowed with the same powers.

Sections 274\footnote{The Companies Act, 1956. § 274.}, 284,\footnote{The Companies Act, 1956. § 284.} 291,\footnote{The Companies Act, 1956. § 291.} 297,\footnote{The Companies Act, 1956. § 297.} 299\footnote{The Companies Act, 1956. § 299.} & 300\footnote{The Companies Act, 1956. § 300.} of the original Act was applicable to all directors, while § 309(4\footnote{The Companies Act, 1956. § 309, cl. (4).}) allowed for separate limits and restriction to be made applicable on the remuneration of IDs only. Apart from this, other liabilities

http://finmin.nic.in/downloads/reports/chandra.pdf

under other laws as well can also be applied. Any communications addressed to the directors of the company are deemed to be addressed to the independent directors as well. The classic example is the Worldcom and Enron settlement, in this case the liabilities extended to the IDs to the tune of $18mn by 10 IDs of Worldcom and $13mn by the IDs of Enron. However in the context of India it can be argued that liability arises only on the account of omission to do certain act or misconduct on the part of director and not by the mere fact of holding an office.

**H. The Satyam Fiasco**

The blowing up of the irregularities in corporate governance, which came to light with the investigation into the Satyam fraud has given an impetus to contemporary debate on the role of IDs and the urgent need to improve corporate governance structures in India. The question arose when the investors and regulators doubted and questioned a bid by the founder of Satyam B. Ramalinga Raju to acquire a firm promoted by his kin. In the aftermath of the Satyam fiasco, nearly 350 IDs resigned from their posts across India which was a clear indication to the investors that all is not well within the boards. This might perhaps attributed to the fact that an adequate proportion of IDs do not feel confident of facing the consequences of the conduct of their companies. This may be because they either already have the knowledge of illegal conduct but have failed to influence the board to act upon it effectively or they are not in control of the happenings of the company.

**I. The Way Forward**

The Companies Act, 2013 came up with stringent provisions than that of the listing agreement. The Act in itself came up with a dedicated chapter on Corporate Governance. Under this law, various provisions were made under at least 11 heads viz. Composition of the Board, Woman Director, Independent Directors, Directors Training and Evaluation, Audit Committee, Nomination and Remuneration Committee, Subsidiary Companies, Internal Audit, Serious Fraud Investigation Office (SFIO), Risk Management Committee and Compliance to provide a rock solid framework around corporate governance.

**a. The Rationale behind Independent Directors**

There are two types of directors in any company viz. Executive Directors (EDs) and Non-executive Directors (NEDs). The NEDs are further divided into 2 categories viz. Independent Directors (IDs) and others. The IDs are primarily meant to oversee the functioning of the board and ensure that their decision do not hurt the interest of the minority shareholders. The current norms demand that the two third members of the Audit Committee and the Chairman should also be Independent. An independent director can serve in the same capacity in maximum seven companies. Further, if a person is whole-time director, he cannot be

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425 The Companies Act, 2013. Schedule IV.
an independent director in more than three listed firms. An Independent Director who has already served on a company’s board for 5 years can serve only one more term of 5 years. Companies are now required to disseminate Independent Director’s resignation letter to Stock Exchanges & on company website.

IV. Conclusion
The objectives of corporate governance cannot be perhaps met without the involvement of independent directors in the larger schemes of things. This becomes even more compelling in the context of burgeoning state of Indian economy with unprecedented amount of funds flowing into the companies from within and outside the country. With the growth in business, there is a rise in the expectations that Indian companies would follow the higher standards of corporate governance in a manner clearly demonstrable to the shareholders. It has been a long standing demand for greater transparency in the procedures and functioning of the Indian market and companies with are now being met through various new proposals, amongst which a wider role for IDs has been a welcome move.

Cl. 49 of the Listing Agreement should come as a reminder to the directors that they are accountable to the shareholders of the company and not the management. They are in a fiduciary relationship with their investors and to dispense with such fiduciary obligations, it is not sufficient to show the mere absence of fraud or bad faith. Instead, such relationship implies the need for an affirmative action. Furthermore, there are many things which do not find its clarifications in the listing agreement, for e.g. - if it is revealed at a later date that the ID on the board is not in fact independent; what would happened to the decision of the boards in such circumstances.

However, in coming few years, one would expect to see more active co-operation from IDs. At the same time, investors must also play an active role in their demands and expectations of the highest level of governance by exercising their rights.

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SPORTS BROADCASTING LAW: 
EVOLUTION AND THE ROAD AHEAD

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ABSTRACT.
India is one of the few countries in the world where a particular sport encompasses everyone, even those divided by culture. In the modern era, it has transformed into a media spectacle, targeting million-sized viewers and trillion-dollar marketing contracts. But, throughout the cycle, sports have become commercialized and commodified. The potency of the mix of media and sports has led to controversy, precipitating judicial interference. The audiovisual sports equally troubled the minds of the legislators and the academics. This article traces the evolution of sports broadcasting law through the help of major cases. It also reviews the areas of sports news and data and whether it comes under the purview of Sports Broadcasting while ending with a brief look at the road ahead.

EVOLUTION AND TRANSFORMATION OF SPORTS BROADCASTING IN INDIA.
Sports broadcasting can be traced all the way back to the time when India first began to flourish in the audiovisual and television market. India’s first public service sports broadcaster was Doordarshan which was established in the year 1976. Initially the vision of the television market was the spread of information and education and it wasn’t interested in commercial interests. However, with all the revenue there, the Indian Government decided to accept sports tournaments and programs that were backed by sponsors. Slowly but surely, Doordarshan was becoming a monopoly in the broadcasting department and was fully state owned. This came to fruition when India hosted in New Delhi, the ninth edition of the Asian Games which was for the first time in the country, an event broadcasted in full colour.

Thus, before the introduction of economic and liberalization reforms by the Indian Government, the sports broadcasting industry was budding and one that was still developing. In fact, until the year of 1984, simply watching and owning a television set required a license which had to be renewed on a timely basis. This fee was used to operate and fund the state owned Doordarshan corporation. This model of licensing changed completely in the 1980s with the commercialization of cricket. Initially, with cricket being almost equal to any religion in India, the government enjoyed a large monopoly towards its broadcasting. However, it wasn’t until 1983 when the Indian cricket team shocked the cricketing world and won the world cup till broadcasting and commercialization really started booming. The 1983 world cup was solely broadcasted by Doordarshan. Therefore, the 1983 world cup not only lead to the explosion of cricket


www.supremoamicus.org
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watchers but also the expansion of the audiovisual media. Doordarshan was continuously gaining and benefitting from these tournaments and the revenue was helping its monopoly get even stronger. However, things were about to take a turn with the introduction of day and night cricket as well as cricketers wearing coloured jerseys which would make the world not only see them as cricketers but also as superstars. This model was begun by a media tycoon form Australia named Kerry Packer. Being credited with this model wasn’t enough for Packer and he wanted the exclusive rights to broadcast these events but conclusively failed in this regard. He was frustrated and therefore started his own tournament, one which would match the allure of the world cup called as the World Series Cricket (WSC) where the best players were offered extraordinary amounts of money to play. This was a real challenge to and angered all the cricket boards around the world. Although, the establishment started by Packer was shutdown, it not only changed cricket forever but also its broadcasting and had a trickledown effect in India.

Doordarshan unaffected dictated terms and conditions to sports organizers without paying them and in reportedly cases charged the BCCI fees in order to broadcast events which was completely illogical. With their being no real competitor out there BCCI had no alternative but to agree with the terms of the BCCI, but things were about to take a turn with the introduction of economic reforms by the government and a huge influx of investment form outside India that ultimately lead to the Hero Case.

**THE HERO CUP CASE.**

In the field of Sports Broadcasting Law, the Hero Cup case or the Cricket Association case is the most historic and landmark case. Pluralist telecast equality has been a developing plant throughout the constitutions of the world. Only in the last two decades have the developed countries seen the dawning of this freedom; as its constitutions were in place for centuries. To name just a few, the United Kingdom and the United States, including Austria, France, Germany, Italy, the main European Constitution have either adopted the radio broadcasting law of judicial decisions against the monopoly and the diversification of Doordarshan chain services of a single authority or individual. India did not witness such a long gestation cycle because of the long delays in television shows, news and developments in foreign soil.

When it comes to the facts, the present case has travelled to the Supreme Court of India from the Calcutta High Court Single Judge Bench, Division Bench. It saw a number of letters exchanged between the respondents and the appellants. The brief facts were that the petitioners, the Bengal Cricket Association (CAB) and the Cricket Control India (BCCI) Board, non-profit sports organizations dedicated to promoting cricket and its ideals, decided to organize the 1993 Hero Cup tournament matches. TWI, an international corporation, had entered into an agreement to telecast the

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431 Boria Majumdar, ‘How a cash-strapped BCCI in the early 90s became the world’s wealthiest board’, (The Economic Times, 4 September 2017) https://blogs.economictimes.indiatimes.com/et-
432 Ministry of Information o & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161
matches. They also wanted INTELSAT to uplink facility through the government agency VSNL for this. The Ministries of Home, Defense, Human Resource Development and Telecommunication granted them permission for telecasting. This angered the Doordarshan and the Ministry of Information and Broadcasting, which protested against such a decision and eventually denied the permission, and this was the bone of contention, attracting Article 19(1)(a).

The issues in the case were twofold:

- Whether the organisation of a cricket match was a form of speech and expression protected by Article 19(1)(a);
- If the right to broadcast that event was also included in the right to free speech and speech.

Once both questions were answered in the affirmative then whether the rejection was protected by Article 19(2) remained the matter. Unanimously, the Supreme Court held that the right to entertain was part of freedom of speech and expression and, in addition, it also included the right to broadcast the case. Instead, referring to the justification of the refusal to grant permission, Justice Sawant took the view that Article 19(2) envisaged another exception "in the interests of the national interest and society which is not another term for the general public's interest." Justice Sawant settled the controversy by not upsetting the Calcutta High Court order which allowed the events to be telecast.433

As regards the revenues, the court ordered the High Court to divide between CAB and DD the revenues generated by the TV advertisements. This way the deadlock was eliminated, created for the millions of viewers inside and outside the world.

The case of the Hero Cup is therefore a case relating to Article 19(1)(a) and the applicable limitations set out in Article 19(2). The decision also included consideration of the difference in the impact of 19(1)(a) and 19(1)(g) as well as 19(2) and 19(6). However, some inference can be drawn which will allow us to continue this discussion. Next, the court rejected in this case the point that 'airwaves / frequencies are a public property' and must be used in the best interest of the public.

In addition, the court observed that Doordarshan has the monopoly of the national telecasting network, thus failing to show the tournament would harm the interests of the majority of people who cannot afford to subscribe to pay channel. Thus, in this court remark, the need for a free service broadcaster other than Doordarshan is implied. Doordarshan is the sole free service network, in the absence of alternatives. Therefore, rules are needed to ensure Doordarshan is unable to abuse its monopolistic status arbitrarily. The statement from the MIBs explained the concern. In explanation of Doordarshan's negative stance, it was affirmed that, since sport is one of the main sources of revenue, there is nothing illegitimate or unreasonable in Doordarshan that seeks to earn some money in the matter of telecasting such events.

The Hero Cup case for the first time emphasized the need for an independent public authority to regulate the broad spectrum of broadcasting issues. Furthermore, it was also explained that 19(1)(a) does not include the right to establish, retain or operate broadcasting.

434 Constitution of India, Article 19(1)(g): Every citizen has a right to practice any profession, or to carry on any occupation, trade or business
stations or broadcasting facilities’ within its scope. This is important from the perspective of the present discussion in the sense that conflicts relating to sports broadcasting are not an issue to be resolved by recourse to constitutional provisions alone.

Citizen, Consumer and Civic Action Group & Anr. v. Prasar Bharati & Ors.\(^{435}\)

The decision in the case of Cricket Association of Bengal by the Supreme Court was considered to be a bit redundant with Doordarshan becoming more and more non-competitive which ultimately resulted in private players having majority of the concentration of sports broadcasting rights. This was felt when two of the biggest cricket tournaments, the Cricket World Cup, 1999 and the one in 2003 were broadcasted by Star Sports and Set Max respectively. Doordarshan was only able to ensure that the matches concerning team India where able to be telecasted by it, but this was more of a temporary arrangement rather than one by law and compulsion. In 2004, India were headlining probably the most lucrative tour in their small cricketing history with them touring Pakistan. The broadcast rights to both the test matches as well as the one-day internationals were bought by Ten Sports. Both Ten Sports and the Doordarshan Network were unable to agree on terms regarding what matches would be telecasted by the latter. This was because Ten dismissed Doordarshan’s contention to retransmit the feed which led to this decision being regarded as one which was against public interest and thus ultimately led to the filing of legal proceedings in the High Court of Madras. The High Court’s judgment was three-fold. Firstly, Ten sports was required to share its transmission to the Doordarshan network; secondly, the Ten sports logo as well as the advertisements would be retained in the Doordarshan network’s retransmitted feed; thirdly, both the parties would agree for a fixed remuneration that Doordarshan would pay to Ten sports.

AN ANALYSIS.

All sports broadcasters who acquire the rights were required to share their feed with Prasar Bharati when it came to ‘national and international sporting events of national importance’ in India according to the ‘Policy Guidelines for Downlinking of Television Channels 2005’ issued by the Ministry of Information and Broadcasting after the above decision. This was in the news when during the broadcast of the series between West Indies and India in 2007 when the official broadcaster Nimbus refused to abide by and follow the above guideline requiring the feed to be shared by Prasar Bharati. This ultimately led to the promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 by the Government of India but was repealed when the parliament in 2008 passed the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Bill. This act was enacted and passed with the intention of providing access free of cost to a huge number of viewers when it came to events concerning of national importance. Thus, it arbitrarily provided that all sports broadcasters who had acquired the content rights legally would not be able to telecast unless and until the feed was shared and simultaneously telecasted on the Prasar Bharati feed as well. All the Sports broadcasters would get some sought of relief in the form of revenue from advertisements in the 50:50 ratio and 75:25

\(^{435}\) W.P.M.P. Nos. 6375 and 6376 of 2004
in radio and television broadcasting and coverage respectively.

CAN NEWS CHANNELS BROADCAST SPORTS EVENTS IN THEIR PROGRAMMES?

New Delhi Television Ltd. v. ICC Development (International) Ltd. & Anr.436

The Cricket World Cup, 2011 was probably the biggest event that India has ever hosted. The ICC, before the start of the world cup issued the ‘ICC Cricket World Cup 2011 News Access Guidelines for India’ according to which bona fide news channels in India could broadcast live as well as past footage of the world cup in limits for the sole purpose of reporting along with strict terms and conditions regarding the issue of commercialization concerning match footage. These guidelines and rules were severely overlooked by all the news channels and were violated multiple times. The Ministry of Information and Broadcasting had to intervene the ICC from banning the media coverage of the knockout matches. However, the ICC did not completely ignore the violations and just before the start of the twenty-twenty world cup in 2012, initiated legal proceedings against the news channel NDTV. The ICC’s contention was that NDTV had during the 2011 world cup violated multiple provision of the guidelines issued by the ICC and thus infringed upon multiple rights of its sponsors and partners. The ICC wanted to ban NDTV from broadcasting any part of the 2012 world cup that was held in Sri Lanka. The High Court while deciding the case held that a news channel could not show numerous minutes of footage of the sports programme where it ultimately led to a commercial profit but could only show important events such as a hundred or a five wicket haul which would be considered as fair use and therefore ruled in favour of the ICC. NDTV appealed in the Supreme Court contending that it did not violate any proprietary rights but broadcasted under the concept of fair dealing mentioned in the Indian Copyright Act, 1957. According to NDTV, the telecasting of current events would fall under the category of fair dealing. The court while deciding ruled that if a news channel created special programmes for covering a sports event, it would be considered as news analysis and not news reporting. The Supreme Court also held that if a news channel created special programmes, it could show the footage but then not commercialize it by showing advertisements or advertise it but not show any of the footage of the sporting event.

AN ANALYSIS.

The situation preceding to the case was one in which there was exploitation in a rampant manner by the news channels under the category of fair dealing while covering sports events. All the sports broadcasters who spent crores on acquisition of rights of broadcasting from the BCCI lost out on their privileges which they felt were exclusive to these news channels. When it came to the case of electronic media, there was a sense of ambiguity regarding what constituted fair dealing in the context and situation of news reporting of footage of a match of a sporting event. The courts only had accepted the concept of fair dealing but were yet to legally form a definite test regarding what constituted under it. Therefore, the accepted practice, instead of a definite test of what was and wasn’t fair

436 CS (OS) No. 2416/2012
dealing, was that there would be contracts and agreements between the official broadcasters of the sporting events and the body that represented the broadcasting aspect of news in India News Broadcasters Association in India. The contracts included specific guidelines as to the limits and extent of the match footage that could be broadcasted as well as the revenue structure. Although, these agreements covered the parts of the sports broadcasters and the news organizations, the interests of the investors of the sponsors were considerably ignored. This judgment took into purview all the important aspects of copyright, broadcasting and commercialization by tangibly defining and fixing the exact limits and structure for reporting of a sporting event for the first time.

DO ORGANIZATIONS WHO PROVIDE LIVE STATISTICS AND COMMENTARY VIOLATE THE RIGHTS OF SPORTS BROADCASTERS?

In the year of 2012, Star India filed a suit against the organizations Idea Cellular, OnMobile and Cricbuzz. Star India, at the time was the broadcaster for cricket in India had the support from the BCCI who according to them had proprietary rights over the information of the cricketing events organized by them as they were the sole organizer and promoter of international cricket in India. According to Star, the three corporations had violated multiple rights due to the agreement that Star had with BCCI whereby it had acquired mobile rights form the BCCI. The Court decided against Star ruling that as the information was already in the public domain, its use was allowed with a lag of two minutes. This decisions was set aside because of a large number of flaws in the procedural part. In 2013, the Delhi High Court granted an interim injunction according to which the corporations could display the information including live scores and commentary with a fifteen-minute lag but anything under that, they would need to require to obtain a licence from Star. This injunction was then subsequently set aside by the Delhi High Court. The Court ruled that the agreement between BCCI and Star regarding quasi property rights was in contravention of the copyright law. This decision was appealed by Star in the Supreme Court. The Supreme Court’s judgment was not very clear but simply ordered the three corporations to follow certain conditions while disseminating the information including a small deposit for which Star had exclusive rights.

AN ANALYSIS.

The real issue regarding the use of sports data is still pretty unclear even after the judgment. There are many unsolved questions including the main one whether in a cricket match or sporting event there exists quasi property rights over its news and facts. It still remains unclear if the restrictions mentioned in the judgment apply only to the internet or to mobile updates as well. In many jurisdictions, data rights are generally not recognized but the efforts and investment of organizers need to regard. If the mobile updates are not legal, then what about the consumers who post statistics in the social media.

THE FINAL RESULT AND THE CURRENT SITUATION THROUGH UNION OF INDIA v. BCCI.

437 STAR India Private Ltd. v. Akuate Internet Services and Ors. CM APPL. 4665/2013
The Supreme Court of India finally addressed the issue of whether there should be mandatory sharing of signals that contain sports content in 2017 in the case of Union of India v. Board of Cricket Control in India438. The Supreme Court, in the case, addressed two laws that were different but had to be applied harmoniously and together. According to the Supreme Court, if and where the private broadcasters who acquire the rights are compulsorily required to share the broadcast with the public broadcaster, then the retransmission so in effect must be only limited to the public broadcaster’s network and cannot be in any way be retransmitted on any other private networks.

The current situation of how exactly sports broadcasting works in India can be explained through the following points:

1. The controlling authority of any sport makes available the media rights for that particular sporting event.
2. The media rights made available by the controlling authority are then acquired by a broadcaster from the same authority. This is on an extremely exclusive basis.
3. The Multiple System Operators who act basically as simple television networks get the sporting event available to them by the broadcaster after the payment of a fee.
4. The final customers can subscribe to the sporting event through various Local Cable Operators who get the feed from the respective television networks.

However, this is not always the case. Sometimes certain legislations of India require sports content exclusively acquired by the broadcaster to be made available publicly to all television providers and networks. This is the concept of mandatory sharing. These legislations are mentioned below:-

A. Cable Television Networks (Regulation) Act, 1993- Section 8439.
This allows the Government to require mandatory coverage by all television networks of certain specified channels through the following procedure:-

1. The services are run by India’s public broadcaster, Prasar Bharati.

2. The channels are called "Doordarshan" channels, channels that are operated by or on behalf of the Indian parliament.

3. Accordingly, the Ministry of Information and Broadcasting (MIB) released multiple notifications ordering private cable operators to carry all Doordarshan channels compulsorily440.

4. Doordarshan channels are Free-to-air (FTA), meaning that no subscription fee has to be paid by a television network to carry it on its network.

According to the provision, It is mandatory that private broadcasters share with Prasar Bharati the signals of some exclusively acquired sporting events.

1. The Government may notify an event as a "nationally significant sporting event"442.

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438 Union of India v. Board of Control for Cricket in India and Ors., Supreme Court of India, SLP(C) Nos. 4574-4575 of 2015, para. 22.
439 Cable Television Networks (Regulation) Act, 1993
2. Even if a private broadcaster has acquired exclusively the rights to a notified event, it has to share its signals with Prasar Bharati.

3. The channels of Prasar Bharati shall be mandatory for all television networks in accordance with Section 8 of the CTN Act.

Therefore, the above two laws result in the access by public broadcasters to the content acquired on private broadcasters, with no fee payable to the private broadcaster directly. As a result, television networks stopped signing up for private broadcasters as the content could be easily viewed by the public broadcaster. In order to acquire exclusive rights to broadcast such activities, a private broadcaster usually pays a high fee. The failure to substitute their investment due to the non-subscribing service providers could result in significant revenue losses for broadcasters (and sports).

WHAT IS THE FUTURE AND THE ROAD AHEAD?

This is the social media stage and any or every news or sports event that isn’t made accessible on it is pretty much considered irrelevant. The expansion of Internet and mobile connectivity among the Indian population would change the nature of broadcasting and the way the Indian public consumes sports content. The involvement of Internet and digital platform operators (which are traditionally unable to be regarded as broadcasters) in the purchase and delivery of premium sport rights is part of a broader change in the media sport content market, which means a shift from the existing "broadcast model" to the ‘networked model,’ described by digital plenitude of new technology, has significantly reduced the barriers to the marketing of sports content in companies and sporting organizations able to produce, manage, and distribute popular sport content. Moreover, the smartphone's increase as the app used to handle most of our everyday activities has allowed us to always consume content irrespective of where we are in.

The focus for Indian sporting groups / federations, and broadcasters is currently on extending their events to the largest audience in India, including those population groups and regions that have been previously ignored, as the television penetration and Internet access continue to grow across the country. In this regard, it should be noted that certain Indian Sports broadcasters are trying to diversify the availability of live sports feeds with commentary and coverage to extend the audience’s audience in the vernacular languages of the south and the east. In addition, licensing agreements of broadcasters, mobile networks and service providers will likely allow sports content to be widely disseminated through their mobiles and digital services to the broader audience as smart phones become the key and preferred source of view for consumers.

The role of sports governing agencies and event organisers is also to maintain a balance between the security of exclusive interests of the broadcasters against the interests of distribution of sport events and their content and broader public access. The significant investment in broadcasting rights from broadcasters is now underpinning the sustainability and profitability of most sports competitions and events. However, the continued absences in sporting events / competitions
on free-to-air channels or state-owned public broadcaster channels, where multiple sports attempt to catch public attention at almost the same time, reduces fan interaction and such a sport's ability to attract fans and new audiences beyond the current fan circle. While this may not be a problem in India at the moment, particularly with cricket as an undisputed leader, and the current mandatory sharing system, it is a factor worth considering given the rapidly changing technology and consumer preferences among consumers and fans, as well as the increasing demand and availability of a more diverse range of sports and entertainment activities.

The Sport Broadcasting industry is invited to always focus its vision and practices on the sport enthusiasts and the viewer. In order to encourage and promote the priority given to the public interest, sport law and regulations must be aimed at a balanced blend of regulations, both visionary as well as the free market.

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ACCOUNTABILITY OF MINING ENTERPRISES IN LIGHT OF THE EQUITY PRINCIPLE: A STEP TOWARDS SUSTAINABLE DEVELOPMENT

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INTRODUCTION
Economic development and social responsibility date back and have continued to be supplementary to one another with the passage of time. ‘Sustainability’ signifies a balance between the consequences and goals which in its domain focuses on the environmental, social and economic impacts of business. Lately, the mining industry has made significant advances in mitigating and managing mining activities resulting in negative impacts on the environment, by improving how companies manage their environmental and social impacts, protect the health of their workers, achieve energy efficiencies, report on financial flows and respect and support human rights as well as the environment.

With the prevalence of human insatiability, intergenerational equity as a sustainable development principle deems that it is the responsibility of the present generation to protect and improve the environment and its resources for the future generations. The equity principle with its nuances, is split in the UN Charter and is as an implied principle under the Sustainable Goals which saw the light of the day in the UN General Assembly, 2015. Alongside this principle, other principles corollary to sustainable development principles also lend support to deter the wrong of mining enterprises before hand rather than after the harm done to the environment.

ACCOUNTABILITY OF MINING ENTERPRISES AND NEED FOR A SUSTAINABLE BALANCE

‘Accountability’ refers to the formal or legal locus of responsibility. Accountability in the mining industry is viewed as responsibility of the mining enterprises to reinstate the environment after the mining process. Corporate Social Responsibility (CSR) is one form of accountability of mining enterprises along with the laws already in place for the same. This social responsibility is mostly about balancing impacts on the environment and people and ensuring that the mining corporations maximise positive impacts through relocation or rehabilitation of indigenous people, local employment and engagement, filling up of mines, encouraging afforestation after excavation and handling other adverse environmental and social impacts.

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In consensus with the sustainable development framework and the standing laws overseeing corporations, undertaking Corporate Social Responsibility is a mandatory compliance. As part of their Corporate Social Responsibility, mining companies need to invest in improving social outcomes by increasing transparency of their operations, by institutionalising systematic public reporting at all stages within a more sustainable developmental framework, by partnering with local communities and improving prospects for employment and entrepreneurship and by consulting local communities during mine planning and post-closure planning and also aligning post closure land use with community aspirations. Local governments and mining companies work hand in hand when ensuring sustainable management of natural resources and establishing infrastructure provisioning to the communities in the area.

Although, corporate social responsibility is a mode of corporate bodies giving back to the society to nurture further development as instructed in the legal codes. With the dawn of a negative footprint on environment due to mining operations and negligence of companies to keep a check on the same, it is observed to be an inadequate governance mechanism of the regulatory institutions and the government as such. Incorporating corporate social responsibility as an ancillary to environmental sustainability is a recent trend. The World Bank Environment and Social Framework Group Strategy sets out with a perspective of securing the long-term future of the planet, its people and its resources, ensuring social inclusion and limiting the economic burdens on future generations. Intergenerational equity principle is given importance in the corporate goals for ending extreme poverty and promoting shared prosperity in all its member countries. It has emphasized the importance of economic growth and sustainability including strong concerns for equity.

A CORPORATE SOCIAL RESPONSIBILITY - THE LEGAL AND INSTITUTIONAL STANCE

Corporate social responsibility in India is seen as a philanthropic activity. This social responsibility is given recognition and is governed under the Companies Act, 2013 supplemented by the Companies (Corporate Social Responsibility Policy) Rules, 2014. Section 135 of the Companies Act, 2013 is the provision that gives legal effect to corporate social responsibility. This provision only provides for civil liability of the corporations. The mining companies are required to comply with the provisions contained in the Mines Act, 1952 and Mines Rules for the welfare of workers employed in mines. Besides the welfare activities, the mining companies are also obliged under Corporate Social Responsibility (CSR) to spend at least two percent of the average net profit of the company made during the three immediately preceding financial years.

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447 Planning Commission of India (n 2).

Framework.pdf#page=15&zoom=80> accessed 26 January 2020
towards implementation of CSR activities as per the CSR policy.  

In addition, Section 9B of Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 as amended in 2015 provides for the establishment of District Mineral Foundation or Jila Khanij Pratishthan (DMF) in every district affected by mining related operations. The DMF is funded by statutory contributions from mining enterprises holding mining leases. The Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) is a welfare scheme that provides the implementation framework for schemes to be undertaken for welfare and development of mining affected areas and the public through the funds collected under DMFs. Section 20A of the Act also gives directions in this regard to all the States Governments to incorporate the PMKKKY into the rules framed by them for the DMF. The details of implementation or non-implementation of welfare schemes or programmes as well as activities carried out by mining companies under CSR is not maintained by Ministry of Mines. However, the second proviso to Section 135(5) of the Companies Act, 2013 mandates that if the Company fails to spend such amount as mentioned in Section 135(5), the Board shall, in its report made under Section 134(3)(o), specify the reasons for not spending the amount.

When it narrows down to the mining entities, the laxity of the provision comes through. The revenue that the entities make is much greater than that of the penalty imposed in most cases. In cases where its pertaining to illegal mining, the actual profit may not be assessed and the mining companies slip off through this gateway by complying with the pecuniary penalty. Hence, it is necessary to have more stringent penalties on extracting companies for conducting activities detrimental to the people and the environment.

The rehabilitation and resettlement matters concerned with the mining sector, being the duty of the mining companies are reviewed by the National Monitoring Committee in the Department of Land Reserves, Ministry of Rural Development as under National Rehabilitation and Resettlement Policy, 2007 and in addition, the Central Government has also enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to protect people affected by mining activities. The National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 also includes corporate social responsibility in its ambit. It also outlines principles that deal with issues related to business ethics, transparency and accountability, environment, human (labour) rights, equitable distribution of wealth and fair growth and development providing value to consumers. These principles have been tailored upon sustainable development principles of intergenerational equity and precautionary principle.

AN IMPEDIMENT TO THE INCORPORATION OF SUSTAINABILITY VIS-À-VIS ACCOUNTABILITY OF MINING CORPORATIONS

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451 Ibid.

452 Ibid.

453 National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (n 1).
The idea behind the backdrops of corporate social responsibility is to hold mining enterprises accountable for their effects on the society and environment. The fundamental approach to widen the corporation’s attitude was to include essentials i.e. to make profits, giving back to the people and planet.\(^4\) The efficiency and effectiveness of any legal arrangement are determined by the governance system responsible for administering and monitoring the implementation of the relevant laws. The duality of control and accountability in the extractive sector vests with the States and with the Centre which work in the interest of the public. Transparency and accountability are fundamental, especially for this sector, bearing in mind the equitable distribution of resource-derived profits without being entangled in the rein of corruption which is endemic in the mining industry. On this account, mining companies have not been doing so well as there is no traditional norm in this sectoral governance for sharing information (on behalf of the mining enterprises) with the local communities. Nonetheless, stakeholder engagement is negligible and can only be seen during approval for environmental clearances. Owing to the social status quo of the local communities, they are often not considered to be a part of the stakeholder circle. Mining companies have failed to make amends for their neglect towards the people and the environment. There have been such shortcomings as an outcome of illegal activities and corruption as observed in the Odisha Mining Scam.\(^5\) It can be inferred from the report provided by National Aluminium Company Limited (NALCO) that there was no efficient objective assessment of the community needs, no involvement of primary stakeholders, expenditure spread much beyond periphery area, inordinate delays in implementation of projects and lack of accountability and sustainability.\(^6\) Assigning funds for the development of the community and betterment of the environment have resulted in the misutilization and diversion of funds by the local government authorities. Both large as well as small industries are included in this scope. Multinational mining companies like Anglo American, BHP Billiton, Rio Tinto, Vale, Barrick and Vedanta are looking to incorporate dimensions of sustainability examined in light of technological advancement, environment protection and biodiversity, stakeholder engagement, local community development and transparency and accountability.\(^7\)

A PATHWAY TO THE EXISTING VOID: A SUSTAINABLE FRAMEWORK

Accountability of mining enterprises is in agreement with the polluters pay principle under sustainable development. This principle states that the absolute liability of the polluter for harm to the environment

\(^4\) Ananya Chakraborty, ‘Environmental Sustainability and CSR in Mining Industry - Focusing on Odisha’ (2015) United World School of Law
<https://www.academia.edu/15747393/Environmental_Sustainability_and_CSR_in_Mining_Industry_Focusing_On_Odisha> accessed 26 January 2020

\(^5\) Orissa Mining Corporation v Ministry of Environment, Forest and Climate Change and Others (2013) 6 SCR 881.


\(^7\) Planning Commission of India (n 2).
extends not only to the extent of compensating the victims of pollution, but also includes the cost of restoring the environmental degradation. It enunciates that the responsibility to disprove environmental damage is upon the polluter. The polluter’s pay principle has been elucidated by the Apex Court in Research Foundation for Science, Technology and Natural Resources Policy v Union of India and Another,\(^{458}\) where it observed that the polluter pays for the cost of preventing or dealing with any pollution that the process causes and it also noted that this principle does not mean that the polluter can pollute and then pay for it. This principle was also applied in other important cases, Indian Council for Enviro Legal Action v Union of India,\(^{459}\) Sterlite Industries (India) Ltd. v Union of India\(^{460}\) and so on.

Conversely, in India, there is no practice of mining enterprises sharing matters concerning mining activities with the local communities while the industry should actually be paying greater attention to these issues so as to enhance communal acceptance of their operations. To avoid exists in the governing and implementation mechanism and this needs to be filled in. A distinct regulation can be incorporated in the law on mine closure formulating and regulating the after-math of mining operations. This should be implemented strictly by the institutional bodies involved as every mining corporation is accountable to the communities in the area and the niche as such. This is a key component in maintaining effective relations with the community to facilitate an unimpeded chain of mining activities. A sustainable development framework has been promulgated to incorporate all these aspects and provide for effective governance.

Internationally, many multinational mining transnationals have formal disclosure policies and publish annual sustainability reports. It has been noted that ‘corporate disclosures on sustainability issues is almost a good indicator of underlying corporate performance on these issues.’\(^{461}\) The initial trigger was set off with an aim to improve environment management practices through better environmental impact assessment and auditing, prevention and control of pollution and the development of integrated environmental management systems. International agencies developed environmental guidelines for governing extracting activities such as the Berlin Guidelines, 1991 which was reviewed in 1999 and the various modules and technical reports published by the United Nations Environment Programme (UNEP). Further, international organizations like UNEP, the United Nations Commission on Trade and Development (UNCTAD), the International Council on Mining and the Environment (ICME) and the World Bank which in 1998 launched the Business Partnership for Development (BPD) (Natural resources clusters) programme with the objective of managing social issues in the extractive industries\(^{462}\) reflected a comprehensive scheme towards sustainable development in the mining sector.

Initiatives taken up made the world mining

\(^{458}\) Research foundation for Science, Technology and Natural Resources Policy v Union of India and Another (2005) 13 SCC 156.

\(^{459}\) Indian Council for Enviro Legal Action v Union of India (1996) 3 SCC 212.

\(^{460}\) Sterlite Industries (India) Ltd. v Union of India (2013) 4 SCC 575.


industry aware that environment management actually espoused the business, rather than a constraint to it.  

Gradually, environmental dimension of the familiar hitches broadened to include community relations, social justice, poverty alleviation and good governance as a part of sustainable development concerns. Consequently, the world mining industry, represented by the Mining and Minerals Working Group of the World Business Council for Sustainable Development (WBCSD), 1998, undertook the Global Mining Initiative (GMI) project in order to improve the industry-wide sustainable practices. This generated a world-wide research and consultation study called the Minerals, Mining and Sustainable Development (MMSD) project carried out by the International Institute for Environment and Development (IIED) which brought out a project entitled ‘Breaking New Ground: Mining, Minerals and Sustainable Development’ published in 2002, covering a wide range of mining-related issues and challenges. The GMI also led to the establishment of the International Council on Mining and Metals (ICMM) in 2001 which was developed based on the problems identified in the MMSD Project and includes various voluntary principles and standards developed by other international organizations and business associations. It should be applaudable that both, national and international legislations have been tailored to promote sustainable development in the whole mining process. Only few major companies in India, publish reports on their activities relating to sustainable development because they are reluctant to share information with the community stakeholders as interaction between the companies and them are limited. Transformation of this convention is necessary for transparency in behaviour and accountability on the part of mining companies.

