Contemporary Socio-legal Issues
A Roadmap to Viksit Bharat

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Foreword

It is with great enthusiasm that I present this foreword for the edited book "Contemporary Socio-legal Issues: A Roadmap to Viksit Bharat", a distinguished scholarly contribution. This book stands as a testament to the dedication, intellectual rigor, and research acumen of academicians who continuously strive to explore, analyse, and contribute to the ever-evolving academic and policy landscape of our nation.

The thematic focus of this volume aligns closely with India's vision of *Viksit Bharat*, a progressive and self-reliant nation. The diverse range of topics covered in this book—from legal protections for human rights and environmental sustainability to women's empowerment and pedagogical interventions—reflects the multidimensional approach required to address contemporary societal challenges. The authors, through their well-researched and thought-provoking contributions, have successfully engaged with critical issues that are not only relevant to academia but also crucial for policymakers, practitioners, and students.

One of the defining features of this book is its interdisciplinary nature. By bringing together perspectives from law, education, environmental studies, and social sciences, the contributors have fostered a holistic understanding of the pressing challenges faced by modern India. The discussions on judicial approaches to climate change, refugee rights, corporate accountability in ecocide, and simultaneous elections in India exemplify the kind of scholarly inquiry that can drive meaningful change. These contributions are not just theoretical discussions but also practical explorations aimed at finding viable solutions to the complexities of governance, sustainability, and social justice.

As India marches towards becoming a global powerhouse, it is imperative that academic institutions and scholars play a proactive role in shaping discourse and influencing policy. This book is an excellent initiative in that direction, providing critical insights that will undoubtedly benefit scholars, students, and decision-makers alike. I commend the editorial team for curating such an insightful volume and applaud the contributors for their dedication to knowledge creation and dissemination.

I am confident that this book will serve as a valuable resource for those engaged in research, policy formulation, and governance. It is my sincere hope that it will inspire further academic inquiry and contribute to the ongoing efforts toward building a more inclusive, sustainable, and progressive India.

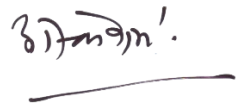
Dr. Rajinder Verma
Pro Vice Chancellor, Himachal Pradesh University
Dean and Chairman, Department of Laws, Himachal Pradesh University

Message

It gives me immense pleasure to introduce this edited volume titled as "Contemporary Socio-legal Issues: A Roadmap to *Viksit Bharat*", a remarkable compilation of scholarly contributions from our distinguished faculty. This book represents our continued resolve to encourage academic excellence and intellectual pursuit on critical issues that have the potential to transform the future of our nation in *Viksit Bharat* vision. I am happy to see the result of the careful, determined efforts and expertise used to compile this edited book. The insights and expert analysis provided by such credible authors will surely add depth to the world of academic literature.

From legal frameworks to environmental sustainability, women's empowerment, sports governance and the diversity of perspectives featured in this volume demonstrate thought leadership of our faculty. The book contributes to the academic dimensions of scholarship and also resonates with the role an institution is expected to play to bring the societal change.

Congratulations to the editorial team for its commitment to make this work a reality and to the authors for their enlightening contributions. I am confident that this book inspire scholars, policymakers, students and enriches the joint journey toward a progressive and inclusive India.



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Her core research areas include Environmental Law and Corporate Law. Dr. Thakur has contributed over fifteen scholarly articles to reputed national and international journals, including Scopus-indexed and peer-reviewed publications. She has authored a book titled "Doctrine of Ultra Vires" and a book chapter on Intellectual Property Rights.

In her academic journey, she has guided several postgraduate and undergraduate dissertations and is currently supervising doctoral research. Her work reflects a strong commitment to interdisciplinary legal studies and social relevance in legal education."

Kaushal Pandey is an academician and researcher in legal domain. Currently, he is serving at the School of Law, Graphic Era Hill University, Dehradun. He is pursuing a Ph.D. in Law, focusing on intellectual property rights and their intersection with startups and innovation. He has contributed and published in the journal of repute on wide topics ranging from IP Laws, RTI Laws, startups and Innovation etc., Kaushal has participated in Patent Law and Global Public Health course jointly hosted by WIPO and Harvard Law School.