Even though mining has contributed to economic development, avoidable environmental and social damages continue to befall in the mining areas, major reason being the ineffective implementation of the existing mining and environmental laws and regulations providing for corrective and mitigation measures (such as compensatory afforestation, land reclamation and prevention of illegal mining). Environmental behaviour of mining enterprises varies with the size of the enterprise. While larger mining companies have concerns for scientific mining, environmental protection and limited socio-

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463 Planning Commission of India (n 2).
468 Planning Commission of India (n 2).
economic development, smaller enterprises are more focused on maximum extraction of mineral resources from their lease areas. Mine closure planning and implementation is derelict due to the overriding interests of the mining corporations over the needs of the community and planet. Hence, keeping a check on over-exploitation of mineral resources by mining corporations would entail preservation of these reserves for the future subsequently providing an equilibrium between economic development and sustainability. It is therefore necessary to imbibe sustainable development principles in the mining process and hold the enterprises accountable for not conferring with the same.

CONCLUSION

While industry greed and unethical business practices sweep in to play an important role, illegal mining activities and corruption also follows. The needs of the future generations are compromised due to the exploitation of mineral resources and negligence of mining enterprises. Only by condemning the bureaucracy involved in the mining process, can there be scope for abiding the core ethic of the accountability process. The regulatory and governing bodies combined with the industry itself needs to take a stern step in view of applying and following sustainability in mining sector thereby toughening the accountability of mining enterprises. Involvement of the companies, government and community, a tripartite connexion would render the smooth running of mining activities as the dialect would take into consideration the pros and cons of the process and the ensuing decision would maximize the good. Therefore, ensuring that the sustainable development principles are met with at every step during the mining process will there be preservation of the environment for the future significantly uplifting the principle of intergenerational equity. Wealth is by far the fruit bestowed by nature itself and thus, protecting our environment even if it comes down to deterrence on mining enterprises, is a worthy strive.

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BIG DATA AND COMPETITION POLICY IN INDIA: AN ANALYSIS

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ABSTRACT

The fast-paced development of information technologies in last few years has made us understand that data is the most important resource in our world today. With digitalization the resources of data have become highly accessible and is being exploited enough. In today's world the development is led by the data-driven firms who use a variety of techniques and technologies for processing and analysing large volumes of data. The business model of many of these firms relies on the use of data and analytics which constitute a major source of the firms’ huge productivity. Greater access to and use of data create a wide array of impacts and policy challenges, ranging from privacy and consumer protection and other concerns, across public and private health, legal and science domains. The extensive growth of the online user data has also been of great benefit for the consumers. For example, there has been an increase in free or subsidised services and has fast-tracked innovation. Debates about what the use of big data means to the customers have increased. Another concern is whether big data usage has any anti-competitive aspect to it. Till date, data breach or abuse were dealt under Information Technology Act, 2000 which were mostly related to privacy concerns. The trend of big data mergers has grabbed the attention of competition law authorities across the world, and some measures have been taken to catch-up with this trend. In India, the competition policy is not well equipped to deal with big data generated anti-trust issues.

Keywords: Data-driven Innovation, Big Data, Anti-trust Issues, Relevant Market, Competition Policy.

1. BIG DATA AND ANTI-TRUST ISSUES

Big Data is commonly understood as the use of large-scale computing power and technologically advanced software in order to collect, process and analyze data characterized by a large volume, velocity, variety and value. These interdependent characteristics drive both the benefits and potential risks of Big Data from a competition policy perspective.469

The collection and use of personal data falls under the domain of data protection laws but the question is whether the competition authorities are concerned in use of big data and generally the role of competition authorities in case of big data is significant in case of mergers between data driven companies and as such use of data does not attract the competition provisions unless there is a breach of competition law. From a competition law perspective, a pertinent question that arises is whether the access and use of big data by enterprises can confer them with market power and a competitive advantage over their competitors.

The emergence of new business models, technologies and even markets creates particular challenges for antitrust enforcers.

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The scale and scope of data collection and use will only accelerate as we move into the era of big data fuelled with increasing amounts of information from the “Internet of Things.”\footnote{Ohlhausen, Maureen K. and Okuliar, Alexander, ‘Competition, Consumer Protection, and the Right (Approach) to Privacy’ (2015) Antitrust Law Journal < https://pdfs.semanticscholar.org/541b/da97c6b1627943b4866915bb34d27e507008.pdf> accessed 20 January 2020.} It is clear that big data offers enormous potential commercial, social, and political gains. For example, McKinsey Global Institute has estimated that analytics enabled by big data could yield benefits for health care of up to $190 billion annually.\footnote{Ibid at 1.} Big data enables business researchers and data scientists to do things “at a large scale that cannot be done at a smaller one, to extract new insights or create new forms of value, in ways that change markets, organizations, the relationship between citizens and governments, and more.”\footnote{Google/DoubleClick, FTC File No. 071-0170.}  

1.1 Big data as an asset

For big data to become the concern of competition laws it should be treated as an asset that a company can gather and use to increase their power in the market and engage in exclusionary practices. If it is considered as asset, question arises as to whether competition authorities should try and adapt enforcement tools to deal with the risk of big data as an asset.\footnote{Ibid at 1.}

According to current competition law, the definition of relevant market does not consider data unless it is data itself that is being traded. The traditional market definition exercise only addresses existing competition for the specific services offered to users and advertisers on online platforms. There is a need for wider definition to include this market.

Pamela Jones Harbour, who was US Federal Trade Commissioner, started the discussion on the definition of data-related relevant markets. In her dissenting statement in response to the decision of the Federal Trade Commission to clear the Google/DoubleClick merger\footnote{Ibid at 1.} in 2007, she expressed concerns about the combination of the datasets of the two companies. In order to enable a proper competition analysis of the data issues, she suggested to define ‘a putative relevant product market comprising data that may be
useful to advertisers and publishers who wish to engage in behavioural targeting’. 476

Mergers and acquisitions happening in online sector seem to be increasingly motivated by the big data that can be obtained through such endeavour. In addition, particular types of conduct whereby incumbent providers try to leverage their strong market position or to extend their services to other markets may have as objective the accumulation of additional data to be used to improve their own platform. 477

Because users commonly have free access to online platforms, they choose their provider on the basis of aspects other than price such as quality and the level of innovation that a service offers. 478 When it comes to online platforms, data should be treated as specialized asset which the competing platforms need to create its own services and to attract more advertisers. This concept will enable the courts and competition authorities to identify a relevant market for data in which potential of competition threats can be analysed.

1.2 Dominance through big data

While big data might come with some pro-competitive benefits, some characteristics that entail the necessity of why the big data needs to be controlled and regulated is discussed below.

1.2.1 Entry barriers

Data driven markets are typically characterized by low entry barriers, as evidenced by innovative challengers emerging rapidly and displacing established firms with much greater data resources than themselves. 479 While this cannot be applied to whole of the data market in general, it is mostly true. New entrants with innovative ideas can easily enter the market without the asset of big data backing them up. If the platforms click, then they can accumulate data easily for further development. As such, new entrants are unlikely to be at a significant competitive disadvantage relative to incumbents in terms of data collection or analysis. 480 So, lack of the asset of big data itself cannot be considered as an entry barrier.

Additionally, the unique economic characteristics of data mean that its accumulation does not, by itself, create a barrier to entry, and does not automatically endow a firm with either the incentive or the ability to foreclose rivals, expand or sustain its own monopoly, or harm competition in other ways. 481

1.2.2 Data is inexpensive and easy to collect

Data is ubiquitous, inexpensive, and easy to collect. 482 The increasing use of internet and smartphones have resulted in endless

476 Ibid at 7.
478 Microsoft/Skype, Case No COMP/M.6281; Microsoft/Yahoo! Search Business Case No COMP/M.572
480 Ibid at 11.
482 Catherine Tucker, ‘The Implications of Improved Attribution and Measurability for Antitrust and
data being generated on day-to-day basis where users leave behind traces of their needs and preferences. There are third-party sources which will provide you with storage and data processing as well. It is important to distinguish between the collection of raw data and the analysis any given firm puts the data through, which is what makes the data valuable. This is the firm’s “secret sauce.”

1.2.3 Data is Non-exclusive

Data is non-exclusive and non-rivalrous. Entire world’s data cannot be held and controlled by a single firm. If one firm collects some data, the same data can be gathered by another firm through some other means. “Multi-homing” is the norm among internet users—users can and do spread their data around the internet, using multiple different providers for multiple different services, or sometimes the same service. This reduces the market power given by the big data and it sets it apart from other key inputs. It is to be noted that there are no exclusivity clauses in terms of service with users, and there are no structures (pricing or otherwise) that lock users into sharing their data with only one provider.

1.2.4 Value of data is short-lived

The nature of big data is such that the value of it is high only when it is new and declines rapidly over time. It has a very limited lifespan. The returns on the particular set of data reduces over time. Therefore, any competitive advantage that data provides is fleeting, and entrants are unlikely to be significantly disadvantaged relative to incumbents in terms of data collection and analysis.

1.2.5 Data Alone is Not Enough

Mere possession of data is not of much use, even if it is held in large volumes. It does not provide any competitive edge by itself. That can only be achieved through engineering talent, quality of service, speed of innovation, and attention to consumer needs. For example, Tinder, which is an online dating application launched in 2012 became a leader in the market even though it did not have any access to user data in the beginning. Giving personalized experience is the key to the functioning of these applications. Similarly, WhatsApp was able to take on more established messaging and social networks because of its low cost and easy-to-use interface.

1.2.6 Highly Differentiated Platforms Need Highly Differentiated Data

Most of the online platforms are unique even if they are offering similar type of service. The data needed by platforms will be particular to its niche. Which implies that data that is crucial for one firm may be


completely irrelevant for another firm. In such a situation, a firm’s success will depend on collecting and processing data relevant to that particular niche. There is no competition for collection of the same data between the competitors. So, a new entrant can pick a niche where the already existing firms do not have the required data and can easily become an equal competitor in terms of valuable data collected.

It is evident from the above discussion that the characteristics of data are such that larger online firms cannot foreclose rivals from replicating the benefits of Big Data they enjoy, and that Big Data in the hands of large firms does not necessarily pose a significant antitrust risk. Examination of many firms suggest that to build a sustainable competitive advantage from Big Data, a firm needs to focus on developing both the managerial toolkit and organizational competence that allows them to turn Big Data into value to consumers in previously impossible ways, rather than simply amassing tremendous amounts of data.\footnote{Ibid at 13.}

1.3 Abuse of dominance
While with regard to the above discussion it is possible to conclude that market power isn’t necessarily obtained by big data and it doesn’t give a decided competitive advantage, it is not as simple as that. Generic information about consumers like gender, age, location and profession are easy to be obtained. But the specific data that is necessary to compete on an equal footing with a prevailing search engine, social network or e-commerce platform provider may not be readily available to others. In a case against twitter, People Browser demonstrated that twitter data is not substitutable to user information from other social networks including Facebook. Particular types of user data may thus not be as widely available as claimed as a result of which it is not unlikely for an undertaking to have a dominant position in a certain market for data.\footnote{Graef, Inge, ‘Market Definition and Market Power in Data: The Case of Online Platforms’ (2015) 38(4) World Competition: Law and Economics Review <http://dx.doi.org/10.2139/ssrn.2657732> accessed 22 January 2020.}

There is a chance for the online platforms to turn to trade secret protect or intellectual property rights to prevent other from procuring confidential user data. While this doesn’t directly relate to dominant position, the fact that the company is going an extra mile to protect such data indicate that it can be put to use in a way that could prove disadvantageous to rival or obstruct new entrants.

The question is how the existence of a dominant position in a market for data can be measured and in particular how value can be attributed to data. Since the same set of data might be of different value to different firms it may be hard, if not impossible, to distinguish different pieces of information and assign value to each of them individually. Behavioral information might be of more value compared to generic information of the user as it will help to predict the future purchases. But it is quite challenging to assign value to data. A better way to evaluate the competitive strength of firms based on its big data would be look at its capacity to make money or other profits through the data. The revenue gained by a provider through licensing of data to third parties, delivering targeted advertising services or offering other paid products and services to customers having data as input indicates how successful it is in the market.
Since the value of a dataset depends in particular on how it is employed by its owner and not merely on its sheer volume, market shares can be calculated in a reliable way by looking at the share of the total turnover earned by undertakings active in a potential market for a specific type of data.\textsuperscript{491}

If data isn’t directly involved in profit making, it is not possible to attribute value to the data (Example: WhatsApp). A possible solution is to look beyond the actual relevant market and look at potential competition as a substitute for actual dominance.

The European Commission has started to take into account potential competition rather than sticking to market share alone for assessing the dominance in markets that are highly dynamic in nature. In its Microsoft/Skype merger decision, the Commission argued that market shares only provide a limited indication of competitive strength in the context of the market for internet consumer communications services because of the nascent and dynamic nature of the sector as a result of which market shares can change quickly within a short period of time.\textsuperscript{492} A similar reasoning may be applied in future cases involving online platforms such as social networks, search engines and e-commerce platforms that all form part of a dynamic sector.

\section*{2. SUFIFICENCY OF EXISTING COMPETITION POLICY}

Big data has caught the attention of competition authorities due to two key developments. Firstly, a string of high-profile mergers and acquisitions in digital or internet markets raised the question of a possible competition impact of bringing together and gaining control over large data sets.\textsuperscript{493} Secondly, there is a growing desire to better understand the possible (welfare) implications of big data for consumers and markets. A number of cases linked to big data have been considered by competition authorities in recent years. To date, there have been no cases that have found big data to be a basis for a theory of harm on antitrust grounds for mergers or conduct cases.\textsuperscript{494}

\subsection*{2.1 Data-related anticompetitive conducts}

The collection of big data does not by itself represent a threat to competition. Although use of data might in specific circumstances discussed below justify regulatory intervention of competition authorities.

\subsubsection*{2.1.1 Exclusionary conducts}

Firstly, competition can be restricted, if the access to data is restricted by a dominant company in an anticompetitive manner. Such a restriction can evolve in different situations. A refusal to access data to a competitor can be anticompetitive if the data is considered as an “essential facility” to the activity of the company requesting access.

More precisely, according to the ECI’s rulings in “Microsoft”, \textsuperscript{495} an undertaking can request access to a facility and if the incumbent’s refusal to grant access concerns a product which is indispensable for carrying on the business in question, if the refusal prevents the emergence of a new

\begin{footnotesize}
491 Ibid at 22.
492 Microsoft/Skype Case No COMP/M.628.
493 OECD, Big Data: Bringing Competition Policy to the Digital Era’ (2016) OECD Publishing <
494 Ibid at 15.
495 GC, Microsoft, T-201/04.
\end{footnotesize}
product for which there is a potential consumer demand and if it is not justified by objective considerations and if it is likely to exclude all competition in the secondary market then it can be threat to competition policy.

Other precondition is that data owned by the dominant company is truly unique and there is no possibility for the competitor to obtain the data needed to perform its service. A refusal to allow access to data could also be anticompetitive if it is discriminatory, i.e. if a dominant company grants access to certain customers while denying access to customers of a downstream competitor.

Anticompetitive data-driven strategies may also include preventing rivals from accessing data through exclusivity provisions with third-party providers or foreclosing opportunities for rivals to procure similar data by making it harder for consumers to adopt their technologies or platforms. Exclusive agreements can exclude rivals, especially when they are concluded by dominant firms. A network of exclusive agreements might be even more problematic, not only under Art. 102 TFEU but also under Article 101 TFEU.

And finally, data collected on a given market could be used by a company to develop or to increase its market power on another market in an anti-competitive way, e.g. by way of tied sales whereby a company owning a valuable dataset ties access to it to the use of its own data analytics services. As it noted, such tied sales may increase efficiency in some circumstances but they could also reduce competition by giving a favorable position to that company which owned the dataset over its competitors on the market for data analytics.

### 2.1.2 Data used for price discrimination

Data can also be a vehicle to facilitate price discrimination. Indeed, by collecting data about their clients, a company receives better information about their purchasing habits and is in a better position to assess their willingness to pay for a given good or service. Price differentiation by itself does not necessarily raise competition concerns. Setting differentiated prices is a key element of competition. Provided that it has market power, the company would then be able to use that information to set different prices for the different customer groups it has identified thanks to the data collected.

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497 Case of Cegedim, French Competition Authority, Decision n° 14-D-06.


Thus, price discrimination alone cannot attract the antitrust issues but the company also need to have a market power.

2.1.3 Merger and Acquisitions
Lastly, the collection and access to data can raise concerns in the assessment of merger cases. For a company, a merger can be a strategy to obtain access to new data by acquiring or merging with another company that possesses relevant data. In data-related markets such a merger could increase the concentration of relevant data and restrict entry and expansion for new companies. The Competition law becomes relevant only if the concentration of the data leads to abuse of dominance.

The OECD reports that in sectors related to data, “the number of mergers and acquisitions (M&A) has increased rapidly from 55 deals in 2008 to almost 164 deals in 2012” 503 Furthermore, a merger in data-related markets can also give rise to vertical or conglomerate effects if the merger increases the ability and incentive of a large company to restrict up- or downstream competitors’ access to data. In any of these scenarios, competition concerns are more likely the more difficult it is for competitors to replicate the information extracted from the relevant data.

2.2 Role and effectiveness of competition policy
There are few significant cases for the study of effectiveness of the competition policy in case of big data. FTC’s analysis in Nielsen/Arbitron demonstrates, current antitrust analysis is well equipped to consider the likely effects on incentives to innovate deriving from mergers between firms in big data spaces.504

2.2.1 Microsoft/Yahoo! Search Engine (2010)
Microsoft announced in 2010 to acquire Yahoo! Search Engine. Microsoft was active in the design, development and supply of computer software, while the Yahoo search business subject to the transaction encompasses the internet search and the online search advertising businesses of Yahoo.

The main issue was that after merger there will be an increase in the concentration which would significantly impede effective competition in the relevant markets. The Commission reported that, Google had more than 90% market share of the online advertising market and that the activities of Microsoft and Yahoo in this market amounted to less than 10% market share. The Commission examined the potential impact of the merger on the different market players, namely internet search users, advertisers, online publishers and distributors of search technology. The Commission after examining approved the merger and concluded that the merger has no negative effects on competition but they also expect it to increase competition in internet search and search advertising by allowing Microsoft to become a stronger competitor to Google.


2.2.2 Microsoft/LinkedIn (2016)
Microsoft planned to acquire LinkedIn in 2016. In its investigation, the European Commission focused on three areas in particular: professional social network services, software solutions for customer relationship management, and online advertising services.

The Commission decision in Microsoft/LinkedIn is noteworthy as it touches upon several interesting issues. First, Microsoft/LinkedIn was the first merger cases in which the Commission defined the relevant market for professional social networking (PSN) services. Second, the Commission dwelled on the role of Big Data in the context of merger review cases. Third, Microsoft/LinkedIn is one of the rare conglomerate merger cases that in the recent decisional practice of the Commission have been found likely to give rise to competition concerns.

In this case, the Commission defined a narrow relevant market for professional social networking services (PSN). In order to set the boundaries of the relevant market for PSN services, the Commission had to establish whether and how this market could be distinguished from the market for social networking (SN) services and whether the enterprise social network services belong to the market for PSN services. PSN present different functionalities, feature and usage cases.

To address the Commission’s concerns about foreclosure, the parties committed to

- Allow competing PSNs to maintain current levels of interoperability with Microsoft’s Office suite of products.
- Grant competing PSNs access to Microsoft Graph, a gateway for software developers.
- Ensure that PC manufacturers and distributors would be free not to install LinkedIn on Windows and allow users to remove LinkedIn from Windows, should PC manufacturers or distributors decide to preinstall it.
- Refrain from retaliating against any PC manufacturer for developing, using, distributing, promoting, installing or supporting a Windows PC application for competing PSN providers.

The Commission accepted these commitments in its Phase 1 proceedings and subsequently cleared the merger, without the need for an in-depth investigation. The European Commission granted phase 1 approval of the transaction on 6 December 2016, making the commitments mandatory for a five-year period.

2.2.3 Facebook/WhatsApp Merger Case
2.2.3.1 European Commission
In August 2014, Facebook, which is active in social networking, consumer communications and online non-search advertising services, notified the Commission of its plans to acquire the consumer communications services provider WhatsApp. European Commission examined Facebook’s acquisition of WhatsApp and cleared the transaction without conditions.

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www.supremoamicus.org
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Commission’s investigation focused on three areas: (i) consumer communications services, (ii) social networking services, and (iii) online advertising services.507

The EU Commission cleared the transaction on 3 October 2014, after assessing its impact on the internal market in relation to the following services:508

(i) Consumer communications services: The Commission found that Facebook Messenger and WhatsApp were not close competitors and that consumers would continue to have a wide choice of alternative consumer communications apps post-merger. Although consumer communications apps are characterized by network effects, the investigation showed that a number of factors mitigated the network effects in this case.

(ii) Social networking services: The Commission concluded that, no matter what the precise boundaries of the market for social networking services are, and whether or not WhatsApp is considered a social network, the companies are distant competitors.

(iii) Online advertising: The Commission concluded that, regardless of whether Facebook would introduce advertising on WhatsApp and/or start collecting WhatsApp user data for advertising purposes, the transaction raised no competition concerns. This is because, besides Facebook, a number of alternative providers would continue to offer targeted advertising after the transaction, and a large amount of internet user data that are valuable for advertising purposes not within Facebook’s exclusive control would continue to exist.

Later in the year 2017, the European Commission has been fined 110 million euros ($122 million) for providing “misleading information” about its acquisition of messaging service WhatsApp.509

2.2.3.2 Germany
In Germany the Bundeskartellamt initiated in March 2016 a proceeding against Facebook - Facebook Inc., USA, the Irish subsidiary of the company on suspicion of having abused its market power by infringing data protection rules with its specific terms of service on the use of user data. The initial suspicion was that Facebook has abused its possibly dominant position in the market for social networks violating data protection provisions consisted in the use of unlawful terms and conditions that could represent an abusive imposition of unfair conditions on users. According to the Bundeskartellamt, some indications of market analysis show that Facebook has a dominant market position in the separate market for social networks, collecting a large amount of personal user data from various sources and creating user profiles Facebook facilitates its advertising customers on targeting sharply their businesses.510

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510 Ibid at 38.
On 7 February 2019, the German Competition Authority (Bundeskartellamt) issued a statement on its decision to impose wide-ranging behavioural restrictions on Facebook and its data processing activities. The Bundeskartellamt’s decision is not yet final. Facebook has one month to appeal the decision, and has issued press statements confirming that it will be seeking to challenge the decision.511

2.2.3.3 India
In Vinod Kumar Gupta v. WhatsApp Inc.512, a Chartered Accountant filed a case against WhatsApp Inc. alleging contravention of provisions of Section 4 of the Competition Act, 2000. It was contended that since January 2016, WhatsApp has waived off its subscription fee of US$0.99 per annum and is providing the service for free. The subscription fee being the only source of revenue since WhatsApp follows no-ads product strategy, it was alleged that WhatsApp is sourcing funds from its parent company i.e. Facebook and hence it is abusing its dominant position by indulging in predatory pricing because in this manner the company is trying to provide services which is below the cost and has the ability to reduce or eliminate the competition.

The sole contention raised against privacy policy was that it has contravened Section 4 by mandating the users to agree with its privacy policy and hence enforcing them to share their account details with “Facebook”. For the issue concerned the Commission determined the relevant market as “the market for instant messaging services using consumer communication apps through smartphones in India” and accepted the dominant position held by WhatsApp. In this regard the Order specifically noted that 96% of the smartphone devices in India had WhatsApp installed on them and that 51% and 56% of internet users in India who active on WhatsApp and Facebook respectively, every day.

The Competition Commission of India concluded that WhatsApp did not indulge in any anti-competitive practice. The Commission stated that there was no indulging in predatory pricing as WhatsApp has waived off its subscription fee of US$0.99 because of the fact that the other competitors in the relevant market like Hike and Viber were providing the same services for free of cost which appears to be a standard practice in the business. Moreover, there wasn’t any switching cost, moving from one consumer communication app to another is convenient since almost all of them are freely available, they have simple user interface, information about them is freely accessible and they can co-exist on the same handset.

While dealing with the contention regarding abuse of dominance by introduction of privacy policy, the Commission noted that WhatsApp did provide the option to opt out from sharing user account information within 30 days of agreeing to the privacy policy as against the allegations of the informant and in fact the content is protected by end-to-end encryption from the service provider or any other third party. Under the policy the

contact list of the user account is shared with Facebook to improve online advertisement and “the Facebook family of companies” use the information to enhance infrastructure and delivery system, securing systems and fighting spam.\footnote{Varun Agarwal, ‘Predatory pricing and data integration concerns’ (2017) SCC ONLINE.}

2.3 Analysis
After analyzing the above cases, it can be concluded that there is a role for competition authorities in case of big data. The competition authorities in various jurisdictions have interpreted the competition policy widely when dealing with the big data concerns, whereas the Competition Commission of India have failed in taking into consideration the factors which are prominent in big data i.e., the network effects, predatory pricing in \textit{Vinod Kumar Gupta v. WhatsApp Inc.}, and thus the CCI failed to keep up the objective of its establishment. Indian law does not allow the convergence of competition and privacy concerns, the European Commission rightly accords centrality to consumer welfare in accounting for privacy concerns in its evaluation of mergers. Anti-competitive effects of data aggregation affecting the quality of services or goods offered as well as privacy protection by the concerned companies will be part of a deal’s competition assessment by EU regulators.\footnote{2017 SCC OnLine CCI 32.}\footnote{Anupriya Dhonchak, ‘Datafication and the Privacy Blindspot in Indian Competition Law’ (2018) Kluwer Competition Law < http://competitionlawblog.kluwercompetitionlaw.com/2018/12/04/datafication-and-the-privacy-blindspot-in-indian-competition-law/> accessed 23 January 2020.}

3. CONCLUSIONS AND SUGGESTIONS

3.1 Conclusion
When we think about anti-trust issues with respect to big data, there are points and reasons for it to be considered anti-competitive and not anti-competitive. If we look at Big data with the traditional competition law and strictly interpret them, it might not constitute any anti-trust issues. But, that would be a wrong approach for analysing an entirely new concept. Rather than looking into the existing laws, we have look at the objective behind the Competition law itself. The goals of the competition law is to promote competition in the market and to ensure the consumers are benefitted from such competition. Even though, there are not many cases where the existing laws found any anti-trust issues with big data, we can safely say that there are indirect threats to competition. In the era of big data, conventional principles may not hold good as they did before. This warrants a new approach which takes into account the dynamics of the digital market. It is concluded that big data imposes anti-trust issues.

Up until now, whenever a question involving data arose, the competition commission considered it to be an issue if data protection laws. They did not look at it from the competition law perspective. But the situation has changes as recently the competition authorities have pronounced their decision such as in Microsoft/Yahoo! Search Engine, Microsoft/LinkedIn,
Facebook/WhatsApp Merger Case. After analysing the above cases, it can be concluded that there is a role for competition authorities in case of big data. The competition authorities in various jurisdictions have interpreted the competition policy widely when dealing with the big data concerns, whereas the Competition Commission of India have failed in taking into consideration the factors which are prominent in bid data i.e., the network effects, predatory pricing in *Vinod Kumar Gupta v. WhatsApp Inc.*

### 3.2 Suggestions

The emergence of new technologies, business models, and even markets creates challenges for antitrust authorities. The existing antitrust theories and practices are no longer effectively applied in the fast moving digital markets. Antitrust authorities have to develop novel theories of harm or seek additional powers to address real or perceived enforcement gaps in this era of Big Data. When it comes to online platforms, data should be treated as specialized asset which the competing platforms need to create its own services and to attract more advertisers. This concept will enable the courts and competition authorities to identify a relevant market for data in which potential of competition threats can be analysed. The Competition authorities have to take into account potential competition rather than considering market shares alone, for assessing the dominance in markets that are highly dynamic in nature.

The various competition law authorities have evolved new theories to assess the anti-competitive conduct in case of data driven firms. Although, the Indian law does not allow the convergence of competition and privacy concerns, the European Commission rightly accords centrality to consumer welfare in accounting for privacy concerns in its evaluation of mergers. Anti-competitive effects of data aggregation affecting the quality of services or goods offered as well as privacy protection by the concerned companies will be part of a deal’s competition assessment by EU regulators. CCI has failed to into privacy as a pricing factor to decide a case of bigdata cases. Ergo, there is need for wider interpretation of the laws existing as they are sufficient enough to deal with the big data generated antitrust issues.
DELIQUENCY CASES: JUVENILES IN INDIA

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The young generation of our nation is being misled. Delinquency cases are being filed against them. Delinquency cases involve juveniles who have violated the law and order. They are usually between the age of twelve and seventeen. They receive the same penalties as the adults do but with different names. They are treated under the juvenile delinquency. Juveniles who commit serious harm or threat to others or the harm caused follows devastating consequences are prosecuted as the youthful offenders. All these cases regarding juveniles begin with their improper behavior which is criminal in nature. If they are left unattended, for example robbing a store or failing to pay an amount within its due date, will lead to several other crimes. These are the ones that are left unconsidered or negligently ignored what the law requires. These cases also focus on its origin and background. A juvenile is considered as an adult depending on the crime committed. The primary goals of the juvenile justice system are to maintain public safety, skill development, habilitation, rehabilitation, addressing treatment needs, and reintegration of youth into the community.

A large number of individual qualities and characteristics also develop delinquent behavior. His interaction within the social groups or a person’s actions and experience must be well understood. A slight change in his character doesn’t mean, he is attempting to a crime. While dealing with the youth group, it must not be negligently dealt with.

The risk factors include individually, social level and community level. In 2016, 17% of all delinquency cases (147,600 cases) were dismissed at intake, generally for lack of legal sufficiency. An additional 26% (223,300 cases) were handled informally, with the juvenile agreeing to some sort of voluntary sanction. Each year approximately 2.1 million youth are being arrested under the age of 18 in the United States. Though the rates of these crimes are decreasing gradually, 1.7 million cases are reported in juvenile courts annually. The most common is theft-larceny, which showed an arrest rate of 401.3 per 100,000 youths in 2016. The second most common is simple assault, with an arrest rate of 382.3 per 100,000 youths. Third is Drug abuse violations, at 295.6 arrests per 100,000 youths. Overall 25 percent of all serious crime involves a single juvenile offender. Juveniles constitute 1,200 of the 1.5 million people housed in federal and state prisons in this country, and nearly 200,000 youth enter the adult criminal-justice system each year, most for non-violent crimes. On any given day, 10,000 juveniles are housed in adult prisons and jails. Social research has shown a strong association between childhood abuse and neglect and delinquent behavior. A National Institute of Justice study showed that a history of child abuse and neglect increased the likelihood of juvenile arrest by 59 percent, adult arrest by 27 percent and violent crime by 29 percent. Other studies have shown that violence begets more violence. One study showed that children who were victims of violence were 24 percent more likely to report engaging in violence. One-third of the victims of child abuse or neglect are likely to subject their own children to abuse. In cases of extreme exposure to violence, children may develop post-traumatic stress syndrome, which makes it more difficult to...
form appropriate relationships, cause an increased tolerance for violence and lead to difficulty learning new information.

Causes:
1. School problems:
Many different schooling problems force a child into a criminal activity. Truancy is one of the main reasons for this. When a child fails to attend the classes often, they cannot gain the benefits of education and also will not understand the discipline of attending school every day. When a child has no interest in the study or whey his/her parents are not interested in knowing if the child attends school regularly. This leads the child to end up in situations leading to criminal activities. This problem can be investigated and eventually, the child can be left crime-free.

2. Economic problems:
Lack of necessities such as food, clothing, and shelter is another major reason for child involvement in criminal activities. A child starts to steal when he has no food to eat. If a minor has no means to satisfy their basic needs, there is a high possibility that the child will indulge in criminal activities.

3. Substance abuse - home:
When there is an act of substance abuse within a home, there is a high chance of criminal activity involvement by a minor in such a home. They child involves in criminal activities for necessities that are not provided to them or they involve in criminal acts because they have to help the elders support their activities. A parent if they involve in substance abuse then there is a lack of guidance for the child too.

4. Substance abuse - personal:
This is one of the major reasons for juvenile delinquency. When a minor has the habit of drugs, then there is a high risk of him/her indulging in criminal activities. There are two reasons for them committing criminal activities. One is to support their habit. The second is that they have poor decision-making skills due to drug usage and hence involve in activities they are not supposed to do.

It is much easier to instigate a person to commit a crime when they are under the influence of mind-altering substances because they have the absence of the thought process to make the right choice.

5. Physical abuse at home:
When a minor is physically abused at home, then there is no surprise that they will act out when away from home. This will generally in the form of deliberate destruction against people or property. Assaults of all kinds of destructions are a result of physical abuse the minor experiences at home.

6. Lack of adult interaction:
Children are influenced by the people around them. This is natural. Children who have no adult influence in their life to teach them right or wrong, to follow the law or just be a part of their life are more easily prone to indulge in criminal activities. An adult makes the child take correct decisions in life and the absence of such a person also leads the child to indulge in criminal activities.

7. Peer pressure - neighborhood influence:
The people to whom the minorS are associated will have a large impact on their choices when the minor is away from his/her home. Peer pressure is a very real thing and a minor will act out in front of his/her friends so that he/she feel accepted and are a part of a group and this is one important reason for juvenile delinquency. In more dangerous neighborhoods one may also see children acting out in fear of gang activity. Minor make decisions to defend themselves or to impress the gang members to protect their safety. Peer influence and
protection of the safety of oneself may lead any minor to a life of crime.

There are also other conditions that also cause juvenile delinquency. They are
- physical factors
- mental factors
- home conditions
- school conditions
- neighborhood conditions
- occupational conditions

1. Physical factors:
   i. Malnutrition caused by improperly selected foods in which there is a disproportion of essential elements.
   ii. Lack of sleep may not only cause drowsiness and inertia but also instability, excitability, and nervousness. The child may suffer from mental conflict as a result of this and they seek refuge in delinquency. He/she may exhibit bad behavior due to easily stimulated impulse hard to control because of hyperexcitability.
   iii. Defective eyesight or hearing or any defect in the body will make the child be at a disadvantage when there is competition with others. Hence they try to restore self-confidence and a sense of superiority by indulging in delinquency.

2. Mental factors:
   Mental defect, superior intelligence, emotional instability, obsessive imagination, mental conflicts, inferiority complex these factors lead a minor into delinquency.

3. Home conditions:
   These reduce the child's physical health directly and mental health indirectly. They reduce his/her vitality and the ability to decide.
   i. Lack of proper clothes, pocket money, toys, pay facilities all these conditions make a child feel inferior and hence they find an undesirable way to compensate.
   ii. Poverty and unemployment are also the main reason for delinquency. The jealous desire for some of the life luxuries makes the child indulge in criminal activities to fulfill the desires.
   iii. When either of the parents is dead, ill-treatment by foster parents, lack of parental care and affection, misdirected discipline by the family, unhappy relationship with siblings, and various other factors leads to delinquency.

Not only the physical and mental health of the person leads to delinquency but also his past and present environments. Sad happenings and unhappy childhood also may lead a minor to engage in criminal activities. Probably, it cannot be said completely that the above-said factors are the only cause of delinquencies. None of them alone can produce delinquency. They are a combination of two or three factors that results in the cause.

Prevention of delinquency:
   Early intervention and preventing a minor from delinquent activities can distract the minor from the adverse effects of delinquency. Many risk factors may lead a minor to perform delinquent activities. Like that, several preventive factors are identified to prevent a minor from indulging in criminal activities. The risk factors include individuals, family, society and school environment. The protective factors include well-maintained school attendance, positive social involvement and the opportunity to discuss the problem of a minor with his/her parent. These protective factors seem to reduce the adverse effect of indulging in delinquent activities.

Prevention of delinquency involves primarily identifying the factors that lead to delinquency, focusing on those factors early and working on preventive factors to
prevent risks. Though at first, delinquency was prevention activities were focused on middle-aged school-going youth but the modern delinquency prevention activity focuses on childbirth to adolescence and their growing environment.

For juvenile delinquency prevention, we have to deal with not only children and youth involved in criminal activities but also children who are going against the school rules and streets though not violating any law. Prevention is a must for them too. Because if not prevented, them would end up as habitual offender. They perform mistakes and get thrilled and fail to act according to lawful expectations. First, such juveniles must be spotted and provided with proper treatment. They may turn into habitual offender if not identified timely. The most effective way is proper counselling and guidance to the juvenile and his/her families at an early stage. These days, the government has identified the importance of juvenile delinquency prevention and has started allocating funds for it. As states also cannot provide the required resources for prevention, all communities, organizations, and governments are working together to prevent delinquency.

There are two types of programs for preventing delinquency. First is an individual program that involves prevention through counselling, psychotherapy, and proper education. The second is an environmental program that involves prevention by changing the socio environment leading to delinquency.

Preventive measures can be done efficiently through school education and activities. Teachers should also actively participate in this and should adopt certain measures that include, they will not discriminate among students; they will be treated equally and teach them morals and social norms which will be useful for the student’s life goals. Parental education is an important aspect of delinquency prevention. The parents must educate their children to keep themselves away from delinquent activities and also not to get indulged in criminal activities. In every society, it should be ensured that the parents are taught to improve the family relationship and to guide their children to follow good and moral norms. Children always need parental care, love, and affection. They may feel frustrated and disappointed due to ignorance of parental care which may lead them to commit a crime. Hence parental care and affection is an important factor to prevent the child from indulging in crime. The children should be helped to come out of their inferiority complex because they try to prove themselves by indulging in criminal activities when they have an inferiority complex.

Family factors like lack of parent supervision, disciplining, a difference of opinion between parents, parent separation and the unhealthy parent-child relationship are also contributing factors that lead the child to engage in criminal activities. A child without parent support and control are more likely to indulge in criminal activities. There is a link between a lack of supervision and offense. When persons fail to know where their children are, or what they are doing, or who are they friends with, have a higher possibility of becoming friends with delinquent juveniles and may indulge in criminal activity. Hence the parent has to guide their children and look into matters where their presence is needed to prevent the child from engaging in criminal activities.

The society involvement through a variety of services and programs on juvenile
delinquency prevention, adopting techniques for constructively reducing the chances to commit delinquent crimes, government making policies that are conducive to help grow the kids in a settled environment, providing positive emotional support to children, creating child guidance clinics to provide treatment to the disturbed and maladjusted minors, these all factors are to be implemented to prevent a child from performing criminal activities.

Quality early child care and education provide the bases for healthy growth and development, which includes physical well-being and structured early learning and educational opportunities. Nutrition, health care, parental involvement and interaction, and quality pre-school experiences also contribute. Positive early child care includes adequate staff qualifications and training, low staff-to-child ratios, adequate staff compensation, and developmental curriculum. If the above factors are considered, the decline in the delinquency cases can be expected.

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PRIVATE COMPANIES – PRIVILEGES AND EXEMPTIONS

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ABSTRACT
In today’s world, the word ‘COMPANY’ is no more new to us, as most of the organisations are in themselves corporates. Having limited liability towards the act of the company has become one of the key features why a number of companies are coming up these days, apart from the revolutions taking place in the technological industry that led to industrialization.

In this paper, we will come across the basic concept of company and look into why a private company is preferred over other forms of business associations. We will also go through the comparative differences between the both, and also discuss the drawbacks of a private limited company before concluding.

RESEARCH METHODOLOGY
The methodology to be used to meet the objectives of this research would be preliminarily doctrinal and will be based on various articles and books written speaking about the working of a private company by the academicians.

RESEARCH QUESTIONS
- What is a company? What are its features?
- What is a Private Limited Company?
- What are the Privileges that a Private Company enjoys over others?
- Does a private company have benefits over other forms of business?
- What is the scope for success of a private limited company in India today?
- Are there any drawbacks for a private company?

OBJECTIVES
- To have a basic understand about companies in legal format.
- To understand the concept of a Private Company and its privileges.
- To distinguish between private, sole-proprietorship, partnership and public company form of businesses.
- To understand the scope for growth of a private limited company in India.
- To know the drawbacks of a private company.

CHAPTER I
INTRODUCTION
1.1 COMPANY
In today’s world, as a result of industrial revolution that took place few decades back, the word COMPANY is no more new to us. Now- a – days, it is difficult to run an enterprise or a business under a single leadership keeping the legal problems in view, that we mostly find a business is run not merely by an individual but by a group of individuals having common interest in the activity of the organisation.

The word ‘COMPANY’ has been defined under Companies Act, 1956 as ‘an association formed and registered under this act or any existing company.’

Justice Marshall defined a company as:
“A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of law, it possesses only those properties which the character of its creation confers upon it.

http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956
either expressly or as incidental to its very existence". 517

1.2 FEATURES OF A COMPANY

- It is an artificial person in the view of law, once it is incorporated as per the law.
- It has perpetual existence and so is not affected by change of ownership, even by the death of the owners.
- It is a separate legal entity and so can conduct business, sue etc. on its own name.
- A key feature of a company is that it offers limited liability to its share-holder’s and so they are not personally liable for the acts of the company, unless the court decides to lift off the corporate veil.
- The shares of a company can be freely transferred in an open stock market.
- The company is primarily run, not by the owners, but by a Board of Directors.

Because of the above mentioned benefits, a company form of organisation is preferred over sole-proprietorship or partnership.

1.3 LIFTING UP OF THE CORPORATE VIEL

One of the main added feature as to why a company is preferred over other forms of business is because it provides only for a limited liability of its members (to the extent of their holding in the company). But the same advantage is being mis-used now-a-days and the companies through its members act against the interest of the law. Hence, in recent times a number of statutory as well as judicial reasoning’s have come up where the corporate veil that a company is a separate entity and so is different from its members, is being lifted off so as to hold the actual intender liable for his acts.

Some of them are as follows:

STATUTORY PROVISIONS

- A mis-statement of prospectus would result in the personal liability of the promoters of the company.
- A mis-description in the name of the company in any instrument will also lead to the piercing of the corporate veil.
- Any fraudulent conduct of the company would make its members personally liable.

JUDICIAL INTERPRETATIONS

- In case, a company fails to pay tax as per statutory requirements, then, the members are held personally liable.
- In case, the company acts in favour/support of an enemy character.
- If the company forms subsidiaries in order to defeat the provisions of law.
- In cases of economic offences.

The above mentioned are few situations where in the corporate veil is lifted off, thereby makes the members personally liable for the act of the company.

1.4 CLASSIFICATION OF COMPANIES

Depending upon the basis of classification, companies can be of various kinds and types. In this paper, we shall see the classification on basis of the holding in a company.

On basis of number of members holding shares in the company, it can be classifies as two types.

1. Private Company
2. Public Company

Let us look into different aspects of these types through this paper.

CHAPTER II

2.1 PRIVATE COMPANY

A private company as defined by the Companies Act, 1956 under Sec. 3(iii) 518 is a company which has a minimum paid up

517 http://www.ddegjust.ac.in/studymaterial

518 Supra note 1.
capital of One Lakh Rupees and by its articles of association has limitations as to

- The right to transfer the shares
- The number of members
- Prohibiting invitation of Public offerings

The recent Companies Act, 2013 has lifted the limitation as to the number of members in a private company to 200 members.

2.2 FEATURES OF A PRIVATE COMPANY

In a private company, the right of the shareholders to sell/dispose of their shares is restricted. They are under an obligation to first offer their holding to any existing member of the company, and in case no member is ready to buy the shares, then only the shares can be offered to an outsider of the company, but in no case to general public.

The number of members that a private company needs to be formed is two, while the maximum allowed is 200. This is to limit the differences in decision making and so as to ensure a better and fast decision making process.

A private company can in no case raise its capital from public unless converted into a public limited company by amending its Articles of Association. Hence, the capital funding required in investing and running the business has to be arranged by members themselves in proportion to their holding in the company.

2.3 INCORPORATION OF A PRIVATE COMPANY

The procedure under Companies Act, 2013 involves the following formalities to be done for a private company to be recognized under law.

The minimum number of people required to come together to form a private limited company are two. The association of people need to first have a clear idea of the business that they would want to carry on upon the incorporation of the company.

A name for the company need to be identified and registered as to identify and distinguish the company in the market. The company needs to be named and the wording ‘private ltd.’ has to be included in the name of the company as to clarify its identity to all. The said name has to be registered with the registrar of the state by paying a nominal fee, which within three months will see that the patent over the name is given to the promoters of the company in absence of any other litigation/claims.

The promoters of the company need to make a Memorandum of Association where in the rules of the company and the details of the business, the objectives, and the information regarding registration, liability and the capital share of the company is provided and is available at the registrar of the companies for public reference.

Further Articles of Association should also be prepared which speaks about the internal rules and procedures of the company. Thus mentions about the liabilities, duties and rights of the members of the company. This is also available with the registrar of the companies for public reference.

Any act not mentioned under Objectives in these documents cannot be performed by the company, unless the same is amended to include the same. These documents need

519 https://www.legalwiz.in/blog/procedure-incorporation-private-company
to be attested duly by the subscribers of the company in presence of the witness for it to be valid in law.

A statutory declaration has to be submitted by the directors undertaking that all the provisions of the Companies Act, 2013 have been followed and any liability thereof from the same lies on them. Further on payment of the fees (depends on the share capital), the process of registration comes to end from the side of the promoters.

After assuring themselves, the ministry and registrar of the companies provides a Certificate of Incorporation to the company, and from here, the company is recognized as a separate legal entity under law and can start with its business.

2.4 PRIVILEGES OF A PRIVATE COMPANY

There are a notable number of privileges that a private company enjoys, which are not available for a public limited company as they have the interest of common man vested in them, which is absent in case of the private companies.

A private company can sometimes be a subsidiary of a public company, but still continues to hold certain general privileges like:

- A private company can be incorporated with only two members.
- It is not required to issue a prospectus for the public, hence limiting the legal necessities and liabilities to a greater extent.
- A private company can commence its business from the date of incorporation, a certificate.
- The director need not require the permission from the registrar. Also, the provisions of qualification and pay grade do not apply to the directors of private companies.
- It need not submit any statutory report with the Registrar of companies, which is a mandate for public limited companies.
- Restriction as to voting rights under Sec. 43 and 47, Companies Act, 2013 do not apply to members of private companies.\(^{522}\)
- Private Companies are exempted from passing a special resolution to dispose of the interest of the company from its assets as per Sec. 180.
- Sec. 185 which explains that the company cannot offer loan to its director, is relaxed towards Private Companies.
- A private independent company has further more privileges like:
  - Financial assistance to subscribe for the share of the company can be given by the company itself.
  - Rules as to right of the shareholders, issue of shares etc. do not apply to an independent private company.
  - Any transaction regarding transfer of shares cannot be questioned in court of law.
  - Restrictions as to the term of director and his appointment, rotation etc. do not apply in this case.
  - It need not constitute a separate audit committee.
  - It can continue with minimum two directors.
  - It is not required to maintain an index of its registered members.
  - Condition as to minimum subscription do not apply, all it requires is a minimum paid up capital of One Lakh Rupees and two members to constitute a company.
  - In order to issue shares to employees, a private company need not pass a special resolution which is essential in case of public limited companies.

\(^{520}\) https://www.owlgen.com/question/what-is-a-private-company-what-are-the-privileges-enjoyed-by-such-a-company

\(^{521}\) https://www.taxmanagementindia.com

\(^{522}\) Exemptions to Private Companies, Rameshwar Sai.
CHAPTER III
PRIVATE COMPANY VERSUS OTHER FORMS OF BUSINESS IN INDIA

Let us now look into different forms of business associations that exist other than a company and then compare them with the working of a private company.

3.1 SOLE-PROPRIETORSHIP

Sole proprietorship is a business run by a single person who is the investor, decision-maker as well as risk-bearer of the business. Here the business is not incorporated under law and so does not have a separate identity from the owner i.e., the natural person.

Though the decision-making process is simple, it is difficult to raise the capital if one is aiming at a large business base, as only the owner is the manager here, who is competent enough to take all the decisions as he is the sole person liable wholly and personally for any act. Also, the business cannot sue as it does not have a legal identity and capacity.

Unlike in Sole-proprietorship, a company is legally recognized and can sue under its own name. A company has a huge capital base even in private, as it includes a number of people while a sole-proprietor has a limited investment in the business. The members of the company are only liable to the extent of their holding in the company and so are better than the unlimited liability of the sole-proprietor.

Also, it has been evident that collective decisions prove to be more efficient, and collective management is more effective to lead the business on success path which is possible in case of companies than in sole-proprietorship where in only one person is responsible to manage all of these responsibilities and hence, a huge burden rests on him, which might not lead to an effective management and accordingly, a successful business enterprise.

3.2 PARTNERSHIP

In this form of business association, two or more persons collectively contribute skills, money and all other required resources and operate the business so as to share the profits, losses and bear risks together collectively as per their agreement.

Partnership firm unlike a company is not a separate legal entity from its members and so does not have right to sue under its own name. It can either be registered or not, so the legal issues are subject to the agreement of the partners of the association who can be up to 20 members.

The partners here have an unlimited and personal liability unlike in the company where in it is a limited liability. The partnership does not have a perpetual succession and hence all the formalities of forming a partnership should be followed on exit or entry of even one partner even if it is due to death of a partner.

The share of a partnership cannot be transferred as easily as it can be in a company, as here all the terms of the contract of partnership will be affected due to change in the shareholding in the partnership firm.

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523 https://smallbusiness.chron.com/differences-between-sole-proprietorship-partnership-corporation

524 http://www.businessdictionary.com/definition/partnership.html
As similar to sole-proprietorship, even in partnership the capital investment is limited to that in a company because here the members are less in number and so has to bear all the expenditure personally.

3.3 PUBLIC LIMITED COMPANIES
These companies are where the common public contributes for raising the share capital for investment of the company. The promoters own a very meagre value of shares while the rest is to be subscribed by the public. The incorporation of a public limited company is in itself a major step as the public should raise the capital as required by the organisation within the timeline for the association to go ahead with its business after getting incorporated. The major setback is that though a large capital can be raised, the legal measures in case of a public company are more than that of a private company as it involves interest of the general public directly in its business. The rules and procedures for establishing and running a public company are strict than in any other form of business. The directors of the company here have only a limited liability so as to their holding in the company and the rest is to be borne by the shareholders of the company. The company can sell its shares in an open market by getting listed in one of the stock exchanges. The concept of transparency is very vital in these organisations so as to secure the public for attracting more investments from them. Failure of getting subscribed as expected will lead to failure of the business ultimately as it would not be recognized as a public limited company by the registrar of the companies.

While private limited companies have an easy and quick decision making process along with sufficient funds in reserve, in a public limited company the same cannot be guaranteed, as risks can’t be taken easily due to rules and interests involved alongside the share value of the company can go down any moment thus may lead to insufficiency of share capital to perform business.

CHAPTER IV
SCOPE OF GROWTH FOR PRIVATE COMPANY IN INDIA
In India, when we go through the evolution of the market and the economy, it is far better today than it was few decades back. After independence, all the actions relating to public were under the control of government to protect the Indian manufacturers and customers, which in later course of period became a burden as it was very costly to finance all the projects in India, at the same time to ensure the development of the nation.

All these burden and failure of the governments in the aspect of building our economy has listed in degradation on Indian economy, that in 1991 under Prime Minister P V Narsimha Rao, on the suggestions of the Narsimham Committee, the economy of India was opened up for the private players, so as to reduce the burden from the shoulders of the government and at the same time to ensure that the Indian players come across to build a global level products and services.

Under these circumstances was that the industrialization has took place at a massive rate, allowing many private corporations to come up with plans, technology which would also help the government in eliminating the unemployment issue in the country.

So far, in recent times, even RBI has de regularized many difficult laws so as to promote private investors who help in the increase of the GDP of India as well as lead
to the development of the country as an overall.

In India, if we wish to have a business, a private company would be a favourable form to opt for, as in the finance as to the capital funding can be arranged via banks with deposit of security, by having enough members, who are qualified, we can assure the quality of work. Since the decision making power lies within the members, decisions can be more effective as there is no intervention of the outsiders.

Also, it has been a proven fact, that a private company yields more favourable results as it attracts more accountability of its members since their interest is vested in it along with the absence of reason to be lenient towards its employees. Also the private players create a healthy competition between them leading to a perfect market. Hence, the scope for growth of a private company is greater than that of a public company.

CHAPTER V

DRAWBACKS OF A PRIVATE COMPANY

Until now we have seen why a private limited company has more advantages and the privileges that it enjoys. But, as said that a coin has two sides, even private companies have certain limitations and drawbacks which play a major role in deciding whether to opt for this form of business or not. Some of the drawbacks are as follows:

- The shares in a private company cannot be transferred easily. One, who intends to transfer it, should first approach the remaining members and then only an outsider. But in no case the public. Hence, the transfer of shares once the interest is lost by the member is difficult.
- Since, the shares of a private company are not listed in any stock-exchange markets; an investor does not know the actual market rate of his investment on a day to day basis.
- Borrowing of funds is a hectic task for a private company as the banks need sufficient security for the same. Unlike the public companies where the borrowing is easy.
- Public do not seem much attracted towards the company as they do not form a part of the internal system of the company and also due to secrecy as the company need not disclose its internal affairs as a public limited company.
- The legal control in case of a private company has become strict due to certain mis-uses of the privileges provided to them.

CONCLUSION

So as to conclude to what all we have come across in this paper are that, a company is a better form of business than other forms such as sole-proprietorship, partnership, with a leading feature that a company involves only a limited liability of the members unlike other forms where a person can be made personally liable.

Also, over the comparisons, we found out that a public company involves more risk due to direct involvement of the general public’s interest in its capital funding, which is not the case in the private companies.

525 https://www.indiafilings.com/learn/disadvantages-private-limited-company/
Also, the government in India, is now encouraging private companies to raise with their plans and management maintaining sufficient capital and to lead the country to development by bringing in the changes in technological industry and by providing training to the public and ensuring that their skill set is improved in a professional world, so as to face the competitive global world.

A proof of such encouragement is that the Companies Act of 2013 and orders thereon have relaxed a number of legal requirements in favour of the private entities. With all the advantages having a brighter side, the private entities also suffer from certain material drawbacks, which put its members in a risk.

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FAKE NEWS: THREAT TO INDIAN LAWS

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Abstract
Fake news is in an era of the information age, the defining variable of the age i.e. information is facing a tsunami in the form of fake news. Tsunami because it came all of a sudden, created havoc and is gargantuan in proportion. In the fast-moving internet age, this role has been primarily challenged as rumors and false information are being viral, sometimes leading to tragic results. With the advent of digital media and the popularity of the internet, the responsibility of the fourth pillar of democracy has increased several folds. The present study aims to emphasize the circulation can be used by authorities for malicious entities to spread rumors and fake news. At the time of the election the two versions of the video clip, both doctored and widely circulated through social media and What Sapp in India, is a classic case study of “fake news”. And the information not only by web pages, Google searches, and media coverage. We find that the web is not sufficient alone for spreading misinformation, but it leads the agenda for traditional media. Further light on how the Indian law is self– sufficient to remove the problem of fake news. The laws of fake news in a country like Russia and Singapore might help India enacted the news law. Recently, many fake images of earth and space is being circulation and various kind of news spread about Jammu and Kashmir issue the power in the hand of Police has warned against attempts to instigate public by spreading rumors and fake posts, saying persons involved will be dealt with strictly under the law and stern action will be initiated against them. Lastly, what are various step was taken by judiciary in case of fake news like social media account need to be linked with Aadhaar numbers to check the circulation of fake?

Keyword: Social media, Misinformation, the role of media, judiciary

Introduction
The fake news is a threat to Indian society as there is no such legislative for fake news control and it more dangerous than paid news. According to oxford dictionary “fake news” false reports of events, written and read on websites. We posit that fake news is, in essence, a two-dimensional occurrence of public communication: there is the (1) fake news genre, describing the measured conception of pseudo journalistic misinformation, and there is the (2) fake news label, describing the political instrumentalization of the term to delegitimize news media. As the use of social media is increasing by day by day the accurate and reliable information is prioritized by the government to protect the citizen of India. Many counties like Singapore, Russia, and Italy, etc. have enacted various laws to control fake news. As India parliament in session, fake news and information published with malevolent intent are important subjects that need to be discussed. The government has suspension social media accounts that spreading disinformation and misinformation to disturb peace and clam for prayer congregation in the valley. A parliamentary committee shaped to considerate fake news and its causes, significances and stand measures endorsed to the Singapore régime in September that it needs to seem to be at bringing new legislation that would encourage social media systems to demand larger transparency and accountability in the go with the flow of content material and
would make certain that perpetrators of falsehoods are punished. The new law, it said, take into account the responsibility of unique stakeholders in the digital advertised.[1] Digital technology makes it easy to alter information—including photographs, audio recordings, and video—for the purposes of misleading the recipients of that information by morphing the content and context altogether. A number of pretty new technologies give purveyors of misinformation sophisticated tools for hauling out deceptions. Not only this, political bots produce machine-generated content, such as tweets, that may falsely appear to be and confused with human-generated content. Advanced software makes it possible to create machine-written articles that require minimal human input. As with tweets produced by political bots, these articles may falsely appear to be generated by humans. The final work is done by search engine optimization which can mislead by re-ranking search engine results to drive less credible information to the top of a results list while driving more credible information to the bottom. [2] Google, Facebook, and social media platforms are continuously trying to devise and develop ways to integrate fact-checking into their searches and news feeds, but only time will tell whether this will cut down on the spread of falsehoods. A user’s willingness also plays an important role. Studies have proved that people want to believe in lies because it suits their partisan agenda, ideology, religion, or some other vested interest. People also like and forward fake news when it is interesting or titillating, or when it confirms a core belief or score points against the opponent.

Role of media
The information by smartphone and website has slowly changed the traditional approach of media, and leading journalists to continuously adapt. Though these new technologies allow audiences to experience a new sense of transparency and accessibility, particularly in their experience of connecting with public figures, they have also led to higher levels of information misuse among users. Role of twenty-two media guru the knowledge by chance smartphone and a couple of web site tends slowly turned into the standard lifestyle of media guru, and a couple of resulting in journalists to incessantly diversifications. Much social policy media guru witless any longer screening method has bumped into gained legitimacy leastwise alternatives to quarter historically reported news flash.

Stratified Organization of Fake News:
Participants specified that there have been fake news flash long is no longer having the ability needful an unusual person or isolated development, except for sounds like to pay attention to gangland and a couple of sagaciously SLE quite audience Economic and Social Council commission. They two noted the high school chance of this stuff gangland bodies attending existence of except for assist in giving of dogmas fixer. especially, the half of twenty-two participants seen to those prime quality and a couple of on the face of it skilled enquiry of doctored videos and a couple of writing, and how purposeful enquiry of the particular dissemination of these items fake news flash. They two noted that there have been, whereas some extent news flash papers make merry shocked the half of twenty initiative of body weight fake news often, recent efforts have nothing once more decided more likely than simply a Zeal mays indentation in thermometer effects of pretend news flash. Albeit this ordeal, participants noted that there's are way enhanced awareness and a couple of
coverage getting ready to issues these days than simply each before installing.

**Vernacular social policy media Platforms:** Participants noted the immense popularity of vernacular social media platforms in India. They two noted that there has been a focus for recent platforms that might seem like be insulated by chance their severally languages, thus providing an enchanting island to a quarter centralized detection. However, as long as the half of social anthropology enquiry of these items drawback, any longer resolution to that should always aid an identical enquiry and a couple of cuts back, participants specified. they two projected slammer city piece of furniture in an enchanting different way village to market a social anthropology understanding of pretend news flash and a couple of weeny effects, maybe attainable resolution.

**Navigating chartless Territory:** the half of twenty-two participants self-addressed the half of the head the security of feminine inquiring journalists. They two acknowledged that it’s are harder to girls to a quarter under consideration into and a couple of reports back to each day oil and a couple of campaign things because of recent areas having the ability male-dominated. Also, they two fire that there have been, in India, ancient cross constraints are suppressed the half of larynx of girls and build several advantages balance island ’tween decks a girl privilege and a couple of her youngster interviewees. However, participants are noted that there is a little more that there’s a is a tendency for twenty-four youngster interviewees to pay attention to more vulnerable—with relevancy specific amount issues—around feminine interviewers, leastwise compared to a quarter youngster ones. Recently settings, the half of participants declared, offer you [men and women journalists with any luck distinctive perspicacity plus farm animal and realities of one's interviewees. Albeit this ordeal, however, participants noted that there have been journalism remains an enchanting male-dominated visual view, very warm with any luck relevancy on-ground body weight. They two consequently specified that there have been perseverance and a couple of patience is something secret for girl’s journalists to achieve. [3]

Role of social media in shaping India’s political discourse, and specifically in transforming the face of the general elections held in 2014. Since then, social media platforms have emerged as an important political tool employed by every political party to communicate with their constituencies. With 45 million new young voters added to the electoral roll since 2014, the role of the new media and the proliferation of social media mean that the public space has been enlarged like never before. [4]. Modern media is increasingly getting decentralized due to the increasing use of social media. This free media provides users with the capabilities to spread information quickly to other users without confirming its truthfulness. [5]

**Indian laws**

In India law, there is the Information technology Act where intermediary guidelines released in December 2018 require all internet platforms to ensure traceability of the origin of all content shared through them. [6]

The Rule 2018 categorically specifies that the intermediaries ought to inform to the users of the laptop aid about the Rules and regulations and privateness coverage to not to host, display, upload, modify, publish, transmit, update or share any information
which may affect public fitness and safety and Critical Information structure. No such provision used to be current in the Draft Rule 2011 and it is determined that the government is taking necessary and needful steps time and once more to conscious human beings about the dangerous outcomes of consumption of cigarettes and intoxication. It is an essential step taken closer to public safety as a social media platform is one of the most frequent platforms used via every section of the society as properly as through each age group. The authorities have also taken an initiative to protect quintessential facts shape against cyber terrorism, cyber struggle and other threats.

Recently, as per reports, it’s been declared that What Sapp had opposed the planned intermediaries’ rules that needed the intermediaries to disclose data with relation to the origin of the messages because it would violate free speech rights and privacy of a person. Whereas, as per the intermediary’s tips that are to be proclaimed when elections would come with penalties and jail terms for the executives of social media corporations and therefore the electronic messaging apps, World Health Organization wouldn't suit the arranged down rules concerning message traceability. The government has taken this step to confine on fake and inflammatory posts and messages which will cause violence together with execution across the country. The What Sapp is of the read that such norms and tips area unit too broad and can’t be complied with considering the end-to-end encoding provided by the corporate to its users. The corporate had declared that it had created vital product changes and functioned with civil society partners to deal with information through public education campaigns however the govt. wasn’t happy with the aforesaid response given by the corporate. As per the corporate, the traceability of the origin of messages and posts would mean re-engineering core products and would have world ramifications and additional have away on user privacy. [7]

Recently in the Lok shabh election 2019, there are almost one hundred fifty and more cases of faux information stated it rampant the Indian authorities as well media. The records used to be launched by means of the Law Ministry and Election Commission following a question asked by South Goa MP Cosme Francisco Caitano Sardinha in the Lok Sabha.

According to the data launched on “cases where social media group of the commission had suo-moto reported instances to social media platforms,” forty-six instances got here from Facebook, ninety-seven from Twitter and 11 from YouTube. However, a first information record (FIR) used to be filed solely in one case of false news over the indelible ink.

“Tweets spreading misinformation concerning indelible ink was once noticed by using the social media crew of the Commission. The tweets have been supposed to lie to voters of a specific community,” Prasad had cited in the annexure.

Notable instances of false facts consist of Facebook posts involving 20 lakh EVMs long past missing (22), transportation of EVM except safety (11) and tweets spreading misinformation about EVMs (84) Sardinha had also requested a query whether or not the ballot panel had considered “banning social media messaging apps like What Sapp all through elections”. To this, the regulation minister
said no such suggestion was once taken up by means of the authorities.

To struggle with the rising tide of false data on social media, the Press Information Bureau (PIB) has determined to set up a fact-checking unit to identify and counter any faux information circulating about the government and its policies, the Hindustan Times reported.

This step assumes significance after the Ministry of Information and Broadcasting in 2016 had suggested expanding its analytics wing to monitor social media [8] the voluntary code of ethics adopted with the aid of social media companies like Facebook, Twitter, What Sapp, Share Chat and Google in advance of elections may not do an awful lot to curb the threat of faux information and misinformation circulating about the government sometimes takes 3 forms — targeting a minority and spreading false news implicating them in violent activities; targeting specific people and spreading false news to tarnish their credibility and reputation; and, spreading pretend news concerning public personalities and their supposed heroics that will increase their standing and influence political outcomes. All 3 forms of propaganda to foment communal and social tensions and heavy hurt to people. Another form of false news outside this spectrum is malicious false news designed to unfold psychosis and mistrust among folks. The spate of execution that semiconductor diode to the murder of over thirty-three folks in India between January 2017 and Gregorian calendar month 2018 stands as a testament of the facility of false news.[10]

Lessons for India

By implementing POFMA, Singapore has incontestable a resolve to fight the growing unfold of false news and information campaigns. There is a unit variety of vital takeaways for the Asian nation from this experiment. Firstly, there's a desire to acknowledge the role of social media and alternative ICT corporations as vital stakeholders in making certain national security, and their experience and talent set got to be optimally used for identical. Secondly, adequate provisions exist within the IT (Amendment) Act 2008 for watching and block websites and services. A proactive approach with facilitating |the
assistance] of ICT corporations will help in distinctive messages and posts that area unit going infective agent and more analytics of those will assist in segregating messages that area unit doubtless to end in the commitment of ineligible acts. Limiting the quantity of forwards has been a serious step during this direction because it helps in speed down message propagation. Thirdly, cyber education of our population in detective work and creating thought-about selections with relation to false statements can cut back the attractiveness and unfold of such messages. Fourthly, all messages that area unit being originated and propagated on the web has to be unambiguously known and half-track so the namelessness of the message conceiver, recipient and propagator will be removed and this may successively cause an undergone user behavior. Fifthly, prompt and exemplary action has to be taken against persons and organizations resorting to unfold of false messages each among and out of doors the country. Lastly, the cooperative and cooperative partnership has to be solid with likeminded countries to spot the origin of information campaigns and initiating countermeasures against the perpetrators. The recent sign language of the “Christchurch decision to Action” declaration by the Asian nation could be a step in the right direction.[11]

Comparative study
The Singapore government has enacted the law on fake news the needs the power to act swiftly to halt the viral spread of false news the law protections against exploitation of power by allowing judicial reviews of government guidelines.[12]

Singapore passed the Protection from Online Falsehood and Manipulation Act (POFMA) 2019 on 8 May 2019. Consisting of nine components and sixty-two sections, the Act at once drew the world’s attention and bouquets and brickbats flew in thick and fast. Irrespective of whether or not the act will deliver or not, the Singapore government, confronted with a daunting and complex problem, decided to act. The following section discusses policy measures taken by some of the nations to adjust faux information and allow vibrancy of the digital public sphere.

Countering pretend information is top in the government’s plan. In 2016, the MIB cautioned expanding its analytics wing to reveal social media and set up an early warning machine for viable flashpoints that the authorities can also be unprepared for. The social media analytics wing of the ministry which is now non-existent, scrutinized posts on social media systems to generate reports for the Prime Minister’s Office, the National Security Advisor’s Office and quite a number intelligence bureaus, apart from ministries such as domestic affairs, external affairs, and defense. In 2018, the ministry constituted a committee to body guidelines to modify news portals and media websites. During the recently concluded Lok Sabha election, the election fee additionally labored with social media structures to pick out and pull down posts that were fakes and should lead to vitiating the elections.

As per EC’s data, 650 posts have been taken down by Facebook for voter misinformation, hate speech, violation of the mannequin code of behavior and public morality and decency. Similarly, Twitter took down 220 posts, Share Chat 31, Google 5 and What Sapp, 3.

Singapore has enacted POFMA for 4 predominant reasons. Firstly, to stop the conversation of false statements of reality and enable measures to counteract the
consequences of such communication. Secondly, to suppress the financing, promotion, and support of online locations in Singapore that over and over speak false statements of facts. Thirdly, to allow measures to be taken to detect, control and safeguard towards coordinated inauthentic behavior and other misuses of online debts and bots. And lastly, to allow measures to be taken to beautify the disclosure of records concerning paid content directed toward a political end. One of the challenges facing the world neighborhood is involving the classification of a piece of statistics or information being spread on cyberspace as hateful or fake. It is not clear as to when such news is to be considered an innocent prank or a law and order trouble or a hazard to national security. POFMA tries to get to the bottom of this dilemma. The act states that a piece of news is deemed to pretend and useful action if and solely if it meets two criteria in Article 7 parts 2. Firstly, it is a false announcement of fact. And secondly, conversation of this false news is probable to have an effect on the security of Singapore or be prejudicial to public health, safety, tranquility or chances or be prejudicial to Singapore’s relations with other countries or have an effect on the result of elections or incite emotions of hatred, enmity unwell will or reduce public confidence in the state or its institutions. Article 10 of Part 3 of the act makes any Minister in the Singapore authorities in a position to classify news as pretend and take fabulous action to deal with such news. Article eleven of Part 3 worries speaking a “Correction Direction”. A Correction Direction can be issued to a man or woman to talk a Correction Notice (Statement nullifying a false information and inserting a corresponding genuine statement and/or its hyperlink next to the false statement) within a detailed time restriction to all individuals who have received the false facts and/or post the correction note in a newspaper or other print publications of Singapore. Article 12 of Part three empowers the Competent Authority to issue a “Stop Communication” direction, and Article 16 of Part three empowers the Minister to direct the Information Communication Media Development Authority (IMDA) to order the web access service company to disable get admission to an online region for all cease customers through issuing an “Access Blocking Order”.

An Internet Intermediary has been classified as a character supplying web intermediary offerings (like social networking services, search engine, content material aggregator, web-based messaging service, video sharing services, etc. Part four of POFMA deals with instructions to internet intermediaries and providers of mass media services. Article 22 offers with the issuance of “Disabling Directions” with the aid of the web middleman to quit get right of entry to the quit consumer in Singapore of detailed false information whilst Article 28 deals with “Access Blocking Order”.

**Italy:** In 2017, lawmakers and regulators in Italy felt a desire to introduce new rules for faux news. Since the spreading of pretend news was extremely debated concern throughout their constitutional vote campaign, a legislative proposal was submitted within the Senate of the Republic. This planned law criminalized sharing and posting of ‘false, exaggerated or biased’ data and obligatory fines of up to 5000 Euros. It planned imprisonment in cases of pretend news as grave as inciting violence or crime and supposed the web Service suppliers (ISP) with a responsibility to watch their role in regulation the content and within the removal of such news that's
not reliable and true a part of the law was Janus-faced resistance since it used imprecise terms like ‘false or exaggerated or biased' news, which might take a large vary of definitions. Also, the law partially challenged the liberty of expression below their Constitution

Article ten of ECHR: ‘Freedom of Expression’ discusses the correct freedom to carry opinions and to receive and impart data and concepts while not interference by public authority. although the Article provides public a right to specific, it conjointly qualifies the correct by stating that this freedom of expression will solely be exercised subject to sure such formalities, conditions, restrictions or penalties as are prescribed by law. Such qualifications shall be based on mostly keeping in mind national security, territorial integrity, public safety, disorder or crime, health or morals, name or rights of others, the revelation of data received in confidence, maintenance of authority and inclination of the judiciary(Council of Europe, 1970).[13]

Malaysia: within the run-up to 2018 Malaysian general elections, the previous Prime Minister of the Asian country, Najib Razak, introduced Anti-Fake News Act 2018, once the Billon anti-fake news received the Malaysian King’s assent. underneath this law, publishers of the content were needed to right away take away the revealed content if it had been suspected to contain faux news (Malaysia’s anti-fake news legislation becomes law, is currently enforceable, 2018). This bill would produce conflict within the constitutional rights of individuals in an exceedingly democratic nation. Such a law that regulates the individuals from registration their opinions could be a regressive one. This law introduced by former Prime Minister was conjointly presupposed to curtail the free morpheme of political speech. However, the present government in August 2018 tried to repeal the law quoting that the prevailing laws about communication and media area unit "sufficient" to tackle faux news within the country. Although, the Bill to repeal the prevailing Anti-Fake News 2018 Bill was passed within the lower house in August, it had been later rejected by the legislator. it's attention-grabbing to notice that such laws that regulate what the general public will opine and speak sets a wrong precedent in an exceedingly democratic area wherever individuals fancy the correct to free speech.