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Contents

Chapter – 1

Pedagogical Innovations in School Education for A Viksit Bharat

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Abstract

The current paper examines the latest scenario of learning techniques in institutions focusing on fulfilling the goals of viksit bharat. Students nowadays face multiple issues like inadequate personal attention from working parents, the culture of nuclear families, pressure of studies, peer pressure, competitive needs and many more challenges. They are also surrounded by machines and gadgets, and it becomes critical to mark a boundary between their use and misuse, often their excessive usage leads to obsessions. In the longer run problems like loneliness, stress, and lack of sharing experiences among peers and family emerge in students. To cope up with these issues, the educational context is transformed with enhanced effectiveness. It is important to understand how the learning process takes place in educational Institutions to prepare the young generation 21st century ready and its impact on stakeholders. The focus of education has shifted from mere rote learning to experiential, creative and critical learning.

Keywords: Active learning pedagogy, Child-centric teaching methods, Experiential learning, Viksit Bharat.

Introduction

The education is the core of society. It nurtures a human being as a social being with the inculcation of all the virtues and values in the letter and spirit. The roots of any education system lie in its philosophical foundation. *Philosophy* says Kautilya, "is the lamp of all the sciences, the means of performing all the works, and the support of all the duties" (Radhakrishnan, S., 1924). It has been a matter of great fortune that India has always been a torchbearer in the field of education since its evolution as a nation. Our historical base has dimensions like ancient, medieval, and modern history. In all the phases, education has served as a substantial component for transition among these phases.

Since time immortal, we have been enchanted by the fascinating tales of *Gurukuls* where young princes of kingdoms used to avail priceless guidance and skills from legendary *Gurus or Teachers.* Their ways were traditional and in collaboration with nature. The values like simplicity, excellence and bravery were taught in the serene atmosphere of forests. The historical evidence is proof that these educated princes brought glory and grace to the nation, which is a showcase of their educational upbringing.

Later, with the advent of further institutionalization, institutions of education evolved not only as centers of academic excellence but also a hub of cultural enrichment with encouragement to arts like singing,

dancing, and vocational, instrumental trainings. Few of these notable institutions included University of Takshashila, Nalanda University, Valabhi University, Odantapuri University, Somapura Mahavihara, Bikrampur Viharaetc. The heritage carried forward by these centers led to development of India as fondly called '*sonekichidiya.*'

With the onset of British invasion practices which started from entry of Britishers in 1600 to final eviction of Britishers in 1947, the biggest loss suffered by India was westernization of the educational system which certainly benefitted by its best practices but at the same time it vanished the traditional educational norms and values of India. The national character of the educational system was disturbed by sudden changes in the educational mechanisms.

The pedagogical interventions or the measures are meant to make the education interesting and comprehensive for all students. These values were already imbibed in Indian system of education where the students were taught in connection with the nature and through practical exposure. Although western ways of education brought new technology, it also damaged educational conventions by sidelining the basic norms and virtues of education.

Furthermore, in recent years the global problems in the form of pandemic like Corona emerged which halted the pace of education. Especially it incurred loss to toddlers who were at their basic foundational stage of learning. A fair glance at these crucial factors related to education is required to understand the role of pedagogical interventions in the education system with special emphasis on school education.

Meaning of Pedagogical Interventions

The term, "Pedagogy" is the art and science of teaching children. It is a systematic approach towards academic goals and objectives. Pedagogy is a method of teaching in which both theory and practice are methods of learning. Pedagogy is influenced by one's belief pattern and their different learning styles. As an essential component, it also includes establishing meaningful classroom relationships to build on prior learning acquired by the students. It also targets on developing the in-built skill set of the students by encouraging them to foster in their field of interest. A balanced approach is required to keep the students focused on achieving these objectives.

Pedagogy enables the students to understand the subject and in application of learning in their daily life, i.e. applied learning methodology. Thus, Pedagogy is the art of maximizing the benefits of education by introducing creative and strategic methods of learning. The response of students towards these initiatives provides evidence of the effectiveness of the pedagogical measures introduced in education.