Germany: In a European country, the govt. brought an exceeding law that came into impact on January one, 2018. This law mandates online platforms to get rid of “obviously illegal” posts among twenty-four hours or risk fines of up to €50 million this law was enforced by the German government to cut back the unfold of info, it received a lot of flak. Primarily as a result of once regulation of content happens on social media platforms, it typically ends up in depreciation of the democracy in situ. Such law that blindly restricts the speech of its individuals, supported specific key-word parameters, is often used as a tool by the govt. to suppress power, voice and disturb the democratic area within the public sphere. If unbridled, such a move will develop into systematic state-based police investigation and censorship, which might adversely undermine democracy within the nation.

France: when Italia introduced a law criminalizing the sharing and posting of ‘false, exaggerated or biased' data beside Deutschland passing legislation to fight back pretend news, France conjointly determined to require pro-active steps to
handle the difficulty of pretend news. French Parliament amended its Constitution in Gregorian calendar month 2018, at the National Assembly, when being opposed by the Senate doubly earlier and passed a law to fight the handling of data. In compliance with the previous live, digital platforms can currently have to be compelled to publish the name of the author and therefore the quantity got any of their sponsored content. Below the latter, it might change associate degree interim decide to fleetly halt the circulation of pretend news by means of legal injunction. [14]

Fake News in the Indian Context
Fake news on social media has a huge have impact on the opinions of people across the world. In the Indian context, the consequences of spreading pretend information has been away from what one could contemplate. According to record of Indo-Asian News Service. In scenarios like these, where the important notion at the back of spreading news is related to nationalism, the data become less important for the customers than the emotional desire to bolster their countrywide identity.

Unlike other countries, the prime distributor of fake news in India is What Sapp, but now not different social networking sites like Facebook or Twitter (What's Driving India's Fake News Problem? 2018). What Sapp, a cell messaging application, was once acquired via the social media giant - Facebook, in 2014. This social media platform lets in its customers share facts by means of forwarding it to different customers in a number of agencies and broadcast lists within the same platform which has led to widespread, unchecked distribution of facts hardly ever vetted by using users. It has now not solely misinformed the users on social media but additionally triggered violence and barbaric killings around the country.

In 2018, Panjuri Kachari, a small village in Assam, witnessed one of the most gruesome instances of lynching. The smartphone photos which went viral showed two blood-soaked men pleading for their lives, moments later they have been dead. These two guys who have been from Guwahati, capital of the north-eastern state of Assam, had been overwhelmed to loss of life via a crazed village mob wielding bamboo sticks, machetes, and rocks, as they were wrong to be toddler kidnappers. The case used to be mentioned in more than a few media platforms as to how rumors spread on Facebook and What Sapp in India lead to the death of two people. Around 20 humans have been victims to cases of lynching in May and June 2018 alone, due to the viral news unfold via Facebook and What Sapp. At least 18 humans were killed as a result of the violence fuelled by means of the rumors unfolds on What Sapp.

Outbursts of violence in Shillong due to communal variations between two groups; lynching of two guys through an irritated mob, who presumed the victims to be cattle thieves in Jharkhand; and the demise of two men and women in Assam after being misunderstood as baby lifters by means of a mob are some instances. These cases resulted in pushing the West Bengal authorities to work toward the implementation of a law. The violence in these places was once because of unfolded of hatred and misinformation on social media. The proposed law of the new law has strict actions in the area in opposition to persons or businesses that are accountable for spreading hatred and pretend news in society, and for disrupting harmony in a public sphere. Such strict movements
encompass penitentiary sentences to residents for posting fake news if such information causes concern or alarm in public.

According to a BBC analysis, in the 12 months 2018, at least 32 humans have been killed in incidents involving rumors unfold on social media or messaging apps (What's Driving India's Fake News Problem? 2018). All this referred to as for the authorities to take some tremendous movements to curb unfold of misinformation. Following the quite a number of instances of lynching witnessed in India, in August 2018, What Sapp had to begin rolling out the 5 chat limit for forwarding messages to control the unfold of pretend news.[15]

India judiciary
The Supreme Court stressed the need to discover a balance between the right to online privacy and the proper of the State to discover people who use the net to spread panic and commit crimes. Though I do no longer recognize how to access it, I have heard about the darkish goings-on in the dark web. It is worse than what occurs in the net search. Two The link of social media profiles of registered users with their Aadhaar numbers, and if required, have platforms such as Facebook and What Sapp to share the 12-digit unique identification with law enforcement organizations to assist notice crimes. The government discovered it a task to hint the 'originator' of such online content. The services of social media platforms, which had been used to flow into such content, were the need of the hour. “We do now not have the mechanism to find out the originator we can't have human beings commit crimes. [16]

Fake information in Daily Newspaper "Tameel-e-Irshad" twice i.e. on 10-08-2016 and 30-09-2016 concerning Protest Rally organized in Tulla-Mulla on 09-08-2016 and 29-09-2016 respectively. Fake news was also posted involving "Munshi" of P/s Kheer Bhawani. The petitioner on 19-08-2016 posted an apology concerning the fake information that has been posted with the aid of the petitioner. Thus, the petitioner wantonly gave provocation to reason riots and precipitated the public to disrupt public order in the District. However, tendering of apology related to the pretend information honestly suggests that there have been no practical grounds that bake that such declaration used to be factual and the petitioner has no longer posted the stated information in properly faith. The FIR is lodged in opposition to the petitioner in the Worrying police station. The petitioner in the instantaneous case has posted pretend news which reality is admitted via the petitioner and consequently the petitioner has committed an offense which has led to the registration of the immediate FIR against the petitioner and there is no question of imposing a ban on freedom of the press.[17]

Lynching and mob violence are creeping threats that may additionally steadily take the form of a Typhon-like monster as evidenced in the wake of the rising wave of incidents of habitual patterns with the aid of frenzied mobs throughout the united states of America instigated by means of intolerance and misinformed by the circulation of fake news and false stories. There has been an unfortunate litany of spiraling mob violence and agonized horror supplying a grim and ugly picture that compels us to mirror whether the populace of a top-notch Republic like ours has misplaced the values of tolerance to preserve a numerous culture.[18]

Conclusion
The fake news is a threat to Indian society as the misinformation in the digit world is dangerous to people and society. The social media platform information to be origin or fake is a question for the country. As the information circulates in any form the origin of news is all there. The guideline of 2018 is there in the information technology act. But these guidelines are not self-sufficient which only solves the problem of misinformation in the country. The strict laws, rules, regulations, and guidelines should be enacted the same in the case of motor vehicle act for preventing the accident on road. The Indian government should have enacted the law as a country like Singapore, Germany, Italy, France, etc. has the law with strict fine and penalty. Recently, in the Lok shah election there is widespread misinformation. The apex court has recommended the social media account should be linked with Aadhaar card. As long as people have a strong incentive to believe a lie, liars will have an equally strong incentive to lie. Fake news will continue to disrupt the media and communication research traffic in the coming years. As poison kills poison, so the digital literacy will play a big role in combating the problem of fake news. So it is safe to conclude that social media is an important aspect which is authentic and helpful for its users as well as for the development and growth of the society.

Recommendation
As the fake news spread rapidly in the country it is a threat to India society the following are the recommendation -

1. The awareness program of fake news should be done at each level by the workshop, seminar, schools, college, and office, etc.
2. Social media messages like in the case of what Sapp message the name of the person should be mention that is forward that message.
3. An account on social media should be one for one person.
4. The government should create the ad hoc committee to the watchdog of fake news.

References
[17] Reyaz Ahmad Bhat vs. the State of J&K and Ors. (07.03.2018 - JKHC) : MANU/JK/1052/2018
[18] Tehseen S. Poonawalla vs. Union of India (UOI) and Ors. (17.07.2018 - SC) : MANU/SC/0738/2018

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FAIRNESS AND PEACE: HYDHYA 
VERDICT

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ABSTRACT:
India's constitution upholds secularism and a sense of respect for the prevailing religious diversity. However, The Ayodhya Dispute regarding the demolition of Babri Masjid has been a counter narrative to India's secular nature. A mob of Hindu extremists demolished the mosque at Ayodhya arguing that the site marked the birth place of Lord Rama and there used to be a temple at that site before Mughal emperor Babur demolished it to erect a mosque. This dispute reflects the intolerance shared between the Hindu and Muslims in India and how under the rule of our current Prime Minister, Narendra Modi, and this negative sentiment is becoming even stronger due to his Hindu revivalist and extremist ideology.

INTRODUCTION:
The cause of violence between the Hindus and the Muslims for many decades has been the Babri-masjid disputes in Ayodhya each faith claiming the ownership of the disputed holy site. About 500000 people including both Hindu and Muslims attend the Annual Ram festivals and both the faiths believe that the well water found in the site has phenomenal healing properties. Hindus claimed that the place where the temple was built in 12th century in honor of lord Rama had stood and got destroyed during the reign of Babur was the site where the mosque stood. Hindus consider this particular site to be the birth place of Lord Rama, but also located the Babri Masjid. The question arises if an earlier Hindu temple was demolished or modified to create the mosque.

HISTORY:
Babar’s general Mir Baqi in 1528 built the Babri mosque following the orders that were given by Babur after the destruction of the Ram Mandir. Regarding the issues the first recorded violent incident took place in 1853 at the time when Nawab Wajid reigned. To control the violence the British administration in 1859 was forced to erect a fence in the site to separate the places of worship so that the Muslims could use the inner court and the Hindus could use the outer court. A controversial incident took place in 1949 where idols of Lord Rama appeared inside the mosque and it was alleged to have been placed by the Hindus and this incident led to huge protests by the Muslims and resulted to both the parties filing law suits against each other. To control the situation the government declared the premises as a disputed area and locked all the gates to the site. Vishwa Hindu Parishad party lead the formation of a committee that was intended to unshackle the dispute and to carry out the building of a temple in the site and the leader of Janta Party Lal Krishna later took over in leading the campaign. Formation of the committees incited the order by the District judge to open the gates of the mosque and allowing the Hindus to worship and this decision again sparked the protest by people belonging to Muslim faith resulting in formation of the Babri Mosque Action Committee which was responsible for ensuring that there was no temple built near the mosque.

THE CONFLICT:
The Hindus regard the land in Ayodhya, on which the Babri Masjid was built in the year 1528, is the Ram Janmabhoomi. It has been said that one of Babur’s generals, Mir Baqi demolished a temple of Lord Ram in order to build the mosque, which was named after Babur himself (Babri Masjid). Meanwhile, both the communities prayed at the site. But in the year 1885, the head of Nirmohi Akhara had filed a petition, where he asked for permission to pray to Ram Lalla inside the Babri Masjid. The court did not grant the permission, but in 1886, district Judge of Faizabad court Colonel FEA Chamier famously said that it was an unfortunate event that a mosque was built in a sacred place for Hindus, yet with the passage of more than three centuries, it was too late now. Similar petitions and judgements continued for a long time.

The way the dispute has been reduced to a mere law and order situation and assigned culpability to particular sections of the society and the eventual treatment is a clear indication of a myopic mind set which disregards the overarching historical political and religious avenues. It is essentially a very simplistic approach and has been the bane of this controversy. The Supreme Court’s decision would be the deciding factor in the backdrop of the movement for building a Ram Temple at the disputed site. The Supreme Court, in April 2017, decided to revive the criminal conspiracy against the senior BJP leaders in the Babri Masjid demolition cases.

COURT VERDICT:
The recent Supreme Court order has asked for a harmonious, out-of-court settlement in the on-going dispute. An Allahabad High Court ordered in 2010, saying that there should be a partition of the site in Ayodhya and distributed among the concerned parties, BJP leader Subramanian Swamy had urged the Supreme Court to constitute a bench to hear a batch of petitions which had challenged the 2010 Allahabad High Court order. However, Supreme Court had said that it is a sensitive and sentimental issue and it’s best to be settled amicably. After the Babri Masjid demolition, the court had ordered a survey to investigate of a Ram temple on the site. Later evidence was found of such a temple under the mosque, which was again disputed. Later many BJP leaders were asked to stand trial for inciting the demolition of Babri Masjid. The issue, after 1992 saw many disputable judgements, including the Liberhan Commission that was instituted in 1992 but it submitted its report in 2009. 17 years later, the report was submitted, and leaders like Atal Bihari Vajpayee, LK Advani, Murli Manohar Joshi, Uma Bharti, Kalyan Singh, Pramod Mahajan were found culpable. Recently, in March 2017, the apex court with a bench of Justices, Nariman and PC Ghose heard a CBI plea to invoke conspiracy charges against the top politicians but the court indicated that the charges won't be dropped. The final hearing over the disputed Ayodhya site, claimed by Hindus and Muslims, will begin on February 8 next year by a three-judge bench of the Supreme Court.

AYODHYA VERDICT:
After decades of mandir-masjid politics in the country, the Supreme Court of India took decision on November 9th 2019. Lord Ram- the deity Ram Lalla, was recognised as a legitimate legal personality and given
the title to the entire 2.77-acre disputed property in Ayodhya. The five-judge
Constitution bench of CJI Ranjan Gogoi, Justice SA Bobde, DY Chandrachud,
Ashok Bhushan and SA Nazeer pronounced its verdict in a special hearing called on
November 9th, amidst tight security and a jam-packed courtroom. The judgement was
that the property in dispute would be managed in the name of Lord Ram by a
temple trust which was to be set up by the central government within 3 months under
the provisions of the Acquisition of Certain Area at Ayodhya Act 1993. The trust will
have the responsibility for managing the site, construction, maintenance and
management of the Ram temple. The court rejected the claim of the Nirmohi Akhara as
the shebait-sole manager of the temple but said that the Akhara will be included in the
trust/board that will be created for the management of the temple. The court also in
favour of the muslims ordered that the Sunni Waqf Board would be given 5 acres
of land in Ayodhya for the construction of a mosque. However, it has been left to the
BJP government at the Centre and state level to decide where this land will be
allotted-whether part of the 77-acre 'mandir-masjid' area will be given, or would
they be granted land in some other "prominent place" in Ayodhya.

CONCLUSION:

The Babri-Masjid Demolition Case has led to more misunderstandings between the
Hindu community as people are divided between supporting their religion by
fighting for the building of the temple in Ayodhya and advocating for peace and
harmony between the Hindus and the Muslim community. The daily controversy
has led to formation of a more divided Hindu community which affects the future
history of the community in a similar way
THE ERA OF BIG DATA: PRIVACY IN QUESTION

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ABSTRACT

Privacy is a Fundamental right recognized by many International organisations like UN, ICCPR, etc. The researcher in this paper aims at determining the perks of Big Data, but moreover tries to culminate how privacy and data protection is being hindered or challenged by this. Initially the paper seeks to make the reader understand and incorporate as to what is meant by Big Data in the contemporary scenario. Later, data protection issues and privacy issues have been made to come in picture, along with how government keeps a balance between surveillance and right to privacy as enshrined in the Indian Constitution. CCTV footage and recordings as such kept at the behest of the state is also being questioned as to whether this violates the right to privacy of the general public or does national security plays a trump card over such Fundamental Rights. To conclude, the paper will try to explore policies, laws and regulations made by the government to protect user data in such digital era, and the researcher will also give their own recommendations as to how the present state of affairs could be improved.

Keywords: United Nations, ICCPR, Right to Privacy, big data, CCTV.

INTRODUCTION

Right to Secrecy is considered a right naturally perceived by the UN. It’s hard ere characterize compactly what’s more, unequivocally what this right entails. Protection has a double perspective- it is worried about data or on the other hand close to home information & the degree to which that is common with different gatherings. The comprehension of security¹ has been formed by advancements accessible at the time, beginning from proficiency, to accounting to papers, & the present occasions we live in, the Internet. The Internet & the approach of mass information gathering & maintenance have reshaped the idea of protection in the advanced world. The current talk around protection rotates around the ways in which outsiders manage the data they hold- regardless of whether it is verified, defended, who approaches, & under what conditions. The ‘right to protection’ is an essential natural right perceived in the universal declaration of natural vagrant workers also, the UN convention on protection of child in numerous other universal & local arrangements. Various worldwide natural rights contracts, shows & natural rights courts give explicit remark to protection as a right.

The UN special speaker made remark to one side to protection in his first report on eighth march 2016. Two standards support his report: (A) Security protections must be accessible paying little mind to national fringes; (B) Solutions for infringement² of protection similarly should be accessible over these matters. So, as to encourage the Principles, the special Speaker³ has additionally plot a ten point action plan.

The privilege⁴ to protection supports different rights & opportunities like the opportunity of articulation, affiliation & conviction. Notwithstanding, in the period
of huge information, the privilege to security has turned into an urgent issue close to home information is routinely

1 For example, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on Human Rights, the American Convention on Human Rights, and the American Declaration of the Rights and Duties of Man. Several Courts of Human Rights have also begun to address privacy issues in their hearings.

2 An American computer professional, former Central Intelligence Agency (CIA) employee, and former contractor for the United States government who copied and leaked classified information from the National Security Agency (NSA) in 2013

3 Ten Point Action Plan will be discussed later in the sub-section 1.1. under ‘Privacy Safeguards at the International Level


gathered & exchanged the new economy. Information specialists furthermore, investigators are presently attempting to recover protection concerns & guarantee that data is secured.
In the present age ‘interchanges reconnaissance’5 encompasses the “observing, capturing, gathering, getting, breaking down, utilizing, protecting, holding, meddling with, getting to or comparable moves made with respect to data that incorporates, reflects, emerges from or is about an individual’s correspondences previously, present or future.” (Necessary & Proportionate Alliances, 2014 )
The “Big” is huge information which alludes to volume, yet in addition the speed & assortment of information components & sources. These huge databases are gathered by government to give welfare benefits yet overseen or put away by private partners or gathered by private innovation Companies. For instance, in India, Unique Identification Authority of India (UIDAI), Census of India, Stock Exchange, The Ministry of Rural Development for the Mahatma Gandhi National Rural Employment guarantee annual tax department among others hold enormous datasets. Aside from these, different projects of Indian Government like Central Monitoring System, Natural DNA Profiling, Smart Cities Missions & Digital India Program to hold enormous information. Other than the administration, non-state on screen characters including telecom suppliers, online travel agencies utilize huge information examination to advance their organisation. In spite of the fact that there are certain qualities of enormous information situated projects have an unmistakably laid down protection arrangement, there is an absence of appropriately explained access control component & questions over significant issues, for example information proprietorship owning to most undertakings including open private association which includes private associations gathering, handling, & holding a lot of information. Hence, the Natural Rights ramification of gathering, stockpiling & utilizing enormous information in the Indian setting should be examined. The paper investigates the issue of security in the huge information age & how enormous information assembled through ICT apparatuses & online life stages can be utilized against residents. This paper will
likewise break down the significance of security & depict the advances that put natives’ information most in

5 The US, the United Kingdom (UK), Australia, Canada, and New Zealand are the Five Eyes Intelligence Alliance. See: Nyst, C and Crowe, A. Unmasking the Five Eyes’ global surveillance practices. Association for Progressive Communications (APc) & Humanist Institute for cooperation with developing countries (Hivos). APC-201408-CIPP-R-EN-DIGITAL-207.

danger on the net. At long last, the research will recognize potential approaches to secure residents private information on the internet.

RESEARCH OBJECTIVE

One of the objectives of this research paper is to understand, keeping in mind the Indian perspective, as to what meant by Big Data and does it pose any threat to the citizens if it is not regulated by the government. The research paper also tends to explore whether CCTV cameras which come under the surveillance by the government hinder right to privacy of the general public or an individual person per se. the paper also strives to target as to how human rights of a citizen gets violated when such data is being misused by tech companies and the government.

RESEARCH QUESTIONS

1. What are the diverse protection issues identified with utilization of Big Data?
2. In what capacity can enormous information assembled through ICT devices & stages, including online networking be utilized against clients?
3. Can CCTV Footage be considered as issue of privacy in the era of Big Data?
4. What can be possible solutions for the above mentioned issues?

Chapter- 1

BIG DATA & ITS RELATIONSHIP WITH PRIVACY

The nation is encountering revolution of data. Now-a-days, an immense proportion of data is ordinarily being made and spilling out of various sources, through different channels, reliably in the present computerized age. Research has demonstrated that measure of data put away every year developed to 161 exabyte, up from 5 exabytes in 2003. Generally, equivalent to the measure of data put away in the size thirty seven thousands of library as that of “US Library of Congress.”

Big Data is another worldwide of information driven choices. The amount of information that is being created by cell phones, TVs, web based life styles, sensor driven gadgets & numerous other such arranges that we always use in our everyday life. Big Data searches for connection as opposed to the causation, the ‘what’ as opposed to the ‘why’. Big Data contains an assortment of information types including content, symbolism & video. Various wellsprings of such information types are standard news stories, internet based life stages, pictures on Instagram, proficient photos, satellite symbolism & elevated symbolism caught by unmanned Aerial vehicles (UAVs), & recordings from TV channels, “YouTube”, & various channels. This isn’t constrained to the created world, with the creating world delivering enormous measures of huge information also rapid ICT improvements & client’s commitment with stages like
social media, miniaturized scale blogging destinations, among others empower extraordinary social occasion, maintenance, & examination of enormous data. The information gathered from web based life, sites, portable GPS, & more could help to address different viable arrangements & measures. Hence, enormous information is being considered as an uncommon asset that could possibly present interesting chances for all. Alongside big data, metadata, likewise can possibly uncover delicate data about individual’s lives, political inclinations, religion, sexual direction, & so forth. The plan of action of numerous web organisations depend on the gathering of metadata, so as to improve their administrations & to deduce clients’ conduct to further improve their items. Be that as it may, gathering, getting to & utilizing such information convey huge dangers to key opportunities & natural rights. Big data & metadata

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6 Data that gives a description of data.
7 “Personal data” means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller’. (Sept 27, 2019, 3:31 pm) See: https://www.dataprotection.ie/docs/What-is-Personal-Data-/210.htm
8 Metadata summarizes basic information about data, which can make finding and working with particular instances of data easier both have the potential to truly undermine people’s privileges to keep their own what’s more, touchy data privilege & to have power over how their data is utilized. As of late, political pioneers & organisations are declaring big data as an answer for differing scope of issues from defilement, giving taxpayer supported organisations, battling against maladies & so forth. It has been noted that for the sake of open administrations, better conveyance of resident driven administrations, better client experience & giving security also, security of natives, governments & private partners are collecting, putting away & breaking down gigantic measures of resident’s information. Be that as it may, worries over the absence of straightforwardness & responsibility around the plan of calculations process used the information, questionable measures of security utilized away & upkeep of huge databases & overreliance of enormous information rather that customary types of investigation & the formation of new advanced partitions have developed. In the next segment, I will talk about how governments & various organisations are gathering, putting away, utilizing, moving & reusing gathered information for various objectives & how the privilege to protection is being compromised & encroached upon in the immediate time of big data.

At long last, in view of the “Ten Point Action Plan” proposed by UN exceptional speaker for the privilege to security, the paper propounds to create a system in India to secure native’s close to home & touchy information on the internet. Toward the end, the paper diagrams a few open doors for gaining ground.

PRIVACY PROTECTION AT AN INTERNATIONAL LEVEL

A few nations have protection shields for their very own residents. Protection is a major natural right perceived in the “Universal Declaration of Natural Rights
(UDHR), the International Covenant of Civil & Political rights (ICCPR), the UN Convention on Migrant workers & UN Convention on Protection of Child” & in a few other universal & territorial settlements, various global natural rights contracts, shows & natural right courts give explicit remark to security as a privilege.

9 ‘Sensitive data encompasses a wide range of information and can include: your ethnic or racial origin; political opinion; religious or other similar beliefs; memberships; physical or mental health details; personal life; or criminal or civil offences. These examples of information are protected by your civil rights.’ (15th Sept, 2019, 12:23)
See: http://web.mit.edu/infoprotect/docs/protectiondata.pdf

10 For example, The 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention created the European Commission of Human Rights, the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man. Also different Courts of Human Rights have also begun to addresses privacy issues in its cases

Article 1211 of UDHR provides that

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation.”

It additionally says “everybody has the privilege to the security of the law against such observations or attacks.” The United Nations General Assembly (UNGA) in its goals, worldwide natural rights law gives the all-inclusive structure against which any obstruction in person security rights must be surveyed. Other territorial bodies, for example, the EU, perceive the privilege to security as a basic natural right in “Article 8 of the Charter of Fundamental Rights of the European Union.” The special Speaker on the advancement & security of the privilege to opportunity of feeling & articulation can’t be completely enjoyed. During the thirteenth meeting in December 200912, in UN the discussion on the advancement13. Furthermore, assurance of natural rights & crucial opportunities, Frank La Mourn, likewise underlined that, “reconnaissance frameworks require compelling oversight to limit hurt & abuses.” Including by requiring a warrant issued by a judge on a case-by-case premise. The Ten point Action Plan14 outlined is:

1. Going past the current lawful structure to a more profound comprehension of what it is that we have promised to secure.
2. Expanding mindfulness.
3. The protection of an organised, on-going discourse about protection.
4. A complete way to deal with lawful, procedural & operational defends & cures.
5. A recharge accentuation on a specialised protections.
6. An uncommonly engaged exchange with the corporate world.

11 See the Article 12 of the Universal Declaration of Human Rights (UDHR), 1948.
12 See A/HRC/27/37 also available at http://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx


14 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. (A/HRC/23/40). Human Rights Council. Twenty-third session. Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Frank La Rue

1. Advancing national & territorial advancements in security & assurance systems.
2. Bridling the vitality & impact of common society.
3. The internet, cyber-security, cyber-secret activities, cyberwar, & cyber peace.
4. Putting further in International law.

PRIVACY ISSUES IN REMARK TO INDIAN CONSTITUTION

The Supreme Court of India has in various decisions saw the suitable to security as a subset of the greater perfect to life and individual opportunity under Article 21 of the Constitution of India. The article communicates that no individual will be prevented from securing his life or individual opportunity beside as shown by procedure developed by law. The Supreme Court of India has expressed that Article 21 of the Constitution is the middle for major rights. The extension in the components of Article 21 has been made possible by giving a comprehensive significance to the words 'life' and 'opportunity'.

The extend of the right previously came up for thought in “Kharak Singh v. State of Uttar Pradesh”16, which was worried about the legitimacy of guidelines17 that allowed the reconnaissance of doubts. In the setting of article 19(1) (d), the privilege to security was again considered by Supreme Court in 1975, while choosing the instance of Govind v. State of Madhya Pradesh18, it sets out different essential benefits of inhabitants can be delineated as adding to the other side to assurance. Regardless, the Supreme Court furthermore communicated that the benefit to insurance would need to encounter a method of case-by-case improvement.

The SC in the instance of R. Rajgopal v. State of Tamil Nadu19, just because straightwardly connected the privilege to protection to Article 21 of the constitution is verifiable justified to life & freedom ensured to the residents of this nation by Article 21. It is a ‘right to be not to mention.’ A native has a privilege to defend the security of his own, his family, marriage, child, parenthood, tyke bearing & instruction among different issues. No one can distribute anything concerning the above issues without his assent whether honest or generally & whether commendatory or basic. In the event that he does as such, he would abuse the privilege to


16 Kharak Singh v State of UP, AIR 1963 SC 1295; People’s Union of Civil Liberties v. the Union of India, (1997) 1 SCC 318


protection of the individual concerned- on account of \textit{PUCL V. Association of India}\textsuperscript{20}, the Supreme Court saw that phone tapping would be a genuine attack of a person’s privacy.

In remark to “\textit{Selvi v. State of Karnataka},\textsuperscript{21}” the SC said that an automatic subjection of an individual to narco investigation, polygraph assessment, BEAP tests damages the privilege to privacy. It is noticed that with the expanded extent of Article 21 of the Constitution covering appropriate to protection, yet any person’s security is registered because of the absence of legitimate strategy & structure.

The thoughts of protection & information the board that are passive can be followed to the “\textit{Fair Information Practice Principles (FIPP)}.” These standards are additionally followed in worldwide systems, for example, the “OCED privacy guidelines,” APEC structure or the nine national privacy principles enunciated by the Justice A.P Shah Committee Report. In 2002, the Justice A.P Shah board suggested a overall legislation to secure protection & individual information in private & open circles. The report likewise proposed setting up protection chief’s both at central & state levels. Nine national security rules that can be perused while surrounding the law. The Supreme Court saw that the benefit to security\textsuperscript{22} may be restricted for evasion of bad behavior, issue or security of prosperity or morals or confirmations of rights and chances of others. Tragically, during the thinking about a lot of petitions hoping to stop the utilization of the Aadhar Scheme in July 2015\textsuperscript{23}, the inside replied in the Supreme court that insurance was not a pivotal right in India. Legal advisor General Mukul Rohatgi said the benefit to insurance had been a ‘vague’ thought, all of these occasions, a subject of changing closures from SC. These systems give the intensity of consent fore people with the goal that they ought to be informed if their own information is utilized.

**PRIVACY IN RESPECT OF ACCESS BY STATE**

Another part of enormous information is the deceptive access of individual information by the state\textsuperscript{24}. Numerous nations are gathering & refreshing their resident databases for example Huge \textit{PUCL v. Union of India}, cited at: (1997) 1 SCC.


\textsuperscript{20} Social Credit comprises interlocking concepts of economics and politics which deal with the just relationship between man and the Society in which he lives.

\textsuperscript{21} See Report of the Group of Experts on Privacy (Chaired by Justice A P Shah, Former Chief Justice, Delhi High Court) 17\textsuperscript{th} September, 2019, 1:12 am, http://planningcommission.nic.in/reports/g enrep/rep_privacy.pdf

\textsuperscript{22} The survey was conducted by the Pew Research Center. It is a nonpartisan American think tank which is based in Washington, D.C. It provides information on social issues, public opinion, and demographic trends shaping the United States and the world.) 17\textsuperscript{th} September, 2019, 1:12 am, See: http://www.pewresearch.org/topics/privacy-and-safety

Data Bank to incorporate biometric identifiers that confirm character
dependent on physical attributes for example physical attributes, for example, fingerprints, iris, face & palm prints, religion, ethnicity, sexual direction, walk, voice & DNA. Mandatory national distinguishing proof frameworks have been executed in various nations counting “Argentina, Belgium, Colombia, Germany, India, Italy, Mexico, Peru, Spain & Thailand (Electronic Frontier Foundation).”

For instance, Aadhar task of India gathers all inhabitants’ biometric data. It has turned into a device for focused reconnaissance & mass observation to clandestinely distinguish what’s more, track residents. Aadhar has turned into the accepted personality archive acknowledged at private banks, schools, emergency clinics, telecom administrations to purchase SIM cards, medical protection or some other utility administrations. The record is being connected to various social plans too. In addition, Aadhar there are other such purported activities, for example, Central Monitoring System (CMS), keen cities mission, & Digital India program that are utilizing innovations further more arrangements that undermine singular protection. Along these lines if individuals or gatherings, the state is likely previously following their developments through web based life, protection organisations, cell phones & so forth. The Pakistani Government is occupied with interchanges observation-of telephone what’s more, web connection 9IP) traffic, locally, globally & other information like biometrics & gadget enlistment data to counter ‘inward what’s more, outer’ dangers. Biometric server farm has been set up by China with an expressed motivation behind keeping up open security, however has permitted an on the web business venture offering biometric information coordinating administrations access to the information. As indicated by BBC, by 2010, everybody in “China” will be tried out a tremendous national database that arranges financial & government data, counting minor petty criminal offences. The aims behind executing these national recognizable proof plans fluctuate by nation. In most cases, people are regularly appointed an ID number with biometric subtleties, which is utilized for an expensive scope of recognizable proof purposes. Enormous sums of individual & delicate information of occupants, for example, name, date, & spot of sex, biometric information, current location, photos & other data like relatives is connected to this ID number & put away in an incorporated database. Government chiefly make big data banks for the scope of purposes, including national recognizable proof frameworks, constituent registers & supporting demoratization.- Phillippines (Jaracz, 2013), Ghana (Darkwa, 2013) furthermore, Kenya( Kisiangani & Lewela, 2012) guide conveyance & social assurance programs. While supporters claim that biometric identifiers an compelling approach to precisely perceive
individuals, they are costly & inclined to mistake & above all, abuse to their own information. Furthermore, the developing concern is that huge information advances can possibly be used to oppress helpless gatherings & control data. Biometric identifiers present outrageous dangers to person’s security & can make a disturbing impact on appropriate to protection, opportunity of articulation & opportunity of getting together & affiliation on the web & disconnected.

27 Mauritia is implementing a biometric entry-exit border control system as part of its security and counter-terrorism strategy and Senegal (http://www.snedai.sn/fr/) recently implemented a biometric visa process upon entry for nationals of certain countries


Chapter 2

PRIVACY AND CCTV FOOTAGE

"There was obviously, no chance to get of knowing whether you were being viewed at any given minute… you needed to live, did live, from propensity29 that wound up impulse, in the suspicion that each solid you made was caught, and, aside from in haziness, each development investigated.290

Government observation camera projects31 represent a few grave worries for common freedoms. To begin with, the presence of the cameras themselves conveys noteworthy security suggestions. The possibility of 24-hour observing of open spaces with video reconnaissance cameras makes a huge amount of data on residents accessible to the government, permitting the observing or following of individuals taking part in completely honest what’s more, unavoidably ensured conduct.

The risk to protection is intensified by the innovative advancement of new frameworks. The cameras being introduced and considered by urban areas in California are not the grainy observation cameras of days of old. Many are cutting edge, roosted high on utility poles with 360-degree sees, moving 24-hours per day.32 With their DVD-quality video and alternatives for sound, they can zoom in close enough to peruse and record the book somebody is conveying, the name of the specialist's office somebody is entering, or the substance of the individual somebody is conversing with or kissing farewell. Everything the camera sees, or conceivably hears, can be put away on its hard drive or a focal factor in perpetuity.

The ramifications of free to video observation film is wide and has not by and large been considered by arrangement creators. Contingent upon what number of cameras33 are sent and where they are found, individuals from the open would have the option to ask for and get to video pictures for an entire host of intrusive reasons (for example an untrusting spouse or wife


of which are increasing regularly, one can take lawful plan of action under section 66E of the Information Technology Act, 2000. Up until now, notwithstanding, there has been no revealed conviction under the arrangement.

Digital law specialists state a few instances of introduced CCTV cameras disregarding security are rising, be it cameras introduced in lodges of representatives, in changing rooms of shopping centers or out in the open & private washrooms. As of late, a 18-year-old worker of a mainstream parlor & bar in Mumbai was captured after he was found recording ladies in the can, through a cell phone taped to the divider. There are occurrences of such infringement on a standard premise in lodgings of honeymoons, which discover their approach to pornography film on the web.

Absence of itemized enactment & solid punishments, just as low mindfulness among the overall population about the entanglements of being under observation, are a portion of the purposes for the rising number of such occasions. The way that India neither has a nitty gritty information security law nor a protection law just intensifies the worry.

Bagchi, Shrabonti, “Growing CCTV penetration creates culture of Surveillance”, The Times of India, Bangalore, October 3, 2019, 15:06

Agarwal, Surabhi, “Violation of privacy through CCTV cameras rampant, say experts.” Business Standard, New Delhi, October 4, 2019, 16:50
http://www.business-standard.com/article/currentaffairs/violation-of-privacy-through-cctv-cameras-
Rampant—say—experts—
115040400775_1.html

36 Rustagi, Geetika, “Indian law only determines the situations where privacy will be afforded legal protection,” Live Mint, September 5, 2019, 4:19 http://www.livemint.com/Consumer/x32Rcm7l26gTi1cRNMDPAMP/Indian-lawonly-determines-the-situations-where-privacy-will.html

"Computerized voyeurism is progressively drastically in India on account of the expansion of cell phones with cameras & the simple accessibility of government agent cameras. A fast study of Indian erotic entertainment online will affirm its vast majority is doubly unlawful - in light of the fact that generation of sex entertainment is illicit & on the grounds that it has been created because of advanced voyeurism," says Sunil Abraham, official chief of the Centre for Internet & Society, a Bengaluru-based research organization.

Gigantic utilization & course of these clasps bring about the privileges of ladies being encroached over & over, he includes. "It is a horrendous circumstance."

The IT Act, 2000, is the parent enactment to manage electronic reconnaissance. In the event that a camera catches pictures of the private pieces of an individual, male or female, or transmits such pictures without assent, the wrongdoer can be reserved under area 66E.

In any case, the arrangement is a "toothless marvel", as it is a bailable offense, with just three years of detention & a fine of Rs 2 lakh, says digital law master & Supreme Court advocate Pavan Duggal. He includes since there are no unmistakable rules on the best way to catch (the organization), save (the term) & present the CCTV camera film, examinations concerning such violations aren't done appropriately, prompting no feelings up until this point.

"Our law is evidently needing on the grounds that this isn't the first run through this has occurred; cases are being accounted for from time to time. The absence of measured harms encourages the guilty party," says Duggal.

Under the IT Act, if a camera catches revolting electronic data, the proprietor of a CCTV camera can be reserved under section 67, however on the off chance that the camera catches explicitly express data, it is delegated a non-bailable offense under area 67a, involving five years of detention & a fine of Rs 10 lakh.

There are occurrences of CCTV cameras being introduced in schools, which is a greater issue, as it may commensurate to youngest sex entertainment.


38 To give an exemplary impression of today’s possibilities, the panoramic image of the Vancouver Stanley Cup Final in June 2011, provided by the Vancouver Gigapixel Project, allows the tagging of individuals’ faces over a distance of the far away back end of the Vancouver Canucks Fan crowd. Information on the high-res image and its tagging functionalities are available online at: http://www.gigapixel.com/image/gigapan-canucks-g7.html. Also see the article “Technology Is Our Friend ... Except
When It Isn’t” by James Fallows, published at

A couple of months back, a CCTV camera introduced at an open spot caught a couple having intercourse. For another situation, a camera caught a couple kissing in the Delhi metro. The recording of both discovered their way to the web.

"In the present occasions, CCTVs are a flat out must. In this way, enactment should find some kind of harmony among protection & security," Duggal includes point by point rules are required the obligations of CCTV camera proprietors to the extent due constancy is worried, as they are named go-betweens under the IT Act. Likewise, the degree of the risk in instances of break of delicate data or film must be indicated.

The security law, which has been at the drafting stage since the previous five years, plans to have a different section on reconnaissance, specifying the rules & regulations for CCTV cameras. Abraham says, "The section of a protection Bill by the Parliament will guarantee globally acknowledged security standards will be executed in the letter of the Indian law." This will guarantee residents have rights that they can implement against companies & government organizations utilizing CCTV cameras, includes Abraham, a functioning member in confining a few drafts of the security law.

JUSTIFICATION OF LAW FOR SURVEILLANCE

Not just have the security ramifications of video reconnaissance frameworks not been enough considered, however neighbourhood governments have additionally neglected to look at the genuine viability of cameras. The essential implied basis by law requirement for arrangement what's more, development of camera frameworks has been decrease of wrongdoing, going from fierce wrongdoing to unlawful dumping. Optionally, authorities have likewise looked to legitimize camera use as a methods for recording proof of crime to be utilized in future arraignment. Be that as it may, neither of these avocations have been bolstered by proof or assessment.

REDUCTION IN CRIMES: theAtlantic.com August 27th 2011, and pointing out the dangers of such facial recognition in crowd sceneries to the exercise of civil liberties in public, available at:


An exemplary description of possible techniques was made by Yisu Zhao’s thesis submitted to the Faculty of Graduate and Postdoctoral Studies, Ottawa-Carleton Institute for Computer Science, “Human Emotion Recognition from Body Language of the Head using Soft Computing Techniques”,1st October, 2019, 12:50 available at:

ruor.uottawa.ca/en/bitstream/handle/10393/23468/Zhao_Yisu_2012_thesis.pdf?sequence=1

The main avocation given by law authorization (and others) for the production of video reconnaissance projects is to diminish wrongdoing through prevention. From Oakley where Police Chief Chris Thorsen has asserted that the establishment of two cameras in that little network will fill in as a "power multiplier" with "impediment esteem," to bigger urban
areas, for example, San Francisco where cameras are being introduced in horror regions in light of a heightening manslaughter rate, cameras are being touted as a wrongdoing avoidance tool. While it might appear to be instinctive to strategy producers that video reconnaissance cameras will decrease wrongdoing, various investigations show the inverse.

In Britain, where camera (CCTV) frameworks have been set up for near a decade, criminologists have directed various investigations to audit their real sway. One early survey was led by the Scottish Central Research Unit and assessed wrongdoing measurements going before and following the organization of observation cameras in Glasgow, Scotland. There, scientists discovered cameras had little sway on wrongdoing finding decreases in wrongdoing not any more noteworthy than those in control territories without the camera areas.

IT HELPS IN PROSECUTION & APPREHENSION

Law requirement elements additionally legitimate cameras by guaranteeing that they will catch proof of crime and the recording can be utilized in worry or in future criminal arraignment. For instance, the London police profoundly announced the job of the CCTV cameras in recognizing the psychological militants associated with bombarding the metro in 2005. In spite of the fact that cameras without a doubt catch some data that can be of future use, in numerous ways, the job of cameras has been exceptionally restricted, frequently just giving a few help to continuous examinations. While we are ignorant of any thorough examinations demonstrating the degree to which cameras positively affect wrongdoing freedom and arraignment, some restricted proof proposes their effect in such manner may not.

Since this document is meant to give only an overview of the current and upcoming technical possibilities in the field of CCTV, a more detailed description and effectiveness analysis of the individual functionalities is unfortunately out of scope. However, the most interesting algorithms, namely object detection, object tracking, object classification, event detection, and route reconstruction were already described in detail within the ADDPRIV Deliverable 2.1 (pp. 45 ff.). Most of these algorithms are still subject to further research in this field, thus it is to be expected that even more advanced and effective techniques will be available in near future. 21 Francine Prokoski, “History, Current Status, and Future of Infrared Identification”, published in 2000 in IEEE Computer Society, Computer Vision beyond the Visible Spectrum: Methods and Applications, pp. 5-14, 30th September, 2019, 21:54 marathon.cse.usf.edu/~sarkar/biometrics/papers/IRSummary.pdf”


be as critical true to form. Further, the nature of the pictures gathered and the plausibility of computerized film being altered or corrupted may make it hard to use as proof in a indictment.

In the first place, some proof proposes that the impact of cameras on law requirement's
capacity to clear wrongdoings isn't fundamentally helped by the nearness of video reconnaissance cameras. The Glasgow study referred to above, for instance, found that "the cameras showed up to have little impact on the unmistakable up rates for wrongdoings and offenses for the most part. Looking at insights when establishment of the cameras, the reasonable up rate expanded somewhat from 62% to 64%. When these figures were balanced for general patterns, in any case, the examine investigators reason that the unmistakable up rate tumbled from 64% to 60%.

Second, while some extra violations will unquestionably be caught on film, the degree to which cameras help law requirement is frequently enormously overestimated. In Maryland, for instance, a representative for the State Attorney's Office told columnists for the Washington Times, that the workplace has not "observed them to be a helpful apparatus to investigator they're useful for incidental proof, yet it certainly isn't confirm that discovery is helpful to convict someone of a wrongdoing.

Eventually, the security fight over the best possible use and extent of facial acknowledgment reconnaissance will happen in the city, not in the courts. In London, for instance, the Metropolitan Police have tried different things with facial acknowledgment innovation, with blended outcomes. Prior to revealing the new innovation, the police expressed that individuals who canvassed their face in territories where there were cameras would not be halted for suspicious conduct.

However, that was not really the case once the innovation was at that point set up. In one prominent case, a man who was halted for covering his face was later fined by the police in the wake of swearing and getting to be threatening. Obviously, you can see this conduct in one of two different ways – as the activities of a "liable" individual who was appropriately halted and kept by the police for covering his face, or as the insulted activities of a "blameless" individual who was inappropriately halted and confined on an absurd charge. Unmistakably, there is a hazy dark line

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43 Currently, IBM is testing a new traffic-management technology in a pilot programme in Lyon, France, using big data to achieve a better performance of large data processing in traffic surveillance areas, Wired.com article by Doug Newcomb, published November 21st 2012, seen at 28th September, 2019, 14:56 “How Big Data Will Ease Your Commute”, www.wired.com/autopia/2012/11/big-data-commute

44 This leads to intensified efforts by vendors to provide improved software able to centralize different alarm sources and filter out relevant events needing human intervention; see for example the article in the Security Middle East Magazine issue 65 March/April 2012, titled “Improving situational awareness”, 1st October, 2019, 17:50 http://www.securitymiddleeastmagazine.com/features/view/32

45 This is for example a weakness of the aforementioned “automatic action recognition” functionality, which predetermines certain actions of individuals and thus is not yet able to ascertain unforeseen activities of
here. When do you stop somebody essentially in light of the fact that they are attempting to keep up their protection?46 London cops were advised to "use judgment" when halting individuals who keep away from the cameras, yet doesn't that suggest that specific sorts of individuals –, for example, youngsters of shading – will be halted more regularly than others?

An opportunity to manage another innovation is at the very start, and not after it has turned out to be so dug in and imbued that disposing of it would appear to be pointlessly mind boggling.

That is the reason the present minute is so significant. Facial acknowledgment frameworks are presently utilized in air terminals and at fringe intersections by movement and traditions authorization experts. They are utilized as group control apparatuses in tyrant countries. Furthermore, they are utilized by informal communities. It's currently similarly as normal for somebody to login to their computerized gadget with their face all things considered with their unique mark.

So we truly are at a tipping moment that it comes to choosing how to manage cutting edge observation frameworks that utilization our face as the essential type of ID – on the off chance that we hold up a couple of more years, it may be past the point where it is possible to take care of business.

individuals, see the article by Adi Robertson, “Military-backed surveillance prototype can read people’s actions on video” 1st September, 2019, 13:09.


CONCLUSION & RECOMMENDATIONS

Since Countries have different types of laws governing them, so it is safe to assume that their approach towards issue like privacy and that too in the Big Data Age will be different. Since it is a modern problem, most of them do not have laid down procedures set up for implementation with regard to privacy. Moreover it is seen to be an alarming state when a citizens’ data or sensitive personal information being tracked by the government along with big tech companies. It is human tendency that even if a company promises to safeguard your sensitive data with them and assures that it will not leak it, we know that there are hackers that can hack the softwares of such companies and steal all the data, or even the company itself can sell such data at whatever price they want to. It is also seen the not only MNC’s, but also service providers do not maintain privacy on multiple platforms which are online. But, at the same time there are some countries whose policies regarding data protection and privacy is plausible. Though, rule of law being implemented to such policies is still a rarity.

1. The government must provide with a clear
framework of guidelines which imbibe collecting, monitor, storing, and ownership of data, for MNC’s, Tech companies and various others involved in collection of such data.

2. There must be a set of policies and counter measures which will protect the people and their data from cyber risks and misuse by top level officials. The laws concerning privacy should protect a user’s passwords, fingerprints, medical history, etc. moreover it should ask for an express consent of the user before collecting the data. If a company collects data of a user for a certain usage, then the data must be deleted after the said use.

3. State and non state actors must be controlled of their data collection by bodies such as the TRAI (Telecom Regulatory Authority of India)

4. The public at large should be allowed to give their opinion as to how the government can protect and improve such data and privacy protection policies.

5. If national security concern arises, then a judicial authority must give an authorization to access any information in data canters.

6. Laws to be made for the protection of data centre’s digital safeguards.

7. Technology like PET (Privacy Enhancing Technology) must be allowed to be used by users so that it becomes their choice to remain unknown or to disclose their location.

8. All data which is being collected by the state in the facade of national security should be immediately put to a stop until laws and regulations are made for the same.

9. A before-hand consent or authorization from the particular authority must be taken, and only after that should the data be collected.

10. An express and informed consent from users should be taken for collecting their data.

11. Most importantly, awareness of such privacy and data importance must be given number one priority. The citizens should what are the outcome of their data being leaked or taken which consent, and how it could harm them. The users must be educated.

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CRITICAL ANALYSIS OF THE CITIZENSHIP AMENDMENT ACT, 2019 AND ITS IMPLEMENTATION

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ABSTRACT
After having been passed by both the houses of the Parliament and with the assent of the President, the much controversial Citizenship Amendment Bill has been enacted into a Central law. Since this law talks about providing fast track citizenship to six non-Muslim minorities from Pakistan, Bangladesh and Afghanistan, this has made a great fuss in the country. There are superficially two groups, one in support of the enactment of the bill on grounds that it is sound in its constitutional legality and the other group which is opposing the implementation of the act with great ferocity on grounds that the law is contrary to the provisions of the Constitution and against the principle of secularism. Violent protests and outcry are being witnessed in most parts of the country to controvert the new legislation. Kerala has also filed suit against the Centre in the Supreme Court under article 131 of the Constitution on the basis that the Citizenship Amendment Act 2019 is unconstitutional. Other petitions have also been filed under article 32 of the Constitution of India, contending that the act is against the provisions of the Constitution of India.

However there is a constitutional duty on States to obey any law which has been passed by the Centre under article 256 so that the balance between the Union and the State is maintained. In case of disobedience of the Union law by the State, the role of president under article 365 of the Constitution comes into play. From the interpretation of the Constitution this can easily be understood that the Centre executive has supremacy over the State executive and in case of any conflict the Union law shall prevail.

METHODODOLOGY
The research is based on the secondary data analysis mainly from the newspaper articles, books, reports and case laws.

INTRODUCTION
After the enactment of the Citizenship Amendment Bill into an act, there is a mixed reaction received from the citizens of the country. The act provides for fast track citizenship to six non-Muslim communities from Pakistan, Bangladesh and Afghanistan. Protests and violent demonstrations have been witnessed in many states criticizing the act.

Under the Citizenship Amendment Act, 1955, the most important requirement for granting citizenship by naturalization is that the applicant must have resided in India for last 12 months and 11 years of the previous 14 years. The Citizenship Amendment Act, 2019 relaxes this 11 years requirement to 6 years for persons belonging to abovementioned religions of these three countries.

The protesters in Assam are showing violent demonstration against the effectuation of the Citizenship Amendment Act as they have existential concerns. They are worried about the consequences of the arrival of more immigrants regardless of their religion which would directly affect their demography and put pressure on the land, natural resources and economic opportunities. The Assamese fear that they would be reduced to minority in their own
land and their language and culture would be on the verge of extinction.

Three Autonomous districts in Assam have been exempted but the new law remains in force in major area. Protestors are of the opinion that this new law is violative of Assam Accord of 1985, which marks the March 24, 1971 as the cutoff for Indian citizenship. Same is the cut-off for the National Register of Citizens (NRC) in Assam, Citizenship Amendment Act also runs contrary to objective of NRC which is to detect illegal immigrants, irrespective of religion, on the basis of a cutoff date, the Citizenship Amendment Act, 2019 differentiates amongst immigrants on the basis of religion.

After the Kerala’s legislative Assembly unanimously demanded the Centre to rescind the Citizenship Amendment Act, 2019, the State approached the Supreme Court contending that the despite the Act being unconstitutional, due to the provision of article 256 of the Constitution the State would have to implement the Central law which is “manifestly arbitrary, unreasonable, irrational and violative of fundamental rights”.529

Kerala has filed petition under article 131 clubbed with the other petition that have been filed under article 32, contending that the law allows the entry of ‘illegal migrants’ into India exclusively on the basis of their religion which has never happened before and is pointedly excluding Muslims. One of the contentions was also that the Citizenship Amendment Act shares a corrupt nexus with the NRC (National Register of Citizens) and is against the principles of secularism, right to equality under article 14 and dignity of life under article 21 as enshrined in the basic structure of the Constitution of India.

The Bhartiya Janta Party had contended in favour of classification done in the Citizenship Amendment Act, that in 2011, population of non-Muslims in Pakistan had reduced from 23% at the time of independence to 3.7% and in Bangladesh from 22% at the time of independence to 7.8% due to persecution of non-Muslims converting them into minorities in the respective place.

According to the survey done by India Today531, taking Pakistan's Census 1951 as benchmark for the analysis: Non-Muslims formed 23% of the population only in East Pakistan. However when population of both East and West Pakistan was taken together, total share of non-Muslims was 14.20 % in 1951 (which was highest ever).

The Bhartiya Janta Party is correct in saying that the population of non-Muslims has reduced appreciably in Bangladesh but the numbers told by them are not true because as per the official census data the drop is


530 Id.

from 23.20% in 1951 to 9.40% in 2011 not from 22% to 7.8% as stated by them. When talking about the West Pakistan, population of non-Muslims was 3.44% of the total population of the region and according to the census their population has increased to 3.5% over the decades. Besides religious persecutions there were other strong factors also which led to diminution of non-Muslims in Pakistan and Bangladesh. This is a fact that thousands of non-Muslims were victimized in Pakistan at the time of partition in 1947 but many Hindus and other non-Muslims left Pakistan and entered India. Similarly many Muslims left India and went to Pakistan. This migration of people altered the religious compositions of the country and there is no clear data showing the exact scale of persecution and migration. Major causes for the settlement of large number of illegal migrants also include persecution based on language in Bangladesh and greener economic opportunities in India. These illegal migrants from Bangladesh didn’t have only Hindus but also hefty population of Bengali Muslim.532

SUPREME COURT IS UNLIKELY TO REPEAL THE CITIZENSHIP AMENDMENT ACT 2019

ACCORDING TO THE BHARTIYA JANTA PARTY CITIZENSHIP AMENDMENT ACT IS SOUND IN ITS CONSTITUTIONAL VALIDITY:

- The Citizenship Amendment Act is meeting with the requirements of article 14 because the classification of six religious groups namely, Hindu, Sikhs, Buddhist, Jains, Parsis and Christians, is based on intelligible differentia and has nexus with the object which is sought to be achieved. The basis of classification is reasonable because it is not religion per se but ‘persecuted minorities’ in neighbouring countries Pakistan, Afghanistan and Bangladesh. The Constitutions of these countries provide for specific State religion. The Government of India had declared the abovementioned six religious groups as persecuted minorities in these countries in 2015 and 2016. According to article 14 of the Indian Constitution, equal protection requires that the State should take affirmative action towards unequal by providing facilities and opportunities.533 An analogy can be drawn from Indra Sawhney case where ‘caste’ was taken as a ground for social backwardness and exception was made in the favour of people belonging to lower caste for providing reservation in government jobs and employments.

- The Home Minister Amit Shah talked about the 'Nehru-Liaquat Pact' of 1950 which was signed after the partition of the subcontinent in 1947, the pact sought to create a framework to guarantee the rights, interests and lives of the minorities in both the countries to avert another war. Since the pact’s objective was limited only to protect the rights of minorities in India and Pakistan, Tamil refugees from Sri Lanka cannot be given benefit under this new law.

- In addition to the abovementioned reasons, the Constitution of India acknowledges the religious minorities as one single religious group, without categorizing them into further cults and denominations of faith, and supplement welfare and auspices to them accordingly. Because the Constitution recognizes all Muslims as one religious community which is ‘Umma’, the Ahmadiya community as raised by some

532 Id. at 3.

group of people, don’t qualify to avail any international shielding as refugees in India. The UNHCR in 2011 itself elaborated the term ‘refugee’ which was mentioned in the UN Convention of 1951, by classifying them as refugees, "Who are outside their country of nationality or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order." In furtherance to this, the European Union provides for the similar definition of refugee as given by UN Convention of 1951.

Therefore the migrants belonging to Muslim community, who have fled from Pakistan, Bangladesh and Afghanistan, remorsefully, can’t qualify to be recognized as a ‘refugee’ as the cause of their migration in India is not the outcome of the abovementioned condition. However Each country may have its own formulation of methodology to classify refugees and providing them rational and fair treatment accordingly.534

**OPPOSITION FROM STATES AGAINST THE IMPLEMENTATION OF CITIZENSHIP AMENDMENT ACT (2019)**

The new law Citizenship Amendment Act, which seeks to give citizenship to six non-Muslim minority communities Hindus, Christians, Sikhs, Parsis, Buddhists and Jains from Pakistan, Bangladesh and Afghanistan, has seen clamorous opposition across the country ever since it passed by Parliament in December 2019. The country has witnessed Assam in paroxysm of violence after the Citizenship Amendment Bill was passed in Lok Sabha and taken up in Rajya Sabha. Situations worsened and Delhi was under indeterminate curfew with army and paramilitary troops controlling the turbulent protesters.

The effects of the Act was not only limited to Assam but also seen in other states including three other Opposition ruled states Kerala, Punjab and West Bengal. These states have declared that the Act will not be implemented and lawsuits challenging the constitutionality of the Act have been filed in the Supreme Court.535 The opponents of the Citizenship Amendment Act, can be chiefly distinguished into two groups having two major grounds, one group of dissenters with existential concerns, are mainly the inhabitants of north-east region who have the fear of loss of their identity in their own state and loss of various economic opportunity and dissipation of uncommitted natural resources due to immigration. However the other group having the ideological concerns mainly belongs to politicians who are of the opinion that the new law is contrary to the principle of secularism and provisions of the Constitution.

In the opinion of Manoj Mate who is a visiting professor of law at UC Irvin and specialist in India’s constitutional law, concerns of the first group seem to be ech  

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while ideological concerns of the second group influenced by political issues, appear to be more surreal and motivated than having any substantive value in real. The legislative assembly of Kerala previously passed a resolution asking for the abrogation of the Citizenship Amendment Act and the Chief Minister wrote to 11 other Chief Ministers calling for their interposition against the citizenship law, which he referred to as “fundamentally discriminatory in nature.”

“The states are saying that the sovereignty of India’s parliament cannot just walk over the will of the people, of states, or their right to determine things for themselves,” says Manu Bhagavan, a professor at the City University of New York and expert in South Asian history.

In order to put pressure on the Central government following the remark made by Home Minister that the Centre would not budge an inch even if all the Opposition parties come together against the legislation, the Congress government in Rajasthan and the Kerala and the Punjab Assemblies decided to pass resolution against the effectuation of the Act.

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538 Id.

Ministers of Madhya Pradesh and Chhattisgarh are also against the implementation of the act and West Bengal chief minister Mamata Banerjee called for major protests in Kolkata following the enactment of the Act.

**IS STATE BOUND TO COMPLY WITH THE UNION LAW?**

**ENFORCEMENT OF UNION LAWS BY STATE:**

Under article 256, whether or not there is expressed delegation of power to administer a Union law, it shall be the constitutional duty of every State to enforce and ensure due compliance with the Union laws as applicable in that State. The enforcement of laws made by Union is secured by the law enforcement by the state.

A failure to comply with article 256 may attract serious consequences but no court can entertain a petition at the instance of a private party that there is violation of article 256 by the State Government.

Article 256 covers cases where in exercise of the executive power of the Union the president may want to give direction to a
State Government in relation to any existing Union law which applies to that State and the President is likely to exercise this power if the Union Government feels that the State Government exercises its executive power in such a manner that amounts to hindrance to enforce the law made by Central Government.  

**SCOPE OF ARTICLE 365**

Under article 365, it shall be legitimate that the President holds that a circumstance has surfaced where the State Government cannot continue in conformity with the Constitutional provisions.

Sawant, J. has explained the sense of article 365, in *S.R. Bommai v. Union of India* 545 K. Ramaswamy, J. (who gave the minority opinion) for himself and on behalf of Kuldeep Singh, J. conveyed the corresponding view remarked that Article 365 is more in the nature of a deeming provision. In addition to that he also expressed that failing to comply with or not bringing into force any order given by the Centre under any Constitutional provision falls under one of the circumstances excogitated by the expression “Government of the State cannot be carried on in accordance with the provisions of this Constitution” arising under Article 356.  

The words “it shall be lawful for the President to hold” coming under Article 365 are not obligatory. These words only grant discretionary power to the president to exercise. Regardless of the scope and gravity of the Union direction, if the State Government has not complied with the direction, the President is not apprenticed to say that a situation has emerged where the State Government defiant of the direction, cannot continue in line with the Constitution. The President should use this draconian power in a fairish manner with caution and vigilance, and not mechanically. Also if there is any response given by the State Government, he should reflect upon all pertinent contexts of the reply.

The State Government might give reasons to the President, for not complying with the directions of the Union and on the basis of those reasons, show that the issuance of direction is based on some awry facts and misinformation, or the needed rectification has been effected.

The President should also examine that every peanut deviance or transgression the provisions of the Constitution by the State Government officials would not certainly and reasonably lead him to decide that the State Government cannot function in conformity with the Constitutional provisions.

Therefore article 365 can reasonably be invoked only if the Union Government has given certain directions within its power under Constitutional provisions and the State Government has failed to abide by it or refuse to observe the same.  

Also in a situation where State Government has failed to observe or give effect to order given by the Union, Article 365 works like a shield to preclude any precipitant recourse to the rigorous action under Article 356. Therefore, the exceptional power given under article 365 should be utilized with caution and in utmost instances  


IS THE STATE EXECUTIVE SUBSERVIENT TO THE UNION EXECUTIVE?

Article 256 requires that the State should exercise their executive powers in compliance with the Union laws in biddability so that the balance is maintained between the Centre and the State and the Centre’s executive power stretches to giving such directions as are necessary for running the Constitutional machinery smoothly and achieving the object of preserving the unity and integrity of India. The High Court of Calcutta in Jay Engineering Works Ltd. v. State of W.B. ruled that the provisions of article 256 are obligatory and the State must observe and give effect to the provisions. Facts of the case were that a circular was issued by the State of West Bengal to the police officers not to interfere in ‘gherao’ of industrial establishment by its workers. A writ petition challenging the constitutionality of the circular, was filed in Calcutta High Court.

The circular issued by the State had one of the provisions of not enforcing certain sections of a Central law. Treating article 256 mandatory, the circular was struck down as it was violative of article 256. This judgement also makes the intention of the constitution makers strong that the State executive is submissive to the Union executive power. Constitutional expert K.V. Dhananjay said that under Articles 256 and 257 of the Constitution, it would be legally not permissible for a state government to contravene with the Centre. Another instance which shows the supremacy of the Union executive over the State executive is that under article 251 and 254, in case of any inconsistency between center legislation and state legislation, centre legislation will always prevail, this is another instance which shows the supremacy of the Union executive over the State executive.

The Constitution framers had the intention of making the Union Government strong enough to bridge over the trouble created by the breakaway propensities. In their view, Article 365 is one of the ways to achieve the goal of making Union more powerful. At present the Indian polity is facing many problems like conservative tendencies, patronage, religious disputes, petty political interests, cross-border terrorism leading to imbalance in the society. Article 365 of the Constitution has a very important role to play in such a socio-political environment in maintaining the unity and integrity of India. The inconsiderate directions given by the Centre to the State to implement the Union laws may lead disturbance in constitutional balance between the Centre and the states.

CAN SUPREME COURT EXAMINE THE CONSTITUTIONAL VALIDITY OF A STATUTE UNDER ARTICLE 131?

The new law (Citizenship Amendment Act) will provide citizenship to six non Muslim

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minorities namely Hindus, Christians, Sikhs, Parsis, Buddhists and Jains from Pakistan, Bangladesh and Afghanistan. It has become controversial largely because it excludes Muslims community.

Kerala, becomes the first state in the country to challenge the contentious Citizenship Amendment Act in Supreme Court, sought to declare it as violative of the principles of equality, freedom and secularism enshrined in the Constitution, it has joined the batch of 60 other petitions questioning the constitutionality of the law. There is a major difference between the petitions which had already been filed before the Supreme Court and the one filed by the State of Kerala, because the latter has been filed under article 131 of the Indian Constitution. Normally, the validity of any executive and legislative action is challenged by way of writ under article 226 in High Courts and under article 32 in Supreme Court.553

Kerala’s suit asks for a declaration that the Citizenship Amendment Act, 2019, is violative of the Constitution, and against the principle of secularism that is a basic feature of the Constitution. The lawsuit contends that the religious minorities which are receiving the opportunity of getting fast track citizenship, have been chosen irrationally and it also asks that why this new law doesn’t provide protection to Ahmaddiyas and Shi’ites of Muslim communities who are facing persecution in Pakistan, Afghanistan and Bangladesh. Simultaneously, the lawsuit also challenges the validity of notifications issued under the Passport (Entry into India) Amendment Rules and the Foreigners (Amendment) Order, in 2015-16, as contravening with the Constitutional provisions.554

➤ MAINTAINABILITY OF THE SUIT:

Exclusive jurisdiction is conferred on Supreme Court by the article 131 of the Constitution in a dispute arising out of a contradiction between Government in office at the Centre and the government in office in a State. In order to bring a suit within the ambit of article 131 the plaintiff should question the legal or constitutional right claimed by the Central Government or any other State.555

The Supreme Court refused to give restrictive meaning to article 131 and ruled in the case of State of Rajasthan v. Union of India that article 131 involves a dispute between Central and State Government involving legal rights. In the words of Justice Chandrachud, “the true construction of article 131, a true in substance and true pragmatically is that a dispute must arise between the Union of States and a State.”556

In case of State of West Bengal v. Union of India557, the State of West Bengal filed a suit against the Centre, seeking to declare the Central law as unconstitutional, but the court upheld the validity of impugned law.

555 9 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 9352 (9th ed. 2017).
556 State of Rajasthan v. Union of India, AIR 1977 SC 1361 (India).
557 State of West Bengal v. Union of India, AIR 1963 SC 1241 (India).
The Kerala suit involves a dispute which includes not only the legal rights of the State but also the fundamental rights and other legal rights of its inhabitants. As the State believes that this new law and rules are arbitrary, unjustified, and violates the fundamental rights, a dispute involving law and fact has indeed arisen between Kerala and the Centre.

There have been some conflicting decisions of the Court regarding the maintainability of the suit which seeks to challenge the constitutional validity of law passed by the Parliament.

In 2011, in *State of MP v Union of India*[^558^], the Supreme Court held that validity of central laws can be challenged under Article 32 of the Constitution and not under Article 131.

In the case, Madhya Pradesh had sought to challenge under Article 131 the constitutional validity of certain provisions of the Madhya Pradesh Reorganisation Act, asserting that they violated Article 14 of the Constitution.

The two-judge bench of Justices P. Sathasivam and B.S. Chauhan, however, felt that a petition under Article 32 would’ve been more appropriate for the challenge.

Three years later, in 2014, another two-judge bench — hearing the case of *State of Jharkhand v State of Bihar*[^559^] — disagreed. This bench, comprising Justices J. Chelameswar and S.A. Bobde, held that Article 131 could be used to examine the constitutionality of a statute.

The question was then referred to a three-judge bench, headed by Justice N.V. Ramana. It is currently pending there.

The judgment in the 2014 case had referred to a 1977 Constitution bench decision in *State of Karnataka v. Union of India*[^560^], in which the Supreme Court had examined the scope of Article 131.

The majority opinion by the seven-judge bench had observed, “When differences arise between the representatives of the State and those of the whole people of India on questions of interpretation of the Constitution, which must affect the welfare of the whole people, and particularly that of the people of the State concerned, it appears to be, with great respect, to be too technical an argument to be accepted by us that a suit does not lie in such a case under Article 131 of the Constitution.”

The concurring opinions by Justices Y.V. Chandrachud and P.N. Bhagwati had then ruled that the condition for invoking the court’s jurisdiction under Article 131 was that the dispute should involve a question on the existence or extent of a “legal right” and not a political one.

The Kerala Government has, therefore, attempted to justify its invocation of Article 131 on this aspect, asserting that the dispute with the central government, concerning implementation of CAA, involves “enforcement of legal rights as a State and as well for the enforcement of the fundamental, statutory, constitutional and other legal rights of the inhabitants of the State of Kerala”.

**CONCLUSION**

[^558^]: State of M.P. v. Union of India, AIR 2012 SC 2518 (India).
The enactment of the Citizenship (Amendment) Act can hold significant importance in changing the discourse encompassing the Centre and generating greater checks on its power. This, however, depends on the ability of the opposition and regional parties to use opportunities given by the present. The three-judge bench headed by Chief Justice S. A. Bobde of the Supreme Court didn’t grant any stay on Citizenship Amendment Act, 2019 till it hears the Centre over the matter and has decided to form a constitutional bench to hear the pleas. The Supreme Court has also restrained any High Courts from hearing any pleas till it decides the petitions.

Despite the ground-breaking power of Citizenship Amendment Act to accumulate such a mixed set of criticisms and responses from a myriad of vantage points, the opposition parties have failed to find fault with any ardour this amendment, both outside and within the Parliament. If used befittingly, this act possesses the potency to alter the discourse in the Indian subcontinent for it influences different groups of people differently.

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WHAT IS ABORTION?

By Smridhi Duggal and Kartikay Singh
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“There is no freedom, no equality, no full human dignity and personhood possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual conscience and conscious choice for the women concerned.”

INTRODUCTION

Abortion has been a topic of controversies since times immemorial & continues to be a disputed issue even today. Abortion has many aspects as it involves many characteristics such as religion, ethics, medicine & law. It is a social issue that provides liberation to women & gives them power to make their own decisions.

The term ‘abortion’ means a premature termination of pregnancy, or termination of an unborn life during its gestation period, or expulsion of the product of conception from the uterus of a pregnant woman.

Abortion is one of the most controversial issue as it concerns the taking of a human life. If we look at the arguments for & against abortion, we will only find legal & religious arguments. When it comes to those who favour abortion, they point to the argument that abortion represents a woman’s “right to choose” and whether they want to continue the pregnancy or terminate it. Whereas, anti abortionists, generally make a religious argument.

The fundamental features of abortion are:

1. It is the deliberate destruction of human life in any stage after conception & before birth.
2. It is different from infanticide & non-conception.
3. It can be either spontaneous or induced.

TYPES OF ABORTION

Abortion is of various types, broadly classified in two:

As the above figure shows, abortion is mainly of two types: Spontaneous & Induced.

1. SPONTANEOUS ABORTION:

It is also called miscarriage. This refers to naturally occurring termination of pregnancy without any intervention. This type of abortion sometimes may occur even before a woman realises that she is pregnant.

About 10% of all pregnancies end in spontaneous abortion & much more than that percentage counts for induced abortion.

• NATURAL ABORTION: It is the miscarriage that occurs due to natural reasons like ill-health, diseases, shock, fear, etc.

561 Betty Friedan, Abortion: A Woman’s Civil Right,

562 “Ethics theory & practice”.

563 Principles of Forensic Medicine.
It mostly occurs during the 2\textsuperscript{nd} & 3\textsuperscript{rd} month of pregnancy.\textsuperscript{564}

This type of abortion is beyond anybody’s control & can occur at any time & due to any reason. It has nothing to do with any voluntary action.

- **ACCIDENTAL ABORTION:** It is the miscarriage that occurs due to a trauma or a non-intended accident like falling down the stairs, drug toxicity or it can also be cause by sexual intercourse. It is not done by the decision of the person but it depends upon the circumstance.