Pedagogical Interventions in Education

The educational reforms are directed towards compliance with the government initiatives undertaken in this direction. The launch of the new education Policy in 2020 is one such measure that provides various milestones to be achieved in the educational system. It provides various ways to improve the educational system and achieve the desired milestones.

The onset of the coronavirus pandemic in 2020 also served as one of the reasons for the introduction of such reform measures. The coronavirus pandemic had a direct impact on the educational development of students. Many toddlers who were at their foundational stages of learning could not get access to playschools,

or preschools and were too young to learn from online methods of teaching. The students of higher classes also suffered as online classes have less impact than offline classes. As the coronavirus pandemic intensity decreased in subsequent waves, it became pertinent to introduce a student-friendly educational approach with modern ways of education including Active learning pedagogy, Experiential learning, and Child-centric learning methods.

In this row, the National Education Policy 2020 was launched on July 29, 2020 to bring transformation in educational structure and bring more positive results in school and higher education. The foundational pillars of NEP 2020 include Access, Equity, Quality, Affordability, and Accountability. The framework of this policy is aligned with the 2030 Agenda for Sustainable Development. The objective of the National Education Policy (NEP) is to make both school and college education more holistic, flexible, and multidisciplinary, suited to 21st-century needs. It also strives to explore the unique talents and characteristics of students through creative learning methods.

New Policy aims for universalization of education from pre-school to secondary level with 100% Gross Enrollment Ratio in school education by 2030. New Policy promotes Multilingualism in both schools and Higher Education.

Along with components covered under the New Education Policy, initiatives undertaken by retired volunteers, NGOs, Social workers also contribute towards the upgradation of educational system in schools. Other schemes of the Government like the Mid-day meal scheme, Samagra Shiksha scheme, Sukanya Samriddhi Yojana, Beti Bachao, and Beti Padhao scheme are a few among many efforts for educational reforms. School education holds special importance concerning pedagogical interventions. In schooling years kids learn to arrange concepts in their mind, according to priorities to the learning as per their interests. Right pedagogical methods of teaching are instrumental to ensure better upbringing and skill enhancement of students at school. School education is the basic foundation for academic excellence achieved by any individual.

The typical learning methods in school were earlier rote learning, where no practical exposure or conceptual understanding was involved, and repetition of the concept was done so that it is memorized for examination. Along with the introduction of new learning methodologies, pedagogical interventions also aim to bring uniformity in education and allied facilities provided by private schools and government schools. The students who cannot afford hefty fees owing to their financial constraints and social background must not be the bearer of the negligence and lesser ways of education. The government is already releasing funds and making provisions through schemes for the upliftment of Government schools. The channelization of these funds and schemes is required. Along with it, a break is required in a mindset that government schools cannot excel in comparison to private schools and are a means of lucrative salaries to teaching staff only with no quality education for students.

Techniques of Pedagogical Learning

There are several ways of innovative learning. Four major principles [Wise, A. F. (2014)] are as follows:

Integration: The principle of Integration is to merge the important aspects of learning to present a holistic viewpoint or picture of a concept to students. Reference to local context is taken to make the learning comprehensive for the students. It is to create a wider picture of conceptual understanding in the mindset of

students. Effective teaching skills are a must to integrate the learning methodology to impart crucial educational skills. Qualified, professional, and passionate teachers can integrate teaching strategies efficiently.

Agency: It is a tool that is used to introduce pedagogical interventions in the educational structure. Individuals, groups, or institutions who are part of the agency component must be motivated intrinsically to undertake initiatives for educational upliftment in schools. Encouraging students to participate in all aspects of learning is very important for the successful utilization of all educational tools or mechanisms. Keeping the focus of the students towards the right perspective and avoiding distraction is also part of this principle.

Reference Frame: A reference frame is to refer. While learning, there are many comparative frames in which students can assess their competencies. They can also refer to their personal development in the past and their present performance. They can also assess in comparison to the general competency level of their class. A reference frame is required to ensure sufficient development and knowledge enhancement of the students.