2. **INDUCED ABORTION:**

An induced abortion is the purposeful termination of a pregnancy before the embryo or foetus is capable of sustaining independent life.\textsuperscript{565}

An induced abortion can also be called an elective abortion where the woman carrying the unborn can elect or make a decision to terminate the pregnancy by medical procedures.

It is basically of two types: (a) Legal Induced Abortion & (b) Illegal/Criminal Induced Abortion.

- **LEGAL INDUCED ABORTION:** Any induced abortion performed in accordance with the provisions of Law of a concerned country is called legal induced abortion. There are many countries where abortion is not yet legalised. Whereas, in India, abortion was legalized under “Medical Termination of Pregnancy Act of 1971” which was enforced in the year 1972. Legally induced abortion is not punishable by law.

The above-mentioned act allows abortion until 12 weeks of pregnancy, if the medical practitioner is of the opinion that childbirth would cause a risk of life or grave injury to the woman or the child.

- **ILLEGAL INDUCED ABORTION:** Any induced abortion performed in violation of the provisions of the Law of a concerned country is known as illegal or criminal induced abortion. There are many countries which do not recognise abortion & some which recognise it but only till a certain extent. In India, The Indian Penal Code also governs Indian abortion laws. Sections 312 to 316 of the IPC\textsuperscript{566} lay down situations where any act of abortion is done and state as to when abortion is illegal & punishable under the law. The law also states that causing a miscarriage of a pregnant woman is a crime under the Code and if any person voluntarily causes a miscarriage, will face punishment imprisonment up to 3 years & fine.\textsuperscript{567} Whereas, any act that causes death of an unborn child would be guilty of culpable homicide and shall be punished with imprisonment of either description for a term which may extend to ten years, & shall also be liable to fine.\textsuperscript{568}

**METHODS OF ABORTION**

There are various methods adopted to terminate the pregnancy. These methods vary upon the stages of pregnancy, choice of the woman, & the appliances available in the clinic. The following are some of the methods used to cause abortion:

\textsuperscript{565} Text Book Of Obstetrics: Including Perinatology & Contraception.

\textsuperscript{566} Indian Penal code, 1860.

\textsuperscript{567} Section 312, Indian Penal Code, 1860.

\textsuperscript{568} Section 316, Indian Penal Code, 1860.
MITHOTREXATE & MISOPROSTOL: The two drugs Mithotrexate & Misoprostol initially were developed for cancer & ulcer treatment respectively but these are now being used in combination for abortion. It is worth noting that methotrexate is a highly toxic drug with side-effects & complications such as nausea, pain, diarrhoea, bone marrow depression, anaemia, liver damage & lung disease occurring even at low doses. Methotrexate is a chemotherapy drug with the potential for serious toxicity, which can result in the death of the mother as well as the foetus.  

These two drugs “act on a women’s reproductive system: methotrexate kills the rapidly growing cells of the trophoblast, the tissue which develops onto the placenta, & misoprostol causes uterine contractions to expel the foetus.”  

This regimen also involves multiple clinic or hospital visits. After receiving an injection of methotrexate, the woman returns 3 to 7 days later to receive the misoprostol vaginally. She returns home where cramping & bleeding begin. The foetus is usually aborted within 24 hours.

- MEDICAL ABORTION: A medical abortion is performed through taking two medications in pill-form: (a) mifepristone (Mifeprist) & (b) misoprostol (Cytotec). These two drugs work together to end a pregnancy. Mifepristone blocks the hormone progesterone, which the embryo needs to implant in the uterus & grow. The other medicine, misoprostol makes the uterus contract to push out the pregnancy tissue, is asked to be taken home & be consumed in a few hours or up to 4 days after the first pill. The pills can either be consumed orally or by placing the them into the vagina.

- VACUUM ASPIRATION: Vacuum aspiration or suction can be used to terminate pregnancy surgically. Vacuum aspiration is an outpatient procedure that generally involves a clinic visit of several hours. The procedure itself typically takes less than 15 minutes. It can be done in two ways: manually or by machine. “Suction is created with either an electric pump (electric vacuum aspiration or EVA) or a manual pump (manual vacuum aspiration or MVA). Both methods use the same level

570 Synopsis of PH.D. thesis of Sunil Kumar Das https://shodhganga.inflibnet.ac.in/bitstream/10603/
571 Female Infanticide & Child Marriage.
572 Ibid.
of suction, & so can be considered equivalent in terms of effectiveness & safety. Vacuum or Suction Aspiration uses aspiration to remove uterine contents through the cervix. It may be used as a method of induced abortion, a therapeutic procedure used after miscarriage. The rate of infection is lower than any other surgical abortion procedure at 0.5%.  

- **DILATION & SUCTION CURETTAGE**: Dilation & suction curettage are also called D & C, suction dilation, vacuum curettage, & suction curettage. D & C with suction is a procedure in which contents from the inside of the uterus are evacuated in a very brutal manner. "Dilation" refers to the opening of the cervix so that a loop shaped sharp knife, called curette is easily inserted. "Curettage" refers to the aspiration or removal of tissue within the uterus with an instrument called a curette. This procedure is commonly performed as a treatment for miscarriage, retained placenta after vaginal delivery, or as a method of first-trimester elective abortion. This method is used between 7 & 12 weeks. In this method, the neck of the womb is dilated to permit the insertion of a loop-shaped sharp knife, called a curette, to cut and scrape off the foetus.

- **INDUCTION ABORTION**: Induction abortion involves medications that cause the uterus to contract & expel the pregnancy. After a certain point in pregnancy D&C procedure can no longer be performed & the only option is an induction abortion. Medications to induce abortion can be given in a number of ways. Most commonly, misoprostol tablets are inserted into the vagina every few hours. Oxytocin (Pitocin) may be given through an IV line. For later abortions, an injection into the abdomen may be given to ensure fatal demise. This procedure can take several hours or more than a day to complete.

- **LATE TERM ABORTION**: A late termination of pregnancy often refers to an induced ending of pregnancy after the 20th week of gestation. The exact point when a pregnancy becomes late-term, however, is not clearly defined. Some sources define an abortion after 16 weeks as "late". In the US, the point at which an abortion becomes late-term is often related to the "viability" (ability to survive outside the uterus) of the foetus. Sometimes late-term abortions are referred to as post-viability abortions, though this is not a medical term.

**REASONS FOR ABORTION**
There are various reasons why a woman tends to look for abortion. Some of the reasons are given below:  
- To save the life of the woman carrying the unborn child;
- Because of the age of the woman carrying the unborn child;
- To preserve the physical health or well-being of the woman carrying the unborn child;
- To avoid or alleviate economic hardship;
- To avoid social stigma of illegitimacy;
- To avoid future attitude tinged with bitterness toward the child taking birth as a result of rape or incest;
- At the fear of transmitting fatal disease or deformity from the severely ill or deformed parents;

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- At the fear of anticipated beatings or incestuous attacks of the child from brutal & violent parent;
- To prevent future deformity of the child resulting from chromosomal anomalies;
- To meet the need of the professional career of the woman carrying the unborn child, etc.

MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Before this act came into existence, abortion was only granted in cases where the mother’s life was at risk. But after the enactment of the abovementioned act, limited circumstances were set to allow abortion. The Act only consists 8 sections and was enacted with the objective of allowing abortions by registered practitioners, in limited circumstances. However, the cabinet has approved the new Medical Termination of Pregnancy (Amendment) Bill, 2020, which has increased the upper gestation limit for abortion from the existing 20 weeks to 24 weeks. But in order to get a foetus aborted which is between 20 and 24 weeks, medical opinion would be required from two medical experts.

The Act gives various rights to women. (Privacy, Reproductive rights, etc)

1. Section 3(2(a) of the Act states the time period during which a mother can get abortion. It states that the length of the pregnancy should not exceed twelve weeks. In cases where the length exceeds twelve weeks but does not exceed twenty weeks, then the opinion of two registered medical practitioner is taken, in good faith, that:

   The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
   There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.

2. Section 4 of the Act talks about the place where pregnancy may be terminated. It states that termination can only be done in two places:

   A hospital established or maintained by Government, or
   A place for the time being approved for the purpose of this Act by Government.

3. Section 5 of the Act talks about circumstances where the aforesaid sections, i.e., Section 3 & section 4 shall not apply. The Act states that the provisions of section 4, and provisions of Section 3(2) talking about the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of an opinion that determination of such pregnancy is immediately necessary to save the life of the pregnant woman.

In various cases the constitutionality of Section 3 of the MTP Act, 1971, talking about the length of pregnancy, has also been challenged. In the case of Mrs. X and Mrs. Y v. Union of India the Constitutional validity of section 3 (2) (b) of the Medical Termination of Pregnancy Act 1971 is challenged. The Act bans medical termination of a pregnancy post 20 weeks, and does not take into consideration circumstances where termination is required post 20 weeks, including cases where there are severe foetal abnormalities.

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578 Ibid.
579 Ibid.
580 Ibid.
The criminalisation of abortions after the 20th week of pregnancy violates a woman’s fundamental rights to life, liberty, health, choice and to be free from discrimination and inhuman treatment. In the case of Dr. Nikhil Datar v. Union of India & Ors, where in her 20th week of pregnancy, Niketa Mehta’s sonography showed her foetus as normal however in the 22nd week, her gynaecologist found that her foetus had a congenital complete heart block which would lead to a poor quality of life and could also be fatal. She then reached the Bombay High Court, seeking permission to medically terminate her pregnancy but was denied. She was then forced to continue with her pregnancy, ultimately miscarrying one week after the decision of Bombay High Court.

The US Supreme Court in Roe v. Wade, held that the right to terminate pregnancy is a basic human right. Today, in most of the countries, abortions are permitted for reasons that fall into three categories: 

i. To preserve the life, physical or mental well being of the mother or the child
ii. To prevent the completion of pregnancy that is a result of rape
iii. To prevent the birth of a child with severe deformity or genetic abnormality

In Paton v. United Kingdom, it was held that the rights of an unborn child cannot prevail over the rights of the pregnant woman. Right to life of the foetus would mean that the abortion is forbidden, even at the expense of seriously affecting the health of the pregnant woman.

In Planned Parenthood of Central Missouri v. Danforth, this case struck down the Missouri law on abortion which said that a married woman has to obtain consent from her husband to get an abortion.

**TIMELINE OF MAJOR EVENTS**

1. **Spring 2011** - Guttmacher Policy Review found that unsafe abortion is the third leading cause of maternal death in India.
2. **7 October 2012** - The Hindu published Rare Birth Defect Poses a Challenge to Doctors, reporting that doctors agree that in certain cases of foetal abnormality such as Anencephaly, a medical termination of pregnancy is the only safe option for the mother.
3. **20 November 2012** - The Times of India published One Woman Dies of Abortion every 2 Hours, reporting that unsafe abortions constitute 8% (4,600 deaths) of India’s Maternal Mortality Rate.
4. **1 February 2013** - The UN Human Rights Council published the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment identifying denial of medical termination of pregnancy as a violation of the right to be free from torture and other cruel inhuman or degrading treatment.
5. **3 February 2013** - The National Commission for Women drafted proposed

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582 [SLP(C) 5334 of 2009]

583 https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Datar_v_India.pdf last visited on 09.02.2020, 7:30pm).

584 410 U.S. 113 (1973)

585 (1980) 3 ECHR 408 (European Convention on Human Rights)

586 https://medium.com/@editors_91459/these-are-the-most-significant-supreme-court-cases-about-

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abortion-to-date-4b1910e48a2 (last visited on 09.02.2020, 9:15pm).


amendments to the MTP Act to protect women’s lives where there is a substantial risk of physical or mental foetal abnormality.

CONCLUSION
The current MTP Act thus constitutes a violation of women’s fundamental rights to life, liberty, health, dignity, choice, and to be free from inhuman and degrading treatment under Article 21 of the Constitution. It also violates the right to equality under Article 14 of the Constitution and violates rights under various treaties including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), International Convention of Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR).

Forcing women to continue dangerous pregnancies violates their right to life by compromising their safety and welfare. It also compromises their right to mental and physical health. Further the MTP Act’s criminalisation of abortions after the 20th week also encourages desperate women to seek out unsafe abortions from untrained medical personnel, putting their lives in extreme danger. However, according to the new Medical Termination of Pregnancy (Amendment) Bill, 2020, the extending of the upper limit of the abortion from 20 weeks to 24 weeks is a great step taken by the Government. If there is any substantial risk of physical or mental foetal abnormality, the woman should have a choice to get the foetus aborted according to her will.

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RECOGNITION OF FOREIGN DIVORCES IN INDIA

By Sowndariya Govindan
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INTRODUCTION

Until 1972, recognition of foreign divorces was governed by common law rules. The principle that all questions of domestic status are subject to the exclusive jurisdiction of the courts of domicile applies to the recognition by English courts of foreign decrees and to the competence of the foreign courts to adjudicate on status. Domicile for this purpose is domicile in the English sense.

IN BALER V. BALER

X and Y had married in England in 1880. In 1889, X the husband was living in New York, where he had acquired a domicile. In 1890 his wife obtained a decree of divorce in New York’s on the ground of her husband’s adultery alone was not a ground for divorce in English Law. In 1893 she married B in New York. In 1903, B petitioned for a nullity in the English Courts. On the ground that at the time of her marriage to him, Y was already married. The petition was dismissed, as the New York decree of divorce was recognized as a valid dissolution of the English marriage.

This principle of the exclusive recognition of foreign decrees pronounces by the court of the domicile is subject to two exceptions:

(i) The domiciliary jurisdiction be interpreted in its widest sense, so that any decree recognized by the courts of the domicile would be similarly recognized in English law.

(ii) Recognition of foreign decrees of divorce pronounced on a basis of jurisdiction not simply of domicile, but more broadly of grounds substantially similar to those of English courts.

The general basis of recognition, it may be observed, is the jurisdiction of the courts of the personal law of the parties in the English sense, in which it is founded on their domicile, and not the personal law generally, whether its foundation be domicile or nationality. The unsatisfactory result in following this narrow principle is that English Court may refuse to recognize the validity of a French decree of divorce of two French nationals, resident in France but domicile elsewhere, unless the decree were recognized as valid by the courts of the domicile. On the other hand, no recognition would apparently be granted to a French decree of divorce of French nationals resident in France, though domiciled in England, even if the French Court were to apply English law as that of the domicile; for the question of recognition the validity of a foreign decree is one of choice of jurisdiction, not of choice of law.

Greater difficulty arises where the law of the parties’ domicile permits divorce by private act of the parties. The conflicting principles are that Lex domicilii should have exclusive jurisdiction over the status of the parties, yet status is a social conception which should only be created or dissolved by an act of some state organ, legislative, judicial or executive. In many parts of the British Empire divorce may take place according to a person’s religious law by means of some unilateral act of the husband, such as the form of talak in Muslim law or the Rabbinical decree in Jewish law, it is settled by the decision in Har-shefi Har-shefi (1953), that an extra-judicial divorce, obtained in accordance with the religious law of the common
domicile of the parties, must be regarded as valid.

Thus, in early case, the rule that was laid was that English courts would not recognize a foreign divorce decree unless pronounced by the courts of the country where the parties were domiciled at the time of the suit. This basis was extended by laying down that English courts would recognize a foreign decree of divorce. Even though not pronounced by the court of domicile it is recognized as valid by the court of the domicile of the parties. Later, the courts decided that if the foreign court(i) exercised jurisdiction on a basis on which English courts would exercise jurisdiction, then the English courts would recognize the foreign decree of divorce. Then came the most radical decision of the house of Lords in

Indyaka v. Indyka, In which it was held that if there is a real and substantial connection between the party obtaining divorce and the country of the court which dissolved the marriage, then the foreign decree of divorce would be recognized. In Mathew v. Mahoney. It was held that the court of the place where one of the parties has a substantial connection recognizes a decree of divorce passed by a foreign court, then the English courts too would recognize it.

**ENGLISH LAW OF THE ENACTMENT OF THE RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS ACT, 1971**

English law of recognition of foreign divorces has been codified and reformed by the Recognition of Divorces and Legal Separations Act, 1971. The Act was passed as a sequel to the Hague convention the recognition OF Divorces and Legal separations. The matter was referred to the Law commission, on whose recommendations the present Act, 1971 is based.

The present day law on recognition of foreign divorces is contained in sections 3 and section 6 of the Recognition of foreign and legal separation Act, 1971 and section 16 of domicile and matrimonial proceedings act, 1973 and the act of 1984. The following Pre-Act (old) grounds of recognition of foreign divorces were modified and substituted as given below: The English courts will recognize a foreign decree of divorce if it has been passed by the court of the country where the parties were domiciled at the time of the filing of the proceedings. It would be immaterial if the parties changed their domicile after the date of the institution not the petition. The English courts recognize a foreign divorce and if it is recognized as valid by the domicile of the parties. As the domicile and Matrimonial proceedings Act, 1973 allows the wife to have her separate domicile, section 6 of the act has been reconstituted. Now the English court would recognize a foreign divorce if:

(a) both the parties were domiciled in the country where divorce was obtained at the time of the institution of the suit.

(b) One of them was domiciled there and the divorce is recognized as valid in the country where the other is domiciled.

(c) the divorce is recognized as valid in the country of the common domicile of the parties, or where the parties have different domicile in the country of domicile of each party.

(iii) Recognition of foreign divorce are there in statutes such as the colonial and other territories.
NEW GROUNDS OF DIVORCE ADDED BY THE ACT OF 1971:-

A foreign divorce will be recognized in England: if

(A) At the time of the institution of proceedings either spouse was habitually resident in the country where divorce was obtained;

(B) At the time of the institution of proceedings either spouse was a national of the country where divorce was obtained.

(C) In respect of a country which uses the concept of domicile as a ground of jurisdiction in the matter of divorce the words ‘habitual residence’ should be substituted with ‘domicile’. This may be formulated thus: “English Courts will recognize a foreign divorce if obtained in a country where either party was domiciled at the time of the institution of proceedings’.

The term ‘habitual resident’ has not been defined either in the Act of 1971 or in the Convention; nor is there any judicial definition of the term. The habitual residence means the same thing which Indian Courts have given to ‘residence’ natural or limited sense.

In matters of status some countries have always adhered to nationality. The English courts has emphasised nationality connection. ‘Nationality’ has now been recognized as an independent basis of jurisdiction. Now a muslim of India or Pakistan nationality can divorce his wife by Talak even though he was domiciled in England. (talak procedure was criminalised by Indian parliament in 2019).

Section 1 of the Act of 1971 lays down that a decree of divorce granted after the coming into force of the Act (i.e December 31, 1971) in Scotland, Northern Ireland. The channel Island or the Isle of Mann. will be recognized in England.

Section 2 of the Act of 1971 lays down that in case the aforesaid grounds of divorce exist then the foreign divorce will be recognized whether it is obtained in ‘judicial proceeding or other proceedings’.

NON JUDICIAL GROUNDS

Section 2 of the Act of 1071 lays down that in case the aforesaid grounds of divorce exist then the foreign divorce will be recognized whether it is obtained in “judicial proceedings or other proceedings”. This provision of sec.2 read with section 6 of the Act merely codified the existing law, i.e the non-judicial divorces will be recognized in England if they were valid under the law of the country where they were recognized under the personal law of parties.

IN QURESHI V. QURESHI it was held that a talak pronounced in England, even if pronounced in respect of a marriage celebrated in England will be recognized if under the law of domicile of the parties this mode of divorce was valid. This position has now been substantially changed by s.16, domicile and Matrimonial Act, 1973. Now after January 1, 1974 an extra judicial divorce obtained or pronounced in British Isles will not be recognized in England. Further, an extra judicial divorce obtained or pronounced outside the British Isles will not be recognized in England, if both parties were habitually resident in the United Kingdom throughout the period of one year immediately preceeding the institution of the proceedings. With these qualifications the non-judicial divorces will be continued to be recognized as they were before the coming into force of the act.

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589 Section 3 and 6 of the act

590 (1971) 2 W.L.R. 518
recognized if they fall under the two new grounds of recognition, the habitual residence and nationality. 591

It remains to be seen that what is the meaning of “other proceedings” in s.2 in the context of non-judicial divorces. It is clear that these words I the Hague convention in connection with non-judicial divorces. It should be notices that in the laws of many countries which recognize non judicial divorces some public proceedings are necessary, though more often than not they are nothing more than a public record or public seal on such divorces. Thus, a ghet divorce among Jews even when it is granted by the rabbinical court does not involve any investigation 592; in Egypt, talak needs registration, though non-registration does not render it invalid, 593 again no investigation is made; in Pakistan parties are required to undergo conciliation proceedings before an arbitration council. These may be termed as ‘other proceedings’ in the terms of s.2. 594 it is submitted that the words ‘other proceedings’ in s.2 are used in contradistinction to ‘judicial proceedings’, and therefore would include all and every type of proceedings, howsoever minimal they may be. After all no divorce can be pronounced without some proceedings. Further, the requirement of notice in s.8(2)(a)(i) has to be construed in this context. Too strict construction of this provision would, it is submitted, lead to non-recognition of such divorces. The object of the Recognition of divorces and Legal separations Act,1971 and of the Hague Convention is to accord to extra-judicial divorces howsoever abhorrent they may appear to one. Any other construction would go to frustrate that object. It seems that English courts are not got prepared to take this in the view.

The term “other proceeding” has come for the interpretation in several cases in Quazi v. Quazi, 595 the House of Lords took the view that a divorce obtained in Pakistan by talaq followed by compliance with the procedural requirements of the Pakistani Muslim Family Laws Ordinance, 1961 was a divorce obtained by “other proceedings” within the intendment of section 2(a) of the Recognition and Divorces and Legal Separation Act as supplemented by section 16 of the Domicile and Matrimonial Proceedings act, 1973. But the HOUSE OF LORDS did not express its opinion or to the recognition of foreign bare talaqs which it is effective without any further procedure. In sharrif v. sharif 596 the family division took the view that bare talak would not fall within the phrase “judicial or other proceedings” in section 2(a) of the act of 1971. But a contrary view was expressed in ZAAL V.ZAAL 597.

In the latter case Bush, said that where a bare talak was recognized by the local law as effective to end the marriage it was divorce within the phrase. In R.G. Immigration Appeal Tribunal, 598 Tylor, j. was inclined to agree with Bush.J. OBVIOUSLY, THE PURPOSE OF Act of 1971 was to reduce or prevent the continuance of “Limping Marriages”. In Chaudhary v. Chaudhary, 599 Cumming-Bruce L.J. observed that if the use of the phrase “Judicial and other proceedings” was meant to restrict recognition to narrow category whatsoever which are effective by the law of the country in which divorce was

591 Section 3(1) of the Act of 1971
592 Her-shefi v. Her-shefi (1953) p.220
593 Russ v. Russ(1963)"
594 Quazi v. Quazi (1980)
595 (1980)A.C 744
596 (1980) 10 Fam. 216
597 (1982)4 f.l.r. 284
599 (1985) 2 W.L.R. 350
obtained should be recognized. If the legislature wanted to give it that wide meaning it would have used the words as used in the convention “officially recognized” in the country where divorce was obtained. Thus, it is necessary that divorce must be obtained in “some proceedings” and pronounciation of bare talaq in not such proceedings.

PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

Any Married person who alleges reasonable grounds for supposing that the other party is dead, to petition the court not only to have it presumed that such party is dead, but also to have the marriage dissolved.\(^{600}\) The jurisdiction of the English Court is provided for in section 5(4) of the Domicile and Matrimonial Proceedings Act, 1973. The sole grounds are that the petitioner:

(a) Is domiciled in England on the date when the proceedings are begun;
(b) Was habitual resident in England throughout the period of one year ending with that date.

So far as choice of law is concerned, the problem is similar to that in divorce. The rules as to recognition of foreign decrees of presumption of death and dissolution of marriage are not wholly clear, for no statutory provision has expressly been made for them. An English court will recognize decrees granted in the country where the petitioner was domiciled or had been habitually resident for one year.

DISSOLUTION OF CIVIL PARTNERSHIPS

According to the Civil Partnership Act, 2004 an English court can make to bring a civil partnership to an end, or to provide for the separation of the parties. In particular, according to section 37(1) of the act, the High Court or a Country Court has power to make four orders:

1. A dissolution order, which dissolves a civil partnership on the ground that it has broken down irretrievably.
2. A nullity order which annuls a void or voidable civil partnership.
3. A presumption of death order, which dissolves a civil partnership on the ground that one of the civil partners is presumed to be dead;
4. A separation order, providing for the separation of civil partners.

It provides that the English court has jurisdiction to entertain proceedings for a dissolution in three situations:

1. The court has jurisdiction under the section regulations.\(^{601}\) This regulation provides that the courts in England shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the legal separation of civil partners where:

   (a) Both civil partners are habitually resident in England;
   (b) Both civil partners were lost habitually resident in England;
   (c) The petitioner is habitually resident in England and has resided there for at least one year immediately preceding the presentation of the petition, or
   (d) The petitioner is domiciled and habitually resident in England and has resided there for at least six months preceding the presentation of the petition.

2. Section 221 provides that the English court has jurisdiction to entertain proceedings for a dissolution order or a separation order if no court has, or is recognized as having, jurisdiction under the section219 regulations, and either civil partner is

\(^{600}\) Section 19 of Matrimonial Causes Act, 1973

\(^{601}\) Section 219 of civil partnership act, 2004

www.supremoamicus.org
domiciled in England on the date when the proceedings are begun.

(3) Section 221 provides that the English court has jurisdiction to entertain proceedings for a dissolution order or a separation order if the following conditions are met:

(i) The parties registered as civil partners in England or Wales;
(ii) No court has, or is recognized as having, jurisdiction under the section 219 regulations and
(iii) It appears to the court to be in the interests of justice to assume jurisdiction in the case.

There is no direct reference in the Civil Partnership Act, 2004 to choice of law. Regarding the recognition of dissolution of civil partnership, the civil partnership Act, 2004 makes provisions in section 233 to 238. Section 233 of the 2004 act states that no dissolution or annulment obtained in one part of the UK is effective in any of the UK, unless obtained from a court of civil jurisdiction.

Section 234 of the Act provides that the validity of an overseas dissolution, etc., is to be recognized in the U.K. only by virtue of the scheme of recognition imposed by sections 235 to 237 of the Act, which, in turn are subject to the recognition rules set out in the section 219 regulations. These provision are the same which are provided in sections 46(1) and(2) and 51 of the Family Law Act 19

VALIDITY AND EXECUTION OF FOREIGN DIVORCE DECREES
Analysis of divorce decree granted by Foreign Courts:
Divorce decree granted by Foreign Courts can be divided into two categories:
1. Mutual consent divorce granted by Foreign Courts.
2. Decree granted in Contested Divorce.

In the case of mutual consent divorce decree, the decree granted by a Foreign Court is considered to be legal, valid and binding in the Indian Courts by the virtue of Section 13 and Section 14 of the Civil Procedure Code, wherein Section 13 enumerates the condition when a foreign judgment would not be considered valid in India and Section 14 states that when the Indian Courts would consider the Foreign judgment to be conclusive. A decree which is not affected by section 13 does not need to be validated in India and will be considered conclusive under Section 14 of the Civil Procedure Act.

However, in a case where a divorce decree is granted by a Foreign Court in a contested Divorce a answer to the question of validity of the divorce decree varies. The cases in which the foreign divorce decree would not be considered conclusive:
First, when an ex-parte decree is passed by a Foreign Court, it would not be valid and conclusive in India. A decree would be considered ex-parte if summons are not served on the opposite party. However, if such decree was deliberately left to go ex-parte i.e. no summons are served on the opposite party then the Indian Courts would not allow this fraud.

Secondly, divorce obtained on grounds other than the grounds enumerated under the Hindu Marriage Act if the parties were married under Hindu Law, as a divorce matter is governed by the law under which one gets married and not the law of the land where the party is residing.

A Foreign divorce decree shall be considered to be valid and conclusive in the following case:
It is a general rule that if one of the partners contests divorce filed in Foreign Land it would be said that he/she consented to the jurisdiction of that Court, in such a case the
decree would be considered to be a conclusive one. Where the wife consents to the grant of the relief by the foreign Court although the jurisdiction of the foreign Court is not in accordance with the provisions of the Matrimonial Law of the parties, to be valid and the judgment of such foreign Court to be conclusive.

EXECUTION OF FOREIGN DIVORCE DECREES
A foreign judgment can be executed in two ways in India. The ways are as follows:
First, by filing an execution under Section 44A of the Civil Procedure Code. Section 44A states that a decree passed by Courts in reciprocating territories can be executed in India as if the decree was passed by the Indian Courts only.
Secondly, by filing a suit upon the foreign judgment/decree. For instance, the decree does not pertain to a reciprocating territory or a superior Court of a reciprocating territory, as notified by the Central Government in the Official Gazette, the decree is not directly executable in India. Here the decree passed by the foreign court shall be considered as another piece of evidence.

WHEN FOREIGN DECREES NEED NOT BE RECOGNISED:
1971, A FOREIGN DECREES WHICH WAS OFFENSIVE TO English notions of justice would not be rec where substantial justice, according to English notion, is not offended, all that the English courts look to is the finality of the judgment and the jurisdiction of the court, in this sense and to this extent, merely, its competence to entertain the sort of case which it did and its competence to required the defendant to appear before it. If the foreign court has jurisdiction, England never requires whether the jurisdiction has been properly or improperly excersiced, provided always that no substantial injustice according to English notions, has been committed.
The law has now been codified in section 8 of the Recognition of Divorces and Legal Separation Act, 1971.
The Act of 1971 lays down that foreign divorces will be refused recognition on any of the following grounds:
(c) when there is violation of principles of natural justice; or
(d) when recognition would manifestly be contrary to public policy

Natural Justice :- An English Court may refuse to recognize a foreign divorce if it was obtained by one spouse, (i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken: or (ii) without the other spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings s. having regard to the matters aforesaid, he should reasonably have been given. The English Court interferes in those cases where it considers the foreign rules of service contrary to natural justice. Mere want of notice is no ground for refusing a foreign divorce decree, unless it is proved that the respondent had no notice of the proceedings, Public Policy :- Generally English Courts refuse to recognise foreign judgment when it is against public policy of the UK. The refusal of recognition can only be refused on the grounds laid down in the 1986 Act. One of these is that recognition would be manifestly contrary to public policy. Denial of recognition to an overseas divorce etc., on public policy grounds specifically provided for in Section 51 (3) of the 1986 Act. The court has a discretion to refuse recognition if such recognition
"would be manifestly contrary public policy". It means very likely that the courts will, in applying this provision, seek guidance from the common law decisions just discussed in deciding whether recognition would be contrary to public policy. It should be emphasised that, again, the court has a discretion; there is no requirement that recognition be refused on this basis and there is some authority for the unusual View that in discretion would be exercised in favour of recognition even if such recognition would be manifestly contrary to public policy. Section 51 (3) refers recognition being 'manifestly' contrary to public policy. This does not more an confirm the stated attitude at common law that the discretion is one to be exercised sparingly. The courts deny recognition where the application of the foreign rule is, in the particular circumstances, felt to be contrary to public policy.

INDIAN LAW

In India, the courts followed English Law of recognition of foreign divorces:

In Joao Gloria Pines v. Ana Joquina Pines, 602, two persons of Roman Catholic faith underwent a ceremony of marriage in Goa in the Church. Parties were resident and evidently domiciled in Goa at the time of marriage. The husband obtained a decree of divorce from Uganda Court, where he was residing. Subsequently he made a petition in a Goa court that the decree of divorce obtained by him from the Uganda Court be confirmed. Wife opposed the petition on the grounds, interalia that under Goan law a Roman Catholic marriage is a sacrament and an indissoluble union. and the Uganda decree of divorce cannot be confirmed as Section 1102 (6) of the Civil Code of Goa lays down that a foreign decree or judgement which is against public policy cannot be recognized. It was held that the law of indissolubility of Roman Catholic marriage was a matter of pertaining to public policy and therefore the Uganda divorce decree being against public policy cannot be confirmed or accorded recognition in Goa.

In Teja Singh v. Smt. Satya, [(1970) 72 PLR 235], a Hindu wife filed a petition for maintenance of herself and her two children under Sec 488 (Sec 225 of the Code) of the old criminal procedure code against the husband. The husband defended that his marriage with the petitioner had been validly dissolved by a court of Nevada where he was domiciled at the time of the decree. The court held that a decree of divorce pronounced by the court of domicile will be accorded recognition universally and would be recognized in India.

In Hogan Bhai v. Hariben, [1983 Guj. 187], the court refused to recognize a foreign judgment obtained by the husband who falsely represented to the foreign court about his domicile and residence recognition of divorce granted in the country of domicile of the parties should continue in India and no law has yet been passed.

LAW COMMISSION’S 65TH REPORT RECOMMENDATIONS

(1) The practice of recognition of divorce granted in the country of domicile of the parties should continue.

(2) The divorce or legal separation though not granted in the country of domicile, if recognised as valid in the country of

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602 [1967 Goa 113]
domicile should be recognised in India and this should be expressly provided for.
(3) There should be a general provision to save the provisions of any other enactment which provide for recognition.
(4) Non-recognition of a divorce by a third country should not be a bar to the recognition of divorce in India.
(5) It is desirable to provide for the recognition of foreign divorces or legal separations granted by countries where both parties were habitually resident or by countries of which both are a national, in addition to the current test of domicile.
(6) It is desirable to provide that the rule that on marriage the wife acquires the domicile or the nationality of the husband shall not apply in relation to the recognition of foreign divorces and separations.
(7) A foreign judgment will not be recognised
(i) If the other party had no reasonable notice proceedings, or
(ii) If the party had no opportunity of hearing depending on the nature of the proceedings and all circumstances of the case, or Satya v. Teja Singh, 603 1975 S.C. 105. The Supreme Court said that the judgment was also vitiated by fraud.

CASE LAW

Narasimha Rao and Ors. Vs. Y. Venkata Lakshmi and Anr604

It is not uncommon to hear about cases either the husband or the wife filed for divorce in a foreign court, while the spouse did not attend the proceedings either due to notice not being served or due to some other reason. In such a situation, the case of Y Narasimha Rao is relevant. Y. Narasimha Rao and Y. Venkata Lakshmi were married in Tirupati, India as per Hindu customs in 1975. They separated in July 1978. Mr. Rao filed a petition for dissolution of marriage in the Circuit Court of St. Louis County Missouri, USA. Mrs. Lakshmi sent her reply from India under protest. The Circuit Court passed a decree for dissolution of marriage on February 19, 1980 in the absence of Mrs. Lakshmi. Mr. Rao had earlier filed a petition for dissolution of marriage in the sub-Court of Tirupati. Later, he filed an application for dismissing the petition in view of the decree passed by the Missouri Court. On 2 November 1981, Mr. Rao married another woman. Hence, Mrs. Lakshmi filed a criminal complaint against Mr. Rao for the offence of bigamy. The Supreme Court refused to accept the divorce decree granted by the court at Missouri, USA. While deciding the case the Supreme Court laid down the law for foreign matrimonial judgments in this country. The relevant extract from the judgment is as follows: The jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent is domiciled.

The key rule laid by the Supreme Court can be summed up as follows: If a couple is married under Hindu law, (a) the foreign court that grants divorce must be acceptable under Hindu law; and (b) the foreign court should grant divorce only on the grounds which are permissible under Hindu Law.

603 1985 Guj. 187. 182. 183.
The two conditions make it almost impossible for a Hindu couple married in India to get a legally valid divorce from a foreign court since no foreign court is an acceptable one under Hindu Marriage Act and also because no foreign court is likely to consider the provisions of Hindu Marriage Act before granting divorce. The exceptions that Supreme Court has permitted to the above rule laid by it are as follows in a case where husband has filed for divorce in a foreign land: A) The wife must be domiciled and permanently resident of that foreign land AND the foreign court should decide the case based on Hindu Marriage Act. B) The wife voluntarily and effectively attends the court proceedings and contests the claim on grounds of divorce as permitted under Hindu Marriage Act. C) The wife consents to grant of divorce Exception A seems almost impossible. Exception B is examined in the next section. Exception C means that the divorce is obtained by mutual consent and therefore the courts of India do not want to interfere with it. In a recent case (March 2012), Sunder and Shyamala tied the knot in Vellore district in 1999, Sunder went to the USA within a year and did not communicate with Shyamala after that. In 2000, she received summons from Superior Court of California, which subsequently granted divorce despite the wife’s defence statement. Madras High Court held that the Superior Court of California was not a court of competent jurisdiction to decide the matrimonial dispute in this case.