Dialogue: The principle of Dialogue promotes sharing among the significant stakeholders of education to achieve wider goals. While learning, there may be many conflicts that may arise in the process of better understanding the concepts. There may be conflicts about different viewpoints on a single concept as well. The dialogue is meant to promote negotiation and acceptance as key skills to reach an optimum point of understanding in such situations.

Apart from these specialized models for emphasizing the important milestones of learning sequentially some simple techniques include the introduction of effective Teaching Learning material and their usage, natural ways to impart learning like in theme-based parks like science parks, maths parks, creative play areas for toddlers, activity and confidential profile making of students to make individual improvement in their school life, hiring more passionate and genius teachers than to hire teachers who consider teaching as a means of earning only, continuous assessment of teachers, management, and schools based on feedback received from the students, launch of monitoring and audit initiatives to check the progress achieved by Government's initiatives towards the education sector.

Conclusion

The overall thrust of curriculum and pedagogy reform across all stages is to move the education system toward real understanding. It includes learning methodology and moving away from the culture of rote learning. The National Education Policy 2020 emphasized that the aim of education is not only cognitive development but also to build character and to create holistic and well-rounded individuals equipped with 21st-century skills. The curriculum context is being supplemented with such activities and projects to make space for critical thinking, holistic inquiry-based, discussion-based, and analysis-based learning.

In addition to proficiency in a language, a scientific skill that includes scientific temper, evidence-based thinking, creativity, and innovation, the education sector has seen a paradigm shift in the context of the teaching and learning process. The step-by-step learning is the basis for pedagogical interventions. The overlapping of concepts in the mind leads to chaos. In school education sensitive issues prevail in terms of student's perceptions and real-world challenges. The pedagogy or the method of teaching makes way for easy resolution of such issues. Education aims to make things easier and better sustainable ways of living.

Education is more about understanding and comprehension. It is the sacred duty of all the learned individuals and organizations to impart educational skills to students in the most interesting, creative, and practical way. The theoretical ways of teaching are not effective in achieving higher goals of personality development. The pedagogical interventions in school education have miles to go as the goals keep on multiplying with the ongoing efforts.

The government is becoming more vigilant and aware of the issues and problems faced in the achievement of educational objectives. However, there is a need for effective collaboration among all stakeholders and optimum utilization of resources to ensure the fulfillment of wider objectives. The school students are at the most basic level in the educational structure. If they are effectively provided with meaningful education, it is a great achievement for all individuals and organizations associated with school education.

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Chapter 2

A Study on Women Empowerment in India – Highlighting the Path to Viksit Bharat

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Abstract

The empowerment of women in India is a dynamic and multifaceted process that is designed to improve the social, economic, political, and cultural status of women in a patriarchal society. For the past few decades, India has made substantial progress in the empowerment of women by means of a variety of grassroots movements, policy initiatives, and legislative instruments. Key areas of emphasis include political representation, economic participation, health, and education. Women's empowerment is the process of empowering women to make decisions, take charge of their lives, and shape the trajectory of their own development. It incorporates a variety of issues, such as social, economic, political, and cultural dimensions. Empowerment is designed to eradicate disparities and equip women with the resources, opportunities, and self-assurance necessary to assert their rights and engage completely in society.

In spite of progress, women in India continue to encounter systemic obstacles, such as economic inequality, limited access to education and healthcare, and gender-based violence. The country's dedication to the advancement of gender equality is underscored by legislative frameworks such as the Protection of Women from Domestic Violence Act and the Panchayati Raj Act, which allocate seats for women in local governance. Women's rights and protections have been further bolstered by landmark judicial rulings, including Vishaka v. State of Rajasthan. The journey towards women's empowerment is a continuous process that necessitates collective action to guarantee that women can completely realise their rights and potential in all aspects of life.

Research Gap:

Economic or political empowerment is frequently the primary focus of existing measures, which neglect psychological, cultural, or social dimensions. While the majority of research concentrates on the immediate results of empowerment initiatives, there is inadequate evidence regarding their long-term sustainability. A narrow concentration on workplace and political empowerment, which neglects empowerment in other domains such as family, education, and health.

Research Objectives

- To examine the historical context of women's empowerment in India.
- To investigate the laws that pertain to women's liberties.
- To investigate the extent to which women are involved in politics in India.

Methodology

This investigation will implement a mixed-methods approach that integrates quantitative and qualitative research methodologies to offer a thorough examination of women's empowerment in India, emphasising the path to Viksit Bharat.

Key Findings

Some of the primary discoveries of this paper include the following:

- The economic participation of women has a substantial impact on the well-being of families, the reduction of poverty, and the improvement of household income.
- Education is a primary factor in the empowerment of women, as it increases their access to better opportunities and decision-making authority.
- More inclusive and equitable policies are the result of women's participation in leadership positions and governance.

Keywords: Women's rights – legislation- judgements- women's protection - political representation.

Introduction

"No struggle can ever be successful without the participation of women in tandem with men." The universe is governed by two distinct powers. One is the sword, while the other is the pen. There is a third power that surpasses both: that of women. _ Malala Yousafzai.

Women's empowerment is the process of empowering women to make decisions, take charge of their lives, and shape the trajectory of their own development. It incorporates a variety of issues, such as social, economic, political, and cultural dimensions. Empowerment is designed to eradicate disparities and equip women with the resources, opportunities, and self-assurance necessary to assert their rights and engage completely in society. Sustainable development is contingent upon the empowerment of women, which is not only a matter of social justice. Research indicates that societies that prioritise gender equality are more stable, prosperous, and healthy. Empowering women results in improved economic performance, improved health outcomes for families, and increased community resilience. Since ancient India, Indian women have been subjected to disparate treatment. In the present day, however, the tides are shifting, and this chapter illuminates the ways In which Indian women are surmounting all obstacles and achieving the highest level of success.

The Historical Context of Women's Empowerment in India

The historical context of women's empowerment in India is intricate and extensive, having been influenced by cultural, social, and political dynamics that have evolved over the course of centuries. The following is a summary of the primary phases and developments:

Mediaeval and Ancient Periods

Diverse Roles: In ancient India, women were assigned a variety of responsibilities within society. Texts such as the Rigveda honour women as figures of knowledge and reverence. Nevertheless, subsequent texts began to adhere to patriarchal norms, which limited the rights and liberties of women.

Mediaeval Practices: The mediaeval period saw the widespread implementation of practices such as child marriage, purdah (seclusion of women), and Sati (the burning of widows), which significantly reduced the autonomy and rights of women.

Social Reform Movements of the Nineteenth Century

Awakening: The 19th century witnessed the emergence of social reform movements that were designed to rectify the injustices that were being endured by women. Campaigning against practices such as child marriage and Sati, reformers such as Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar promoted women's legal rights and education.

Legislative Changes: The Widow Remarriage Act (1856) and the Child Marriage Restraint Act (1929) were significant legislative changes that improved the status of women in society.

Nationalist Movement (Early 20th Century)

Active Participation: Women were instrumental in the Indian independence movement, conducting protests and advocating for both national freedom and women's rights. Sarojini Naidu and Kamaladevi Chattopadhyay were among the prominent figures who played a critical role in this endeavour.

Emerging Consciousness: The period witnessed a rise in awareness of women's issues, as organisations were established to resolve social injustices and promote gender equality.

Post-Independence Era (1947-1960s)

Constitutional Guarantees: The Indian Constitution, which was adopted in 1950, established fundamental rights and equality, prohibiting gender-based discrimination and allowing for affirmative action.

Key Legislation: The Hindu Succession Act (1956) was one example of legislation that was designed to enhance the legal status and inheritance rights of women.

Feminism's Second Wave (1970s–1980s)

Grassroots Movements: These movements were established to address issues such as domestic violence, dowries, and sexual harassment. Advocates advocated for legislative reforms and heightened public awareness of women's rights. The Dowry Prohibition Act (1961) and the Vishaka Guidelines (1997) were two

critical measures in the fight against gender-based violence, as they were established to prevent workplace harassment.