SUGGESTION: -
It is not unusual for one of the partners to obtain a decree of divorce from a foreign court while the other partner is either in India or in some other part of the world. The partner who has obtained divorce may feel comfortable in the thought that the other partner has neither protested not contested the decree of divorce. However this comfort may be a false one. Assuming that the husband has obtained the decree of divorce from a foreign court, some consequences that may be faced by the man in due course are as follows: a) If he remarries, he may be prosecuted for bigamy. There is no time limit for the first wife to file a complaint with the police against the husband in the matter of bigamy. We have seen in the case of Y Narasimha Rao5 that the couple separated in 1978, the man remarried in 1981 and ten years later, Supreme Court ordered for bigamy proceedings to be started against the man. Bigamy is punishable under section 494 of Indian Penal Code with imprisonment of seven years. b) Wife (divorced as per foreign law) may file for maintenance. c) In case the man dies without making a will, the first wife will have the right to her share in the property of the man while the second wife will get nothing because her marriage will not be considered legitimate. It may be noted that the above may be faced by the man even though he may have acquired the citizenship of the foreign country (assuming that his domicile or his heart remains Indian). If a women gets divorce from a foreign court and remarries, her new husband may be prosecuted under section 497 of Indian Penal Code under which he may face imprisonment of five years. The wife will, of course, be liable for punishment under section 494 of Indian Penal Code for bigamy.

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What is Artificial Intelligence?

Artificial Intelligence (AI) allows computer systems to process information and give out results in a way that are similar or parallel to how a reasonable human would. Computer systems, today, are capable of performing tasks like decision making, speech recognition, translation, visual perception and other activities that otherwise require human intelligence. Rapid growth in the field of AI has allowed systems to learn, think and act like humans. They are now able to autonomously work intelligently. These systems are known as “neural networks” as they are capable of imitating the functioning of a human brain by consuming and circulating their information processing ability to clusters of receptors which operate as neurons. They look for and generate links and resemblances in the data that is input. These units, known as the “perceptrons” are capable of knowing whether and how much to respond to a specific input and an amalgamation of such reactions controls and regulates the actions of the entire machine. The steep trajectory of AI has seen the IBM computer Deep Blue defeat international chess champion Garry Kasparov over twenty years ago. Another IBM system named Watson won a game show called Jeopardy. Libratus, developed by AI researchers at Carnegie Mellon University is claimed to be the best poker player in the world. Google created an AI system called the AlphaGo which beat a human champion of a 2500 year old Chinese strategy game called Go, believed to be more complex than chess. AI has become capable of producing artistic, literary, musical and journalistic works. Portuguese artist Leonel Moura’s work with AI and robotics has enabled him to create RAP (Robotic Action Painter) which creates original and creative art works autonomously. “The Next Rembrandt” was unveiled in 2016 by a group of researchers and museums. It was created by a computer after over thousands of works by the 17th century artist Rembrandt Harmenszoon van Rijn were input for it to analyse. Google’s Deep Mind is capable of generating music through listening to recordings. A short novel authored by a

Japanese computer qualified to the second round of a national literary prize\(^{613}\).

Copyright and Implications of AI generated work in Copyright

Copyright is a legal or intellectual property right conferred upon the creator of an original work, which permits her/him exclusivity over the use and distribution of the same. The characteristics required for a work to be copyrightable vary from jurisdiction to jurisdiction, however two general elements are originality and tangibility. Conventionally, copyright law doesn’t recognise works generated by AI instead it only brings under its scope creations by human beings. The need for the same hadn’t arisen because the computer systems used to be just tools to help the creative process like pen and paper. However, with advent of sophisticated and autonomous AI systems, human intervention in the process has become redundant. This creates implication for copyright law since it questions legal concepts in copyright law like originality, author, inventiveness or creator. Can a machine fall under the ambit of the definition of an author or creator? Can these works be copyrightable especially since they involve minimum to zero human intervention? Who’d be the owner of works created by AI systems- the humans who developed the computer systems or the computer systems themselves? In case of legal disputes who should be held liable for the work so created by the AI systems? This paper attempts to tackle with these questions and challenges that arise for copyright law and suggest possible solutions.

As mentioned before, traditionally copyright law doesn’t recognise works not created by humans or without human intervention as copyrightable. Legal jurisdictions around the world deal with the challenges raised by AI in copyright law in either of the two options: they do not recognise works generated by computers as copyrightable or they confer the rights to the creator of the system itself.

Copyright Law w.r.t AI in different jurisdictions

In the United States the question of non-human authorship was discussed in detail in what popularly came to be known as the “Monkey Selfie” case\(^{614}\) wherein photographer David Slater left his camera unattended on purpose to observe the reaction of the monkeys he was observing. One of the Macaque, Naruto, took several pictures of himself of which one became viral and got the title “Monkey Selfie”. The defendant, Slater, claimed ownership over the photograph. The United States Court of Appeals of the Ninth Circuit, in consonance with the district court decision, held on 23 April 2018, that Naruto as well as all animals, lack a statutory standing under the Copyright Act since they aren’t human\(^{615}\). The Compendium of US Copyright Office Practices under its chapter ‘Copyrightable Authorship’ published that “The U.S. Copyright Office will register an original work of authorship, provided that the work


\(^{614}\) Naruto v Slater (PETA) 15-cv-4324.

\(^{615}\) Naruto v. Slater [2018] No. 16-15469 (United States Court of Appeals of the Ninth Circuit).
was created by a human being. It cites what was held in the Trade-Mark Cases, Burrow-Giles Lithographic Co. v. Sarony and reiterated in Feist Pubs., Inc. v. Rural Tel. Svc. Co., Inc. protection under copyright law is only granted to “the fruits of intellectual labor” that “are founded in the creative powers of the mind” and that only “original intellectual conceptions of the author” will be copyrightable. The office will not accept works that are not created by humans. Section 313.2 of the Compendium specifically talks about works that lack human authorship and expressly provides that works created by machines lacking any human involvement in the process will not be registered. In Feist, the court held that only “more than a de minimus quantum of creativity” is required for the work to be copyrightable. The Federal Court of Australia in Acohs Pty Ltd v Ucorp Pty Ltd held that works generated by computer systems cannot be protected under copyright law because no humans were involved in the process. The Court of Justice of the European Union in its landmark decision C-5/08 Infopaq International A/S v Danske Dagbaldes Forening, ruled that copyright law only protects original works and that the same should echo the author’s intellectual creation. Hence one could draw the conclusion that the approach adopted by countries like United States and Australia, as it currently stands, wouldn’t allow for works created by autonomous AI systems to be protected under copyright. This approach is one that remains human centric as far as copyright protection is concerned and AI can only be a tool in the process.

As per section 178 of United Kingdom’s Copyright, Design and Patents Act 1988, computer generated works are those "generated by computer in circumstances such that there is no human author of the work" and section 9(3) states that in case of computer generated literary, dramatic, musical or artistic work, the author shall be deemed to be the person who undertakes the required arrangements for the development or creation of such work. Further in the case of Nova Production Ltd v. Mazooma Game Ltd, the issue of authorship was considered by the UK High Court. The facts of the case involved electronic pool games and the individual frames that displayed in the screen were considered computer generated artwork. It was held by the court that the programmer who developed the different features of the program and the software would be considered as the author. UK’s stance on this issue is contested by some to be complete and is hence suggested as a viable approach to other nation states. However, jurisdictions that mandate human involvement/intervention, like United States, Australia, Portugal et al, cannot transpose this approach in their legal systems without discarding the traditional aspects of copyright law. In India, much like the UK, the Copyright Act under section 2(d) (vi) defines the author of computer generated literary, dramatic, and other similar works as the person who invites or requires the program and the software to be developed.

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617 Trade-Mark Cases, 100 U.S. 82, 94 (1879).
620 Compendium, supra note 12, § 313.2.
622 Acohs Pty Ltd v Ucorp Pty Ltd [2012] FCAFC 16.
625 Nova Productions Ltd v Mazooma Games Ltd and ors. [2007] ECDR6,[106].
626 Copyright Act 1957 s 2(d) (iv).
musical or artistic works as the person undertakes or causes the work to be created. Similarly, then the Indian jurisprudence also allows for the creator of the AI systems to be protected under the copyright law.

Analysis

The two legal approaches being employed by countries presently leaves the question of who should get the copyright in ambiguity since in the first approach no provisions exist for the grant of copyright to non-human entities like AI. Absence of a human author doesn’t conclude that there isn’t an author. This approach doesn’t consider the AI as the owner and the human who developed the system, as the author, and thus renders the copyright ownership of concerned work orphan. There is obvious reluctance in extending copyright to machines or software. This reluctance may be because the law as it stands is not capable of recognizing machines as owners of property since it will give rise to problems with several other legal aspects like licensing and duration of copyright. The second approach allows the human programmers to own the copyright but ownership doesn’t always mean authorship. Thus a person who would have played no actual role in the production of the work by the AI would be considered its author for the purposes of copyright law simply because of his/her contribution to the development of the concerned AI. It also attaches the criminal liabilities of the results produced/ works created by the AI upon the programmer even though she/he may not even have the required mens rea or actus reus.

There is a third approach which involves vesting the copyright with the user. This approach follows the work made for hire doctrine. Section 201(b) of the U.S. Copyright Act provides that the employer or other person for whom the work is created is considered the author for the purposes of copyright unless expressly decided otherwise by the parties involved. A simple instance of this is Microsoft Word which has been developed by Microsoft but every document created thereon isn’t owned by them. This doctrine allows the employer to be considered as author. The rationale for the same was given in Picture Music, Inc. v. Bourne, Inc. where it was observed that “the motivating factor in producing the work was the employer who induces the creation.” Following this doctrine, if the programmer wishes to sell the AI to another, then the copyright ownership should vest in the respective user otherwise the user would lose incentive to purchase the machine/software. With sophisticated AIs the user’s involvement with the creative process might be limited to the pressing of a button or giving a command, creating ambiguity as to whether he/she is capable of owning copyright. A possible solution for this could be to adopt a case by case approach to determine whether the user had at least any if not substantial amount of contribution in the creative process.

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630 Picture Music, Inc. v. Bourne, Inc., 457 F.2d 1213, 1216 (2d Cir. 1972) (quoting Note, Renewal of Copyright-Section 23 of the Copyright Act of 1909, 44 COLUM. L. REV. 712, 716 (1944)).
The problem with this approach is that if this doctrine is followed and the programmer/user is designated as the employer and consequently the author of work created by an employee, a machine, lacking the capacity to hold legal personhood, could not be rightfully denoted an employee. This is clearly a challenging problem and leaves us in a vicious circle with respect to determining the owner of copyright within the current legal framework.

Lack of protection of works generated by AI will have massive economic and entrepreneurial implications for this field. The investors will shy from putting in their money of the law doesn’t allow for the work to be protected by copyright law. Consequently, this would dampen the rapid growth that the AI industry has seen and the enormous potential it holds in the future. Countries like Saudi Arabia and Japan (robots named Sophie and Shibuya Mirai respectively) have considered providing AI with legal subjectivity thus making them capable of owning copyright. However that is a complex issue that cannot be dealt with in length in this paper. Other possible as well as viable solutions include broadening the definition of creativity to bring under its scope creative works produced by AI; enhancing human intervention consisting of selecting the data collected and entered into the machine and choosing the parameters that define the objective of the machine’s activity. Taking inspiration from Leonel Moura, who has revealed that his AI autonomously creates artwork but unlike a human isn’t aware that its creating art or what art is yet humans perceive its works as art and so it is probable that its painting program successfully emulates certain parts of the human creative process. Governments and legal systems can enact legislation that allow for a kind of sui generis right to AI.

**Conclusion**

There is an urgent need to bring in policy reform with regards to application of intellectual property rights internationally. Uniform international recognition for AIs and their work should be the starting point to bring in effective policy reform. As mentioned before, lack of efforts to make changes in the legal framework will not only result in severe economic implications but will also hamper the growth and development of AI. The current laws have two distinct approaches but this distinction is counterproductive to the incentive of copyright. Policy and law makers around world need to get involved in the discourse on AI and the challenges copyright law faces, so as to be able to identify the inadequacies present and accordingly help the law evolve.

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A STUDY ON THE ENVIRONMENT FOR PROMOTING EQUITABLE GROWTH WHILE THWARTING DAMAGES

By Vani soujanya and Dr. Archana Vedantam

From Pendekanti college of law, Hyderabad and Sultan ul Uloom college of law, Hyderabad; respectively

ABSTRACT

Dignified & Healthy lives of humanity are highly dependent on the physical environment in which we all live. Natural Resources such as water, air, and soil conditions are among the essential elements of the physical environment, which are global commons that don't fall under the jurisdictions of any one country to have a right to damage. An environment free of pollution is an international human right and also a jus naturale, i.e., a natural right of every organism.

Environmental issues & priorities are also tightly interlocked with economic development. The Rapid industrialization of the Developed Nations and attempts of the Developing nations for economic growth are causing several severe environmental issues. Many countries in the world are now changing from an agricultural base to service and industrial sectors, which are an indication of growth & development but can cause irretrievable damage to the environment if the concept of sustainable development is not followed in every project aimed at growth & development. Sustainable development is promoting development without destroying the environment.

In India, The Fundamental Right of every citizen to Quality life & personal liberty under article 21 of the constitution includes a person's right to fresh air, clean water, and pollution-free environment. This paper attempts to address various dimensions from the perspective of Environmental law focusing on the root causes of geo-hazards with few case studies to promote all the required actions to achieve sustainable development.

INTRODUCTION

An environment free of pollution is an international human right and also a natural right of every plant & organism. The right to dignified life & personal liberty includes a person's right to fresh air, clean water, and pollution-free environment. Urbanization is an inevitable process for developing countries. Industrialization and urbanization though vital for the development of a country, cause massive environmental impacts, which are not often acknowledged until they reach the level of severity. The rapid urbanizing process, fueled by rural to urban migration and population growth, has given rise to a host of environmental problems. Many countries all over the world are now changing from an agricultural base to service and industrial sectors, which are an indication of growth & development but can cause irretrievable damage to the environment if the concept of sustainable development is not followed in every project aimed at growth & development. Sustainable development is promoting development without destroying the environment.

The environmental problem concerning the volume and complexity of wastes has increased drastically in our post-globalization era. Pollution is any action that makes the environment impure or any damage caused to the environment. It is a prohibited behavior that UN laws seek to
prevent in all its member nations as our Earth & its resources are global commons that are not under the jurisdiction of any country on the planet to have the capacity to destroy or damage. Pollution in one corner of a nation can affect even other parts of the world; for example, it is evident that the radioactive contamination from the Chernobyl nuclear power plant in Ukraine has affected North West England. The Report on the World Commission on Environment and Development entitled “Our Common Future” defines “Sustainable Development” as development that “meets the present needs without compromising the ability of future generations to meet their own needs.” It is to make sure that development & environmental protection go together and not compromising on one goal for the other. It is to make both of them move in synergy.

There are two crucial issues to achieve sustainable development: The first is institutional orders. The narratives that shape institutional responses to climate change are biased from the beginning, placing too much burden on developing countries even though communities in the developed world, which had itself developed with scant regard for the environment, remained the largest consumers of energy and producers of waste. Unsurprisingly then, vested interests & incorrect assumptions guided the institutions that were at the forefront of this issue. The second element is the outcomes themselves. Where we can see that despite some convergence on the environmental quality of life, there remains significant inequity in the development pathways of developing and developed nations, the consequences of this failure cannot be understated: with millions of individuals still struggling to access clean energy and safe habitat, ‘survival of the fittest’ which is a Law of Jungle Raj but not of any intellectually stimulated & cultured country continues to dominate our ways of life. Unplanned growth of the population also results in the reckless generation of wastes.

LAND POLLUTION:

Land pollution emerges from agricultural chemicals and waste material from mines, quarries, scrap, industrial waste, and household wastes. Land degradation is defined in the Intergovernmental Panel on Climate Change report as ‘a negative drift in the land conditions, caused by direct or indirect anthropogenic causes resulting in climate change, which is further expressed as long-term reduction & loss of at least one of the following: biological productivity, ecological integrity, or value to human’ Anthropogenic causes directly affect more than 70% of the global, ice-free land surface (IPCC report). The land is both a source and a sink of greenhouse gases (GHGs) and plays a vital role in the exchange of energy, water, and aerosols between the land surface and atmosphere.

Pollutants of Industrial wastes such as mercury and lead caused irretrievable damage to plants, Animals & human beings. Mercury may cause damage to cell membrane permeability, active phosphorus groups, ADP or ATP, and essential ions, and it may lead to oxidative stress to plants, among other effects (Patra and Sharma, 2000; Azevedo and Rodriguez, 2012). Mercury may also enter the environment causing land pollution from electronic wastes such as Switches and relays. Many people died in Minamata Bay of Japan after eating the fish, which are contaminated by industrial mercury waste. Once mercury entered the body, it doesn’t leave quickly. It takes up to 18 years for...
the body to dispose of the dose of mercury from the body. Metal pollutants such as Lead are from Solder in electronics, Industrial Discharges from smelters & battery manufacturing units, pipes, pigments, paints, lead crystal glassware, ammunition, jewelry, toys, and cosmetics. This pollution causes cumulative poison, which affects the central nervous system, causes anemia and kidney damages. Adverse effects on the brain development of infants have been recorded as it crosses the blood-brain barrier to work on the neurons of the brain. Lead also inhibits plant growth, reduces photosynthesis, and reduces mitosis and water absorption. It inhibits photosynthesis by blocking protein sulfhydryl groups and changing the phosphate levels in living cells. Asbestos used in Insulators is also very toxic. Chemical wastes from industries such as asbestos give off the dust, which causes cancer.

Forests cover more than 30% of the Earth's land surface, according to the World Wildlife Fund. These forested areas can provide food, medicine, and fuel for more than a billion people. Worldwide, forests provide 13.4 million people with jobs in the forest sector, and another 41 million people have job roles related to forests. Experts estimate that a chunk of woods the size of a soccer field is lost every second to deforestation. So proper measures are required to compensate for the loss of forest land by introducing compulsory afforestation of equal utility value. Usage by humans directly affects more than 70% of the global, ice-free land surface (IPCC report). Bringing Changes in land-use patterns by expanding the area under agroforestry and bio-fuel plantations could help mitigate GHG emissions. But these measures may, however, lower land availability for food crops. Spreading awareness to excise the branches alone & not the whole trees for fuel and also for minimizing the soil erosion by methods like terracing, strip farming also helps.

Practices of illegal dumping & inappropriate disposing of municipal solid wastes have become a severe threat in many parts of the world. Proper applicable techniques are needed to make people utilize all the resources present in the organic wastes with innovative ideas such as Capsula Mundi, also known as biodegradable burial pod or green burials, which turn the deceased body into nutrients for a tree that will grow out of their remains. One popular way of using organic wastes is by converting organic manure into fertilizers. Every person is a potential generator of the waste and thus a contributor to the land problem. There is a clear indication that people lack knowledge and awareness of how they can deliberately reduce solid waste generation.

**Capsula Mundi**

Planet earth, hosting a voluminous 7.8 billion people, There is no enough space to accommodate the remains of an ever-growing population on our planet, and even decomposing waste bodies produce the most valuable energy by a method of **Microbial fuel cell technology**.

Another innovative idea is green burials, which help to make permanent sacred space for the people is something profoundly and innately human and secular. The Green Burial Council defines green burials as "a way of caring for the dead with minimal environmental impact. Here "Capsula
Mundi, also known as organic burial pods shaped in oval, is made with 100% biodegradable materials such as polyethylene, cellulose, ethylene acrylic acid, gelatine, coated jute, polyactic acid, polyvinyl alcohol, etc. It is a concept for planting 'Sacred forests' with the bodies of deceased. As philosophically stated, 'from dust back to the dust,' here the dead return back to our natural Earth. The capsule, which is a biodegradable burial pod, turns the deceased body into useful nutrients for a plant that shall grow out of its remains. The deceased body here gets enclosed in a fetal position inside a capsule before burying, and the seed gets sowed above it. A forest is made by planting different kinds of trees next to each other. People, when they are alive, chose the trees and relatives or friends of that person shall look after it when death occurs. This idea, when implemented, turns future graveyards into full of eco-friendly holy forests instead of becoming gravestones. The person's name can be added in brackets beside the name of each plant.

**E-WASTES:**

Anything useless or unwanted for utility is a waste. Basel Convention Defines Wastes as "substances which are disposed of or are intended to be discarded or are required to be discarded by the provisions of the law.

The electronic pieces of equipment that are at the end of their useable life period are termed as e-waste. All used and damaged electronic items which have reached the end of their useful life are called e-wastes. In the post-globalization era, many electronic with rapid technological advancements many electronic devices are becoming "trash" after a few short years of use. Millions of tons of electronics are abandoned by their users every year, yet few recycling programs assist with this problem. Most electronics are thrown away in dumpsters, leaving them to rot in landfills where toxic waste is generated. However, many "recyclers" just send them overseas, where they are dismantled in crude fashions that cause local health and environmental problems.

E-waste is generated from the disposal of unused electronic devices. E-waste is capable of being recycled, though it is mostly disposed of in landfills. It is derived from televisions, computers, cell phones, individual batteries, and computer monitors. These are ubiquitous items that every household in developing countries is using. However, as newer electronics are invented and new models are created, more and more devices are being stored or thrown away in dumpsters. This is causing adverse environmental and health effects. The United Nations calls the Exponential growth of e-wastes as a tsunami of e-waste.

As high as 50 million tons of hazardous e-waste is being produced every year, and only a tiny fraction of this is safely disposed of. In a personal computer, for example, there is a hazardous substance called Lead in the cathode ray tube and soldering compound, mercury in switches and housing, and cobalt in steel components, among equally toxic substances (Rouse, 2007). Dangers of E-waste stems from the ingredients such as mercury, arsenic, Lead, cadmium, beryllium, barium, copper, chromium, zinc, nickel, gold, and silver. Many of these are used in circuit boards and present in electrical parts such as computer chips, wirings, and monitors. Also, many electrical products include various flame-retardant chemicals that might pose a potential health risk (Toothman, 2001).
Below is the Table of E-wastes in India:

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Source Description</th>
<th>Constituents/Contaminants</th>
<th>Health Impact</th>
<th>Prominently causing</th>
<th>Water Pollution</th>
<th>Electroplating industries</th>
<th>and kidney. It can affect the respiratory system, kidneys, reproductive system &amp; even skeletal system</th>
<th>Water and air Pollution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Solder in electronics, Industrial Discharges from smelters &amp; battery manufacturing units, pipes, pigments, paints, lead crystal glassware, ammunition, jewelry, toys, and cosmetics</td>
<td>LEAD</td>
<td>The cumulative poison affects the central nervous system, anemia, and kidney damages. Adverse effects on the brain development in infants as it crosses the blood-brain barrier</td>
<td>Water Pollution</td>
<td></td>
<td></td>
<td>Copper wires, Insecticides &amp; Fungicides, vitamins &amp; mineral supplements, cookware, Birth control pills</td>
<td>Copper in combination with zinc, magnesium, and calcium</td>
</tr>
<tr>
<td>2</td>
<td>Semiconductors, Mining &amp; metallurgical operations, fertilizers &amp; pesticides,</td>
<td>CADMIUM</td>
<td>Effects of toxicity are irreversible. Accumulates in the liver</td>
<td>Water Pollution</td>
<td></td>
<td></td>
<td></td>
<td>Copper in combination with zinc, magnesium, and calcium</td>
</tr>
<tr>
<td>5</td>
<td>CRT front panel Electrodes, Vacuum tubes, drilling muds, paints, bricks, ceramics, glass, and rubber</td>
<td>BARIUM &amp; PHOSPHORUS</td>
<td>Cause muscle weakness and damage to the liver, Cardiac arrhythmias due to rectal distension</td>
<td>Soil Pollution</td>
<td>baby through breast milk, Bipolar disorder, major depressive disorder, diarrhea</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Rechargeable batteries, used in alloys, jewelry, silverware, photographic emulsion</td>
<td>NICKEL</td>
<td>Skin allergy, lung allergy, asthma, allergic eczema, argyria</td>
<td>Water and soil pollution</td>
<td>Galvanized steel plates, Massive painting and coating, electro painting, Handling of chrome-based pigments</td>
<td>CHROMIUM</td>
<td>Asthma, kidney damage, eye injury, nosebleeds, respiratory system, lung cancer. Causes bronchitis and DNA damage</td>
<td>Water and soil pollution</td>
</tr>
<tr>
<td>7</td>
<td>Lithium Batteries</td>
<td>LITHIUM</td>
<td>Lithium can cause harm to a nursing baby through breast milk, Bipolar disorder, major depressive disorder, diarrhea</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

There is a need for research on the current circulation, usage, Handling, and management of WEEE (Waste Electrical and Electronic Equipment) in third world countries like India, Africa & Bangladesh, etc. Reusing, recycling and reducing of e-waste must be thoroughly investigated & governments
should make a policy to make sure every buyer holds the responsibility of dismantling or handling over the back these devices for recycling.

A committee on e-waste management that deals with the impending influx of electronics and preparing for their proper disposal is needed. There is poor awareness of the proper treatment of electronic waste to prevent harm to the environment and the people, and these need to be addressed by the legislators. There is a need for establishing the collection of e-waste to ensure that every piece of e-waste is collected and accounted for.

WATER POLLUTION:

Earth is also called the "Blue Planet" due to the abundant water on its surface. Water is critical for human survival, economic development, and the environment. The oceans represent about 70.8 percent of the total surface area of the globe, and the continents represent 29.2. These Oceans have the highest pool of carbons. Water pollution is caused when undesirable substances such as organic, inorganic, biological, radiological substances get into the water, which degrades the water quality so that it becomes unfit for utility. Agenda 21 of UNO specifically stressed the importance of potable water supply, safe drinking water, and environmentally acceptable wastewater treatment.

Wastes can travel all through the world's rivers, oceans and accumulate on beaches and gyres. These wastes harm physical habitats, transports chemical pollutants, threatens aquatic life, living and non-living species, and interferes with human uses of the river, marine, and coastal environments. River waters get polluted mostly when effluents from untreated industrial waste, dirty water, Fertilizers, and pesticides from agriculture get washed into the watercourses. Hot water from power stations causes thermal pollution. Polluted water from industry, oil slicks and spills, and untreated human sewage cause sea pollution. Trash, packaging, and improperly disposed of wastes from sources of land accounts for about 80% of the marine debris found on beaches during many surveys. One-third to two-thirds of the trash we catalog on beaches comes from single-use, disposable plastic packaging from food and beverage-related goods and things like plastic cups, bottles, straws, utensils, and stirrers. The other 20% of Marine debris are attributed to at-sea losses from accidental or deliberate discharges from ocean-going vessels and lost or abandoned fishing gears and traps.

Plastics in the water are often consumed by birds and fish and other organisms & get concentrated as toxic chemicals in their tissues filling their stomachs and causing
them to starve. Evidence suggests that plastic debris, including resin pellets and fragments, transfer PBTs to aquatic organisms when they consume it. One example is the accumulation of PBTs from plastics, which has been documented in seabirds, and benthic organisms can be referred. The issues associated with the ingestion of plastics include the development of internal and external wounds, impairment of feeding capacity due to the blockage of the digestive system, toxicity, predatory avoidance, and decreased mobility. Ingestion of plastics by the seabirds has been shown to reduce body weight, inhibit fat deposition, and reduce reproductive capacity.

Trash and debris can also cause habitat alterations in rivers and oceanic convergence zones, on beaches, and submerged benthic habitats. They can reduce the light levels in underwater waters and deplete the available oxygen levels. These changes can weaken the ability of open water to support aquatic life. As benthic habitat-forming species decline due to this, there can be impacts of this marine debris such as declining in species that are dependent on these habitats for shelter & foraging. For example, degradation of coral reefs globally has the potential to undermine the survival of a diverse array of invertebrates, fish, and vertebrates that depend on these limited resources, including many, threatened, and endangered species.

Source reduction conserves resources and energy, usually costs less, and reduces marine debris. Through source reduction practices, we can significantly reduce the amount of trash getting into waterways and marine debris. These practices include equipment or technology modifications, process changes, reformulation or redesigning of products and improvements in housekeeping, maintenance, training, or inventory control. Enforcement of a strict legal framework for the protection and sustainable use of lakes, rivers, and other large bodies of water is needed.

AIR POLLUTION:

It is caused by burning fossil fuels for industrial, domestic, and transport use giving off gases like sulfur dioxide and carbon monoxide, smoke, small particles, and droplets. Agricultural chemicals also get into the air harming the environment.

A healthy life is an impossibility without healthy air. All Human beings have the right to breathe clean air, and it is a fundamental right under article 21 of the Indian Constitution. But Human activities sometimes result in emissions of four principal greenhouse gases: CO2, CH4, N2O, and the halocarbons into the atmosphere. CO2 is emitted in vast amounts by transportation, heating, and cooling systems, manufacturing companies, e.g., cement. CH4 has increased as a result of agricultural and animal rearing activities. N2O is released by fossil fuel burning and, more importantly, by fertilizers. First, halocarbons include the chlorofluorocarbons (e.g., CFC-11 and CFC-12), used extensively as refrigeration agents, and in other industrial processes, their presence in the atmosphere is found to cause stratospheric ozone depletion. All these contribute to the greenhouse effect.

There is a strong scientific agreement that climate change is occurring and that human activities, especially carbon dioxide gas emissions from the burning of fossil fuels such as coal, oil, and gas, were responsible for most of the climate change, which is observed since the 1970s.
The greenhouse gases emitted today shall remain in the atmosphere for a very, very long time. Data from IPCC, 1992 shows that CO2 has a life span of approximately 120 years, and N2O gas has a life span of 132 years before it gets eliminated.

A pound of nitrous oxide has the equivalent global warming effect of 300 times that of one pound of carbon dioxide because of the chemical reactions. Based on data of 2012, nitrous dioxide is 6 percent of all the U.S. emissions arising from human actions. Globally, about two-fifths, which means 40 percent of nitrous oxide emissions are attributable to human activities. Agriculture, transportation, and industry activities are significant sources of nitrous oxide emissions. The main reason for climate change around the globe is the increase in the concentration of greenhouse gases in the atmosphere due to several natural and anthropogenic activities. The level of GHG in the atmosphere has already increased considerably over time particularly after the industrial era (1850).

Air pollution is estimated to cause around seven million deaths a year worldwide. Perils of Health such as impaired lungs, asthma, cardiovascular diseases, cancer are some of the effects of a degraded environment, and these translate into enormous costs for the economy as well. A WHO report estimated that in the year 2016, air pollution caused more than half-million deaths from respiratory tract infections in children fewer than five years of age. A systematic review of global data has found that People living with air pollution have undergone higher rates of depression and suicide. This new evidence further strengthened calls to tackle what the World Health Organization calls the "silent public health emergency" of dirty air.

Making people understand the importance of clean air so that they voluntarily choose public modes of transportation is inevitable. Increasing awareness in using energy-efficient devices and helping them understand the concepts of reducing,
reusing & recycling is the need of the hour for the sustainability of our environment

NOISE POLLUTION -

Noise means unwanted sound above permissible limits. It is a nuisance of Tort. People who wish to live in peace, comfort, and quiet within his house have a right to prevent the noise from reaching them. No one can claim the power to cause noise pollution even on his premises, which would travel beyond his precincts and cause a nuisance to others. Any sound which can affect people by materially interfering with their ordinary comforts of life as judged by the standard of a reasonable human is a nuisance. High levels of sound are more than just a problem of the nuisance. They constitute a real danger to the health of people. Day and night, at home, and at work, noise can produce acute physical stress and psychological stress. No person can be immune to this stress. Even though we seem to adjust to the noise by just ignoring all that, the human ear never closes, and the body continues to respond sometimes even with extreme tension as to a strange sound in the night. It is a shadowy public enemy, and growing menace of it has increased in the modern age of industrialization and technological advancements.

C.S. Kerse, in his book 'The Law Relating to Noise' stated that noise is psychologically and also physiologically harmful as an invisible and insidious form without any doubts, and once the sound has damaged the hearing, it can scarcely get restored to wholeness. The learned author also proceeded to state that noise causes loss of sleep, annoyance, nervous tension, heart disease, migraine, and gastrointestinal disorders. Noise has both auditory and nonauditory effects depending on the duration and the intensity of the noise level.

It disturbs sleep, harms hearing organs, disrupts communication, and physical, the mental health of humans. Noise can disrupt work, rest, communication, and even sleep. It can harm our hearing and evoke other psychological and possibly pathological reactions. No human on Earth can claim a fundamental right to create noise by amplifying the sounds.

Indian constitution assures that as one has a right to speech, others have a right to listen or decline to hear. No person can be forced to listen, and nobody can claim that he has a right to make his voice trespass into the minds or ears of another. Nobody can indulge in aural aggression, as freedom of speech is not an absolute right. If anyone causes noise with the assistance of artificial devices to forcibly expose those who are unwilling to hear sounds that are raised to unpleasant or obnoxious levels, then that person is violating the right of others to have peaceful, comfortable, and pollution-free life. A person can decline to read a publication or switch off a radio or a television set. But, he cannot prevent the sound from a loudspeaker reaching him. People are forced to hear what, he wishes not, to hear. That will be an invasion of his right to be let alone, to listen to what he wants to hear, or not to hear, what he does not wish to hear.

One may put his mind or hearing to his uses, but not that of another. No one has a right to trespass on the brain or ear of another and commit auricular or visual aggression. A loudspeaker is a mechanical device, and it has no mind or thought process in it. Recognition of the right of speech or expression is a recognition accorded to a human faculty. Power belongs to human personality and not to a mechanical device. One may put his faculties to reasonable uses. But, he cannot put his machines to any
use he likes. He cannot use his tools, such as speakers, to injure others.

Environmental noise pollution is a form of air pollution that is considered a threat to the health and well-being of Plants, Animals, and humans beings. According to estimates of the World Health Organization (WHO), road-traffic noises elevate the possibility of coronary heart disease by nearly 8% per 10 dB(A) increase starting at 50 dB(A). Traffic noises at night cause fragmentation of sleep, the elevation of stress hormones. These factors can cause endothelial dysfunction and high blood pressure, which, in turn, elevate cardiovascular risk. There are also pieces of evidence showing that chronic noise exposure is associated with an increased risk of hyper cholesterol, adiposity, and the development of type 2 diabetes.

Noise barriers such as planting bushes and trees in and around sound generating sources are an effective solution for noise pollution. Noise barriers are solid obstructions built to minimize the overall noise levels in that area. They can be of porous materials like barriers made of thatched leaves or nonporous materials made of plain cement concrete. Barriers like concrete can attenuate the noise significantly. Regular servicing and tuning of automobiles can also effectively reduce noise pollution. Designing the buildings with suitable sound-absorbing materials for the walls, windows, and ceilings can also be useful. Doors and windows, which are of soundproof materials, can be installed to block unwanted noises from the outside.

**FOOD ADULTERATIONS:**
Food Adulteration usually refers to mixing other matters of inferior and harmful quality with food, drink, or other related items that are intended to be sold for consumption. As a result of adulteration, food or drink becomes impure, unsafe and unfit for human consumption. Natural adulteration can occur by the presence of certain chemicals compounds that occur naturally in foods that are injurious to health and are not added to the foods intentionally. Intentional adulteration is a punishable offense and noted as a criminal act. Food adulterations with poisonous chemical like formalin are regularly applied on fish, fruit, meat, and milk that causes different types of cancers and asthma.