New Laws:

Ongoing initiatives to safeguard and empower women are reflected in laws like the Sexual Harassment of Women at Workplace Act (2013) and the Protection of Women from Domestic Violence Act (2005).

Growing Activism: NGOs and civil society groups fighting for women's rights on a range of subjects, including health, education, and economic empowerment, became more prevalent in the 1990s. Present Situation and Prospects• Persistent Challenges: Despite significant progress, economic disparity, cultural prejudices, and gender-based violence persist.

Digital Empowerment: As technology advances, women's empowerment encounters both opportunities and obstacles. Although it increases the accessibility of information and services, it also exposes them to new forms of exploitation.

Legal Framework for The Protection of Women in India

The Constitution of India, 1950 : A number of constitutional provisions and legal frameworks in India are designed to safeguard the rights of women and promote gender equality. The following are the primary provisions:

Fundamental Rights

1. Article 14 ensures that all individuals, including women, are afforded equal protection of the law and equality before the law.
2. Article 15(1): Prohibits discrimination based on religion, race, caste, sex, or place of birth.
3. Article 15(3): Enables the state to establish unique provisions for women and children.
4. Article 16: Prohibits discrimination based on sex and guarantees equal opportunity in public employment.

Directive Principles of State Policy

5. Article 39(a): Requires the state to guarantee the right to an adequate means of subsistence for all citizens, ensuring that men and women receive equal compensation for equivalent labour.
6. Article 39€: Ensures that women are not compelled to perform work that is unsuitable for them, thereby promoting the protection of their health and vitality.
7. Article 42: Requires the establishment of equitable and humane working conditions and maternity leave.

Additional Articles That May Be Relevant

8. Article 51: Implicitly incorporates gender equality, as it encourages the state to foster harmony and the spirit of common brotherhood among all individuals.

9. Article 243D guarantees the representation of women in local bodies, thereby facilitating their involvement in governance.

The Hindu Succession Act of 1956

This Act guarantees women the same rights to inherit ancestral property as males, thereby granting daughters the same rights as sons in Hindu families.

The Dowry Prohibition Act of 1961

This Act addresses a significant social issue that contributes to gender discrimination by prohibiting the giving or receipt of dowry and imposing penalties on those who demand or give dowry.

The Equal Remuneration Act of 1976

This Act guarantees that men and women receive equal compensation for equivalent work and prohibits gender-based discrimination in remuneration.

The Maternity Benefit Act of 1961

This Act guarantees the rights of women during pregnancy and childbirth by providing maternity leave and benefits to women in specific establishments.

The Protection of Women from Domestic Violence Act, 2005

This Act safeguards women from domestic violence by offering legal assistance and support to those who have been abused.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

This Act mandates the establishment of Internal Complaints Committees in organisations to address sexual harassment in the workplace and ensure a safe working environment.

The Prohibition of Child Marriage Act, 2006

This Act safeguards girls from early and forced marriages by prohibiting child marriage and imposing penalties on those who indulge in or facilitate child marriages.

The Criminal Law (Amendment) Act of 2013

This Act reinforces laws against sexual offences by incorporating amendments to define and punish a variety of forms of sexual violence, such as acid assaults and gang rape.

Indian Programs for The Empowerment of Women

In India, government initiatives to empower women have enhanced the socioeconomic status of women and fostered gender equality, affecting all aspects of their lives. These schemes have the following substantial consequences:

Enhanced Education Accessibility

Beti Bachao Beti Padhao: This initiative endeavours to promote girls' education and combat gender bias. It has increased awareness of the importance of education for females and has led to an increase in the number of students enrolling in school.

Grants and Incentives: A variety of state-level grants for females have enabled a greater number of women to enrol in professional and technical courses.

Economic Empowerment

Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA): This program has provided women in rural areas with employment opportunities, enabling them to contribute to domestic income and achieve financial independence.

SHGs or self-help groups, are promoted by initiatives such as the National Rural Livelihoods Mission (NRLM), which enable women to enhance their economic status by fostering financial literacy and entrepreneurship.

Nutrition and Health

National Health Mission (NHM): This initiative has enhanced the availability of maternal and child health services, thereby reduced maternal and neonatal mortality rates and enhanced the overall health and well-being of women.