<table>
<thead>
<tr>
<th>S.No</th>
<th>Food article</th>
<th>Adulterant</th>
<th>Harmful effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bengal gram/toor dal</td>
<td>Kesaidal</td>
<td>Lathyrism cancer</td>
</tr>
<tr>
<td>2</td>
<td>Tea</td>
<td>Used tea leaves</td>
<td>Liver disorder</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Processed and colored</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Coffee powder</td>
<td>Chicory powder</td>
<td>Stomach disorder</td>
</tr>
<tr>
<td>4</td>
<td>Milk</td>
<td>Caustic soda</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Wheat</td>
<td>Ergot</td>
<td>Food poisoning</td>
</tr>
<tr>
<td>6</td>
<td>Sugar</td>
<td>Chalk powder</td>
<td>Stomach disorder</td>
</tr>
<tr>
<td>7</td>
<td>Black pepper</td>
<td>Dried Papaya seeds</td>
<td>Stomach and liver problem</td>
</tr>
<tr>
<td>8</td>
<td>Mustard powder</td>
<td>Argemone seeds</td>
<td>Epidemic drops and glaucoma</td>
</tr>
<tr>
<td>9</td>
<td>Edible oils</td>
<td>Argemone oil</td>
<td>Loss of eyesight,</td>
</tr>
</tbody>
</table>
ENVIRONMENTAL REFUGEES:

"Desertification, In the words of Jacobson (1988), has irredeemably damaged millions of hectares of once productive land and made millions of sub-Saharan African farmers as refugees. Environmental migration is the signal that land degradation has reached its sorry end."

Jacobson (1988) Observed that a one-meter rise in the level of the sea could produce up to fifty million environmental refugees. Myers quoted a higher figure, with a forecast of 150 million environmental refugees by 2050 (Myers, 1993) and it is these figures that have made the Intergovernmental Panel on Climate Change (IPCC), the UN scientific body responsible for reviewing the causes and impacts of climate change, use in its calculation the costs of not responding (Bruce et al., 1996). Myers (1996) has subsequently put the potential number at 200 million environmental refugees from sea-level rise alone.

There are fertile prospects for public participation in waste management. People should be convinced to involve in the initial planning stage and decision making processes for managing the environment. As preached by the phrase "Think global, act local," the majority of actions required to achieve sustainable development needs to be taken first at the local level. For such a purpose, one recommendation is that each local authority should develop program and action plans complying with the Local Agenda. The success of any kind of management measures primarily depends on the willingness of people to cooperate. Thus, their involvement is most vital to implement any management action plan. Creating awareness on effective household waste management and making systematic strategic, practical environmental awareness projects and control of the environment by making various statues by Local & central governments is needed. Environmental agencies as in England must be established even in developing countries for preventing environmental degradation by controlling pollution, regulating Refuse disposal, and managing water resources (including fisheries and flood defenses). The amount of damages awarded for the wrongful act of polluting by the polluter pays principle must be made high & applied strictly & impartially. A public nuisance is
a crime and some of the acts of polluting fall under the public nuisance laws. The participatory approach of environmental management involving civil society, governmental, & nongovernmental bodies, along with awareness campaigns, are needed. Social networking such as Facebook, WhatsApp should be seriously considered as cost-effective methods of awareness. Innovative ideas from the general public must be encouraged

the need to change people’s environmental behavior and attitudes by improving their environmental awareness by ecological, educational programs

Waste materials should be sorted out properly so that the recyclable product can be transformed into something new. Biogas can be generated by using bio-mechanization technology on all domestic biowastes

Practical application of the rigid legal provisions in combination with economic incentive-based approaches can help to solve the problem of pollution.

World leaders are now ultimately coming to terms with the fact that their stance on climate action is very crucial, and there is no easy way out. The budgets in the recent past for environmental remediation efforts have gone up significantly. At the global level, the World Bank announced $200 billion, spread over five years, in 2018 for climate action (World Bank 2018).

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MARRAIGE, A LICENSE TO RAPE

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Abstract

Section 375 of Indian Penal Code defines Rape, “A man is said to commit "rape" if he—

A. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

C. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person; or

D. applies his mouth to the vagina, anus, and urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions:—

First. — against her will.

Secondly.—without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—when she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

From the above definition of rape defined in section 375 of Indian Penal Code we could clearly conclude that for sexual intercourse by her husband without the consent of wife is an exception of Rape under section 375of IPC.

Consent is one of the major component of rape which forms the Fundamental Rights of women regarding sexual intercourse and any decisions regarding their body and if
after marriage all such rights of women are taken away then the marriage itself is violation of fundamental Rights given in Constitution Of India.(Article 14 & 21).
This paper discuss that any forceful sex without the spouse consent will be considered as a rape and it also talks about,” Should Marital Rape be a Crime or not”.

Introduction
Rape is one of the most heinous and shameful crime that can be done by any human to other being. In all over the world it is considered as the most heinous and serious crime which are being controlled by various strict laws and punishments. Crime against women is very common all over the world especially in India.

Country like India where women are considered as ‘Devi’, incarnation of goddess but still the biggest irony is that in every 2 minutes one case of crime against women is reported in India according to National Crime Record Bureau.632 These are the ones which are reported. India has the lengthiest Constitution and thousands of statutes and Acts governing every kind of crime but still neglects the very basic crime of Marital Rape which not only harms women physically and mentally but also affects her pride and dignity which are her basic necessity of life protected by Article 21 of Indian Constitution.

Indiana University Press, 1990 had reported that, “more than 1 in every 7 women who have been married has been raped in their marriage” According to United Nation population fund more than two-thirds of Marital women aged between 15-50 in India have been subjected to forced sex, beaten, tortured along with a demand for dowry.

Many countries have enacted marital rape laws, repealed marital rape exceptions. Recently Indonesia and Turkey have criminalized the marital rape in 2005 and Mauritius and Thailand in 2007. Criminalization of marital rape denotes that it is now recognized as a violation of human rights.

It has been estimated that, marital rape is a punishable offence in at least 100 countries where India is not one of them. Plenty of legislations and enactments regarding dowry, cruelty, domestic violence female infanticide have been regarded as violence against women.

Criminalizing the Marital rape was the suggestion made by the Verma Committee, which had suggested amendments to India’s sexual assault laws. The Protection of women from Domestic Violence Act, 2005 has created a good remedy for various victims but the Act has failed to criminalize the Marital Rape. The law had ignored a huge violation of fundamental right of freedom for any married women, the right to her body or to protect her from any abuse. Various legal framework and different perceptions on the Marital Rape have been analysed further. The main aim of the study is to analyse why the Marital Rape in India have not been Criminalized.

Research Problem
Research Question: Should Marital Rape be included in penal laws in India?
Problem: Consent regarding sexual intercourse even after marriage.

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632 Chaitanya Mallapur, Crimes against women reported every two minutes in India, Scroll. In, (5th Sep, 2015, 9.30 pm), http://scroll.in/article/753496/crimes-against-women-reported-every-two-minutes-in-india
Comparison: Comparative study between India and other Countries
Outcome: To provide awareness regarding Marital Rape

Objective of Study:
- To learn about Marital Rape
- To know the status of marital rape in Indian penal laws.
- To identify marital rape as a form of rape in Indian Penal Laws.
- Comparative study between India and different Countries.

Hypothesis:
HO: Marital Rape is an exception of rape in Indian Penal Code.
HA: Marital Rape is not an exception of rape in Indian Penal Code.

Marital rape:
Marital rape is where both the parties are legally wedded and wife is forced to have sexual intercourse with her husband without her consent which is not considered a crime in India.

India is a secular country where people of every religion reside but even though in any religion or personal law there is no concept of marital rape. Hindu marriage is considered a sacrament not a social contract which is conducted by various rituals and is considered to be as one of the sixteen “Sanskaar”. From ancient to Modern times there has been a lot of development in personal laws in India, like of Divorce. In ancient times there was no such concept of divorce, it was advised that if anything happens between the husband and wife they should solve it between themselves and shall not disclose anything about their relationship outside the four wall boundaries of their bedroom but with further development Divorce is one of the major rights of women after marriage. Marital Rape on the other hand has not been recognised even in the 21st Century its status is same as that of ancient times this is due to the lack of awareness about such sensitive but important issue.

Now the question is whether the sexual intercourse happen without the consent of wife should be considered as rape? According to me it shall not be considered as in every condition its scope should be narrower as it is not possible every time that both the parties are in mood of sexual intercourse but even though they agree and give consent against their will so that it does not hurt the feelings of the other partner but where the sexual intercourse is done by abusing the wife physically or mentally or use physical force or become violent in refusal to sexual intercourse then it should be considered as crime and he should be guilty of marital rape.

So Penal laws regarding marital rape should be flexible and not so rigid it should have narrower scope and should vary from case to case. Marital rape is violation of fundamental rights given by Constitution of India under Article 14 & 21 i.e. Right to Live with Dignity, Marital Rape robs them of that dignity and it harms them both physically and mentally which infringement of their right is.

Reasons for not including Marital Rape as a crime
There are many reasons for not consideration of marital rape as a crime. The one of the major reasons is the patriarchal society there has been many

development regarding gender equality and feminism but even in a country like India man is still dominating women in marital relations. In such condition it is difficult to reform such laws and recognition of women’s rights regarding marital rape. Constitution of India provides various rights like Article 14 and 21 which are very essential for living a good and healthy life and when such rights are infringed in any way it is the duty of the government and judiciary to protect such rights. In cases of marital rape Government is failing miserably, after Delhi Rape Case Justice J.S.Verma Committee Suggested to include marital rape in section 375 of IPC but government of India did not put any serious thought in it.

Thus, Indian law gives a license to husband to rape his wife by providing specified exceptions to section 375 of IPC so that is why even if a wife files a complaint against her husband he will not be charged of any crime. In many research it has been proved and found that women in India whether she is literate or not is subject to marital Rape. In one of the survey conducted by National Family Health Survey in the year 2005-2006, which was conducted among 124,385 women in 29 Indian states, found that 10% of the women reported that their husbands had physically forced them to have sex. In another study conducted by the International Centre for Women (ICRW) and United Nations Population Fund’s (UNPFA) across seven states in India covered 9,205 men and 3,158 women aged 18-49 from each state in which One-third of the men interviewed admitted to having forced a sexual act on their wives.636 

Even after having such a strong data and research report Indian Government is not considering the plight of the women just because of the losing of his power in Patriarchal Society.

"For generations, women have been given in marriage. Once married she is viewed as property that belongs to her husband and his family. A woman's right to her body is not recognized," says Ranjana Kumari of the Centre for Social Research. 637

Marital rape is considered as a criminal offence in about 52 countries, including the United States, the United Kingdom, Canada, and France and neighbouring Bhutan.

According to Advocate Vrinda Grover, "Whenever there is a movement to increase a woman's access to justice, people who are afraid of women being empowered start talking about the misuse of law."638

According to Frederika Meijer, UNFPA representative, "When women experience coercion and violence within relationships, it violates their fundamental right to live in safety, security and with dignity. An intimate relationship, particularly marriage, should be a space of mutual trust and respect."

Somewhere from this discussion we find that as India is a male dominating country, so if Marital Rape is included as Crime under section 375 of IPC then in that case, Hindustan Times,( May 25th May, 2015 ,1:40 am),
636 Id.
637 Id.
638 Id.
639 Id.
male will lose their power over women, which they don't want and that is the only reason for not including Marital Rape as crime.

Right to live with Dignity, are basic Human Rights of every human being irrespective of their sex both in India as well as in International Human Rights Law. And nobody has the right to curtail this right on the basis of sex, race, religion etc. But unfortunately repeatedly, Indian Government and Judiciary had failed to protect this right for women when question come of Marital Rape?

**Interpretation of section 375 of IPC**

Section 375 of Indian Penal Code defines Rape, “A man is said to commit 'rape' if he—

- A. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- B. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- C. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person; or
- D. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions:—

First. — against her will.
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Thirdly.— with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
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Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.
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Exception 1.—A medical procedure or intervention shall not constitute rape.
Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife
not being under fifteen years of age, is not rape.\(^{640}\)

Under section 375 exception no.2 IPC husband would be guilty of rape if the wife is 15 years of age or below, but there is no protection for a married women whose age is above 5 years or major, which is the most common scenario in modern time as child marriage is already an offence in India.

Another important point to consider is that although marital rape is not recognised or mention in any Indian penal law but exception no.2 of 375 of IPC is similar to marital rape with a limitation of age. It also shows the biasness of law which only provides the protection for a particular group of women and which needs to be updated to current conditions. This kind of law which provides immunity of rape to husband shows that women does not have right over her on body and will which is a clear violation of fundamental rights and these law needs to be modified.

Comparative study between India and USA regarding marital rape

Marital rape in USA

Marital rape in USA is also known as spousal rape where the perpetrator is a victim spouse it is a form of partner rape and domestic violence and as of today all 50 states of USA has criminalised marital rape. History of USA before 1975 has not witnessed any concept like marital rape but after several large movements regarding women’s right after 1993 USA started taking the case of marital rape more seriously. Since 1993 all 50 states of USA have enacted laws against marital rape almost all stare have same laws regarding marital rape but only two states have slight difference in their laws, those two states are South Carolina and Virginia. In the South Carolina the marital rape should be reported within 30 days of event and in Virginia provides for marital or personal counselling in lieu of court proceedings.

Marital Rape in India

Penal laws in India are such which does not considered marital rape as a crime. Indian Penal Code section 375 exceptions 2 clearly states that “sexual intercourse by a man with his own wife, the wife not being under 15 years of age is not rape”. In Saretha V. T. Venkata\(^{641}\) Subbaih case, it was held that, rights and duties in a marriage, is like a creation and dissolution and not the term of private contract between two individuals. The right to privacy is not lost by marital association. Hence there is no punishment for marital rape and the remedy lies with her.

Role of Judiciary

The need for a new law on sexual assault was felt. The earlier law which prevailed did not define and reflect the various kinds of sexual assault. In Sakshi v. Union of India\(^{642}\), the Supreme Court had recognised the inadequacies regarding the law relating to rape and had suggested that the legislature should bring about changes in the law.

After passing the criminal law amendment bill, 2013 rape was redefined as the most horrific events where the parliament by an amendment tried to enlarge the ambit of rape and the perception by making oral and anal acts as amounting to rape.

The Domestic Violence Act, 2005 has provided various civil remedies and various provisions such as the cruelty and other


\(^{641}\) AIR 1983 AP 356

\(^{642}\) AIR 2004 SC 3566, 2004 (2) ALD Cri 504.
matters are dealt under. There are large number of victims under the marital rape scenario is being increased but the legislature is ignorant to criminalize such an offence. The women are ignorant of what the actual scenario is and the laws which are prevailing in the Indian penal code for them. The Judicial decision of Queen Empress V. Haree Mythee\textsuperscript{643}, it was held that, the wife over the age is of 15, and then the rape law does not apply in that situation. In this case the husband was punished because wife was of 11 years only. In the Kerala High Court, Shree Kumar v. Pearly Karun\textsuperscript{644}, it was observed that, the wife does not live separately with the husband under the Judicial separation and being subject to sexual intercourse without her will the act does not amount to rape. Hence, it was said that, the husband was not found to be guilty of raping his wife though he was de facto guilty of doing or committing the act.

As per the Constitution of India, every law which is passed must be in conformation with the principles and ideas which are enshrined in the constitution. A law which has been made failed to meet its required standards are considered to be ultra virus and it can be struck down or to be declared unconstitutional. Here, the exemption of Section 375 withdraws the protection of married women on basis of her marital status. Recently, the Supreme Court took another opportunity to inform the subordinate Court and high court that despite stringent provisions for rape, many courts in the past have taken a softer view while awarding punishment to perpetrators of such a heinous crime. The judicial trend, the court stressed, exhibits stark insensitivity to the need for proportionate punishment for perpetrators of rape\textsuperscript{645}. This has warned them to be cautious as false charges of rape, motivated by personal or economic gains, are not uncommon. Persons accused of these kinds of sexual assault also need protection from the false or engineered accusation of rape loaded with ill-motives or designs\textsuperscript{646}. False allegations of rape, like a rape victim, cause a great distress, humiliate and damages to the accused.\textsuperscript{647} Rape, being a monstrous burial of dignity of a woman in the darkness and a crime form the court and the courts are bound to respond, within the legal parameters, to the demand. It is a demand for justice and award of punishment has to be in consonance with the legislative command and the discretion vested in the court.\textsuperscript{648}

**Conclusion**

From the above research we can conclude that Indian Judiciary, Legislature and Executives all have failed to provide proper protection and remedy to women regarding marital rape which still makes the women a property of husband who can exploit and use them without any consequences. Though if a husband is violent and have sexual intercourse without consent, he can be charged with criminal assault but not with marital rape as there is no law present in our penal laws. This prima facie violets Article 14 and 21 of Indian Constitution. Non-criminalisation of marital rape shows that India has a long way to go to achieve gender justice and equality.

\textsuperscript{643} (1890) 18 Cal 49  
\textsuperscript{644} 1999 (2) ALT Cri 77, II (1999) DMC 174  
My only suggestion is that it is 21st century and a new decade and India is almost a developed country so it is a high time to include such crime which has been neglected for so long into our legal system.

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MARITAL RAPE: WHETHER MARRIAGE IS A LICENSE TO RAPE? Through this paper I am going to highlight the negative impact of law on wife for not considering marital rape under section 375 of IPC and its suggestions.

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DEMOCRACY AND ELECTIONS

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1. Abstract:

Today, democracies are considered to be the one of the most preferred forms of the government in the world. Democratic countries allow active participation and representation of people in the decision making and policy formation. And generally, elections are most preferred process for attaining and maintaining the democracy. The presented text is an attempt to understand the democracy and its development with regard to elections conducted generally for the sustenance of such democracies in the world. The typology presented allows to study the fact whether elections always result into democracy or it can also lead to any other form government like that of dictatorship by the representative thereby elected by the citizens of the country. And also is there any other way to attain and sustain democracy other than that of conducting elections. The following research paper discusses such other way apart from elections i.e. “Sortition” which can thus be chosen as an alternate process for choosing the representative in a democratic form of government in any country, which allows the common people to be easily chosen as the leader in the state and the democracy and that the politics does not remain confined to a particular class of people i.e. politicians as we call them.

As the paper discusses an alternative to deal with such discrepancies of the election that leads to unsustainability in the democracy. Sortition is the answer to all the concerned doubts of the prevailing election process. Sortition, the process of random selection of the lot, has been elaborated below. This alternate process suggests the idea of randomly selecting people to the assembly in a way that would wipe out the major drawbacks of election process. Random selection is the appropriate method for distributing public office when all citizens have equal claims to that office and there is not enough to go around.

“The laws of democracy remain a dead letter, its freedom is anarchy, its equality the equality of unequals”
-Plato

2. Introduction:

India’s general election is the biggest democratic exercise in the world. The nation itself being the world’s largest democracy. Reviewing the research relating to the essence of elections in any democratic regime one can propound an idea that as the whole world has inclined towards the system called democracy and its election processes as there is yet to know what goes behind the iron veil of the so-called “free and fair elections”. The paper also emphasizes on the view that the web of the unfairness and corruption being spread in the general elections the prevailing democratic, particularly in country like India, where elections and party politics plays a major role in the daily routine of the citizens.

3. What is democracy?

“Rule of people” as democracy is literally known to be. The term democracy has been derived from the greek δημοκρατία which was coined by demos (people) and kratos (rule). To denote the prevailing political system in some Greek city-states, particularly Athens, the democracy was introduced during the 15th century BCE. The concept of such Democratic state in the modern world era evolved in Britain and
France and gradually spread to the other nations. The major reason of the fast pace development of democracy was the dissatisfaction with the increase in corruption, incompetence, abuse of power and lack of transparency and accountability of the existing polity, which was an absolute monarchy whose legitimacy was based on the doctrine of the Divine Rights of the Kings.

We can think of democracy as a system of government with four key elements:

1. A political system for selecting and electing the government through free and fair elections.
2. The active participation of the people, as citizens, in politics and civic life.
4. A rule of law, in which the laws and procedures apply equally to all citizens.

I. Democracy as a Political System of Competition for Power

Democracy is a means for the people to elect their representatives as their leaders and to hold them leaders accountable for laws and policies framed by these elected representatives as an integral part of the government. Elections are thereby conducted by an independent body and further citizens vote for their respective leaders and elect them as their representative of at the national and local levels. Government is based on the consent of the governed, in a democracy, the people are sovereign—they are the highest in the hierarchy of political authority. Power flows from citizens to the elected representatives of government, who hold power temporarily for a fixed term.

The people of the state hold the authority to be a critique to their representatives and the laws and policy formed by the respective, and to observe how they conduct the functioning of government. Those elected representatives at the national and local levels are bound to hear the cries of the people and respond to their needs and suggestions. Elections must be conducted at regular intervals as suggested by the Independent body that conducts the elections at the different levels of the government. Any country can hold an election, but for an election to be free and fair requires a lot of organization, preparation, and training of political parties, electoral officials, and civil society organizations who monitor the process.

II. Participation: The Role of the Citizen in a Democracy

The key role of citizens in a democracy is to participate in civic life. Citizens have a responsibility of being aware of the public issues, to understand how their political leaders and elected representatives exercise their powers, and to express their own opinions and interests. Voting is another important civic duty of all citizens. But to vote wisely, every citizen must know about the agendas and propagandas of the different political parties and the potential candidates. Participation can also involve campaigning for a political party or candidate, standing as a candidate for political office, debating public issues, attending community meetings, petitioning the government, and even protesting. A vital form of participation comes through active participation in independent, non-governmental organizations, what we call “civil society.”

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These organizations represent a variety of interests and beliefs: farmers, workers, doctors, teachers, business owners, religious believers, women, students, human rights activists. It is important that women actively participate in politics and in civil society as well. This requires an effort by the organizations of society to educate women about their democratic rights and responsibilities, improve their political skills, represent their common interests, and involve them in political aspects of the policy making. Political parties are vital organizations in a democracy, and democracy is stronger when citizens become active members of these political parties. In a democracy, citizens are free to choose which party to support. But participation must be peaceful, respectful of the law, and tolerant of the different views of other groups and individuals.

III. The Rights of Citizens in a Democracy

In a democratic country, every citizen has certain rights available to them that cannot be infringed by anyone, not even by the state. These rights are guaranteed under international law. You have the right to have your own beliefs, and to say and write what you think. No one can tell you what you must think, believe, and say or not say. There is right to freedom of religion. Everyone is free to choose their own religion and to worship and practice their religion. Every individual has the right to enjoy their own culture, along with other members of their group, even if their group is a minority. There is freedom and pluralism in the mass media. You can choose between different sources of news and opinion to read in the newspapers, to hear on the radio, and to watch on television. You have the right to associate with other people, and to form and join organizations of your own choice, including trade unions. You are free to move and settle in any part within the territory or outside the territory. You have the right to assemble freely, and to protest against the government actions. However, certain restrictions are there as everyone has an obligation to exercise these rights peacefully, with respect for the law and for the rights of others.

IV. The Rule of Law

Democracy is a system of rule by laws, and not by individuals. In a democracy, the rule of law protects the rights of citizens, maintains order, and limits the power of government. All citizens are equal under the eyes of law. No one may be discriminated against on the basis of their race, religion, ethnic group, or gender. No one may be arrested, imprisoned, or exiled arbitrarily. If anyone is detained, you have the right to know the charges against you, and to be presumed innocent until proven guilty according to the law. Also anyone charged with a crime, has the right to a fair, speedy, and public trial by an impartial and competent court. No one may be taxed or prosecuted except by a law established in advance. No one is above the law, not even a king or an elected president. The law is fairly, impartially, and consistently enforced, by courts that are independent of the other branches of government. The rule of law places limits on the powers of government. No government official may violate these limits and no ruler, minister, or political party can tell a judge how to decide a case. Office holders cannot use their power to enrich themselves. Independent courts and commissions punish corruption, no matter who is guilty.
4. The Limits and Requirements for Democracy

“Democracy is being allowed to vote for the candidate you dislike the least”

-Robert Byrne

In the past, philosophers from Plato and Aristotle to Thomas Aquinas and Hobbes have considered democracy to be among the worst forms of government because it could easily be corrupted and result in injustice. The chief danger is that a majority can impose its will upon a minority in a way that violates their liberties. Thus during the twentieth century, besides liberal democracies, there were also dictators such as Hitler who came to power through the democratic process and totalitarian democracies like the Soviet Union, where the populace gave strong support to the regime at various times.

If a democracy is to work, citizens must not only participate and exercise their rights, they must also observe certain principles and rules of democratic conduct. People must respect the law and reject violence. Nothing ever justifies using violence against your political opponents, just on the grounds of conflicts of interests. Every citizen must respect the rights of his or her fellow citizens, and their dignity as a human being.

No one should denounce a political opponent as evil and illegitimate, just because they have different views. People should question the decisions of the government, but not reject the government’s authority. Every group has the right to practice its culture and to have some control over its own affairs, but each group should accept that it is a part of a democratic state. Everyone has a right to be heard. Don’t be so convinced of the rightness of your views that you refuse to see any merit in another position. Consider different interests and points of view.

When you make demands, you should understand that in a democracy, it is impossible for everyone to achieve everything they want. Democracy requires compromise. Groups with different interests and opinions must be willing to sit down with one another and negotiate.

If one group is always excluded and fails to be heard, it may turn against democracy in anger and frustration. Everyone who is willing to participate peacefully and respect the rights of others should have some say in the way the country is government.

5. Problems with democracy

In the twenty-first century a number of problems with democracy have emerged.

The eclipse of limited government. The aim of constitutional democracy was to limit government. The separation of powers was developed to prevent the arbitrary exercise of power, along with the rule of law, due process, and the distinction between public and private law. However, with the appearance of a universal franchise, it has seemed unnecessary to limit government. It is commonly asserted that if a government is elected by the majority of the people, it should have the right to pass any measure and enact any policy. Limiting the power of a legitimately elected government has come to appear undemocratic, thwarting of the will of the people, which is one of the problems originally identified by Socrates.

The rising influence of special interest groups. Modern elected governments often do not serve the agreed opinion of the majority, but instead serve numerous special interest groups who lobby for special treatment from the government. Such a relatively small group greatly benefits from legislation passed in its favor,
whereas the impact on the rest of the population is so small that it may not seem worthwhile to oppose it (or, the general population may simply be unaware of detrimental provisions in bills offered by special interest groups). Thus there is an increasing prevalence of bargaining democracy as opposed to representative democracy. Coalitions are formed of a multitude of special interests, each of which consents to the special benefits granted to other groups only at the price of their own special interests being equally considered. Group selfishness is thus a greater threat to democracy than individual selfishness. In many respects, Western democracy has come to be manipulated by lobbyists, or group interests, while the wishes of the majority are ignored. Worse, policies the majority would actively disapprove of, which further the interests only of elite minorities, are the ones enacted.

Government above the law. Although constitutionalists sought to limit government by the separation of powers, they did not separate the functions sufficiently. Thus, legislatures pass not only laws but are concerned with the business of government. They often pass legislation only suited to achieve the purposes of the moment. In a sense, they change the rules of the game so as to never lose. Thus there is no longer government under the law, since the government makes the law, often excluding itself and its representatives from that law. Placing the power of legislation proper and of governmental measures in the same hands has effectively brought a return to unlimited government. In this sense, the danger is that government exists for the maintenance of the ruling elite, regardless of party and country. Moreover, as with the U.S. Supreme Court, there is the problem of the judiciary evolving into a de facto legislative organ beyond which there is no appeal, by overturning laws approved by the legislative and executive branches.

Excessive partisanship and the politics of envy. In the past, when the political culture was still essentially Christian-based, politicians tended to behave in a relatively responsible way. With the decline of the Christian political culture and the rise of the politics of envy, the system is open to great abuse. Politicians promise to deal with social and economic problems, unaware that government cannot solve them and indeed is often the cause. They are tempted to bribe the electorate, pandering to their baser instincts, and sometimes to misplaced idealism, in order to be elected to solve such problems. The disconnect between campaign promises and actual policies enacted once elected is often wide.

6. What are elections?

"Elections belong to people"

Abraham Lincoln

Election is a democratic process where citizens over 18 years or above have the Right To Vote and elect candidates to represent them and their interests locally, nationally or internationally which is the concept of UNIVERSAL ADULT SUFFRAGE. The process is determined by a voting system, where citizens vote for one candidate of their choice. The candidate with the majority of votes is elected. Anyone who is enrolled on the Electoral Register is able to vote. 1) Elections make a fundamental contribution to democratic governance. Because direct democracy—a form of government in which political decisions are made directly by the entire body of qualified citizens—is impractical in most modern societies, democratic government must be conducted through representatives. Elections enable voters to select leaders and to hold them accountable.
for their performance in office. Accountability can be undermined when elected leaders do not care whether they are re-elected or when for historical or other reasons, one party or coalition is so dominant that there is effectively no choice for voters among alternative candidates, parties, or policies. Nevertheless, the possibility of controlling leaders by requiring them to submit to regular and periodic elections helps to solve the problem of succession in leadership and thus contributes to the continuation of democracy. 2) Elections serve as forums for the discussion of public issues and facilitate the expression of public opinion. Elections thus provide political education for citizens and ensure the responsiveness of democratic governments to the will of the people. They also serve to legitimize the acts of those who wield power, a function that is performed to some extent even by elections that are non-competitive. Elections serve a self-actualizing purpose by confirming the worth and dignity of individual citizens as human beings. Whatever other needs voters may have, participation in an election serves to reinforce their self-esteem and self-respect. Voting gives people an opportunity to have their say and, through expressing partisanship, to satisfy their need to feel a sense of belonging. Even non-voting satisfies the need of some people to express their alienation from the political community.

“We do not have government by the majority. We have government by the majority who participate”
– Thomas Jefferson

7. Elections in India
Elections are the essence of Indian democracy. They are bedrock of the Indian democracy. The mammoth Indian elections are conducted at various levels and in various phases under a multi-pronged strategy and includes elections to the Lok Sabha, the Council of States, the State Legislative Assemblies and the Panchayati Raj institutions. The first Lok Sabha elections were conducted in 1952. India’s six-week-long elections will cover the Himalayan range in the north, the Indian Ocean in the south, the Thar Desert in the west and the mangroves of the Sundarbans in the east. Presently general elections 2019 are being held in 7 phases for 543(out of 545) seats to constitute 17th Lok Sabha. This time the polling exercise, due to start on April 11 and to be completed by May 19, will cost an unprecedented Rs 50,000 crores ($7 billion), according to the New Delhi-based Centre for Media Studies.

8. The importance of elections in India for that matter, in any democracy are as follows:

Choice of leadership: Elections provide a way for the citizens of India to choose their leaders. They do so by casting their vote in favour of the candidate or party whose views appeal to them. This ensures that the
will of the people is reflected in the elected candidates.

Change of leadership: Elections in India are also a platform for the public to voice their resentment against a ruling party. By voting for other parties and helping elect a different government, citizens demonstrate that they possess ultimate authority.

Political participation: Elections open the door for new issues to be raised in public. If a citizen of India wishes to introduce reforms that are not the agenda of any of the parties, he or she is free to contest the elections either independently or by forming a new political party.

Self-corrective system: Because elections are a regular exercise, occurring every five years in India, the ruling parties are kept in check and made to consider the demands of the public. This works as a self-corrective system whereby political parties review their performance and try to appease the voters.

With a population of over 1.2 billion (according to the 2011 census) spread across 28 states and 7 union territories, India has a system of elections that is both daunting and praiseworthy.

9. Problems with election in India
The major problems that the elections face in India are the following:
• Conflict of interests between party due to multi-party system
• Vast diversity in the population gives rise to caste politics
• Criminalization of politics has become a major concern in the present day government

• Politics becomes hierarchical in certain families, which sometimes brings inefficient leaders to the front. Such political parties become one family dominated.
• Dominance of money power and Muscle power
• Financing of election exceeding the legal limit
• Booth capturing
• Intimidation of voters
• Buying Voters
• Tampered electoral rolls
• Large-scale rigging of elections
• Abuse of religion and caste in the enlistment of voters, etc

10. Correlation between democracy and elections
The election is a part of the political process in the democracy and for every political system also employs the election as a symbol of the democracy. The election is a part of the political process in the democracy that several people study when they are young or perceive it from the various media for a long time such that if there is no election, there is no democracy. So, this is an important symbol showing the picture of the liberal democracy at its best. The definition of “Democracy is the Election” which creates the meaning indifferent for all political system and indicates that the election is unavoidable process since if there is no election, that political regime will be the dictatorship. Thus, it is not surprising that if the citizen will pay attention on this point of view.

11. If not elections then what?
The biggest question any democracy would face is that, if there are no elections in a democracy then what would be the
alternative. Presently the most talked about alternative is ‘Sortition’. It is the use of random selection to populate assemblies or fill political positions. An assembly that uses sortition would be composed of people just like you and me: and it would be a representative random sample of people, making decisions in an informed, fair and deliberative setting. Sortition has a long history, going back at least to Ancient Athens, where selection by lot (from among all free, male citizens) was the principal way courts and councils were filled. For hundreds of years it was considered a fundamental aspect of democracy; it wasn’t until long after the French and American revolutions, as universal suffrage slowly became widespread, that the term "democracy" was re-christened to mean electoral democracy.  

The example of sortition from America Speaks (now defunct) and uses networked, facilitated small table deliberation to make decisions. Each table discusses proposals, with a facilitator making sure no one dominates and everyone gets his or her say, and a note-taker typing comments and decisions into a computer. A "theme team" can see what every table is discussing and summarizes the output, which is then presented to the entire assembly, who have individual voting keypads to priorities results. In this way the assembly can come to large group decisions. Stratified random sampling ensures that participants accurately reflect the community they are drawn from, unlike open meetings where often only socially privileged or more vocal people attend and dominate discussions. Stratified random sampling ensures that half the participants are women and half men, with proportional representation for the young and old, and across all geographical areas and educational levels.

Sortition would lessen the manipulations in then legislative assembly. For an instance, imagine choosing a legislature by sortation (random selectin) of people in the society or of everybody who has volunteered. For example, anyone might be added to the lot of volunteers by saying, “If I’m chosen I would love to serve”. Or we could set minimum or certain qualification requirements to be a part of the volunteers’ pool. Of course each person is part of a pool which has, say, 4 million other people in it. And let’s say we choose 400 of them to be in our legislature for a year. If we set it up right, the chances of somebody being able to manipulate that legislature are really small.

If this assembly formed a legislative parliament, then every 6 months or year a part of the assembly (say, one quarter) would be replaced with people randomly selected from the electoral roll, ensuring the assembly remained representative of the general populace. These representatives would be paid as politicians are paid now, and would serve one single term in office of two-four years.

12. Conclusion:

Post 1945 i.e. World War II, the democratic regimes in the world grew again. And the very dramatic shift towards a democratic world led to the breakdown of the Soviet Union in 1989.

In the modern world democracy has become the most adapted form of the government set up, and so is the process of conducting elections in these democracies. But due to major drawbacks in the elections process which leads to causing a threat to
the sustainability of the democratic regime, has led to the emergence of Sortition in the modern world. The most competent fact about this new emerging process of random selection i.e. Sortition is that nobody is in charge of who gets picked. And if the selection is done correctly it gets in the way of anybody trying to manipulate the political system. So, if the selection is done in its true essence nobody would know what is going to happen or what is going to show up as a result of the process of Sortition, which would thereby steer to fall in the drawbacks that the general election process faces.

Any system be it democracy or any other form of government, if filled with high degree of corruption, sortition offers a very powerful lever to shift it. Random selection is the appropriate method for distributing public office when all citizens have equal claims to that office and there is not enough to go around. Universal distribution is more appropriate when all claimants have equal claims to the office and there is enough to go around (as with universal suffrage, for example). Election (or possibly other procedures, such as appointment) makes sense when citizens do not enjoy equal claims to the office and that office is in scarce supply. This approach captures a crucial component of democratic equality. Different understandings of democratic equality lay behind sortition and election. Each might be appropriate under different circumstances, but both place rights-based constraints on the design of a democratic political system.

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