Pradhan Mantri Matru Vandana Yojana: Offers financial assistance to expectant and lactating women in order to motivate them to access healthcare services and enhance their nutritional status.

Political Engagement

Reservation for Women in Panchayati Raj: The inclusion of a 33% reservation for women in local governance has resulted in a greater number of women in decision-making entities, thereby enabling them to engage in community development and politics.

Protection and Safety

- One Stop Centres: These facilities enhance the security and protection of women who have been the victims of violence by providing support services, including medical, legal, and psychological assistance.
- Women Helpline (181): This initiative has established a nationwide helpline for women to register complaints about harassment, violence, and other issues in order to increase awareness and facilitate access to support.

Social Awareness and Transformation

Beti Bachao Beti Padhao: This initiative has not only promoted education but has also cultivated a more comprehensive understanding of the value of females and the discrimination against them in society, thereby altering attitudes and diminishing gender bias.

Skill Development and Entrepreneurship

- Startup India and Stand-Up India: These initiatives foster self-employment and creativity in female entrepreneurs by providing them with mentorship and capital.
- The Skill India Mission aims to enhance the capabilities of women in a variety of disciplines to facilitate their entry into the workforce and increase their economic participation.

Empowerment through Digital

- Digital India Initiative: Promotes the digital literacy of women by providing them with access to technology and information that can enhance their employment and educational opportunities.

Indian Policies on The Empowerment of Women

- **The National Policy for Women's Empowerment**

  The National Policy for Empowerment of Women, which was adopted by the Indian government on March 20, 2001, was designed to eradicate all forms of discrimination against women and to foster their advancement, development, and empowerment. The objective of all government policies and programs is to attain inclusive growth, with a particular emphasis on women, in accordance with the National Policy for Empowerment of Women.

  It was determined that the processes that facilitate women's overall development required reinforcement due to the long-term nature of the issues that influence them. This was accomplished by emphasising a coordinated approach to the implementation of the relevant Ministries' and Departments' initiatives and by cultivating an environment that is conducive to social change. On March 8, 2010, the government established the National Mission for Empowerment of Women with the objective of consolidating the policies and initiatives of the Indian government's various Ministries and Departments, as well as those of the State Governments and Union Territories. This was done in light of the aforementioned.

  Additionally, a High-Level Committee to Study the Status of Women in the Nation has been established by the Indian government since 1989. The committee's responsibilities include the development of appropriate policy interventions that are based on a current assessment of the requirements of women, among other things.

- **The National Commission for Women**

  The National Commission for Women (NCW) was established in 1992 in India with the objective of assessing the legal and constitutional safeguards for women, assessing their impact, and proposing corrective measures to address concerns regarding women's rights and empowerment.

The Commission's Primary Functions and Features

1. Advisory Function: The NCW offers the government guidance on legislative and policy matters that affect women.

2. Investigational Authority: The commission is authorised to investigate complaints and instances of violence and prejudice against women, in addition to suggesting action against offenders.

3. Research and Statistics Collection: The NCW conducts research and compiles statistics on women's issues to bolster advocacy and policy.

4. Public awareness: It endeavours to increase public awareness of the rights and obstacles faced by women through campaigns, conferences, and outreach initiatives.

5. Monitoring Implementation: The commission supervises the implementation of laws and policies that pertain to women's rights to ensure that they are implemented correctly.

6. Legislative Change Recommendations: The NCW recommends the amendment of existing laws and the introduction of new ones to safeguard and empower women.

World Policies Regarding the Empowerment of Women

The objective of numerous international policies and frameworks is to advance gender equality and women's empowerment. The following are several critical global policies and agreements:

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- The United Nations General Assembly adopted this resolution in 1979.
- CEDAW is frequently referred to as the "international bill of rights for women" and establishes a framework for the eradication of discrimination against women and the attainment of equality.

Beijing Declaration and Platform for Action (1995)

- As a consequence of the Fourth World Conference on Women.
- This policy agenda is exhaustive and delineates strategic objectives and actions to advance women's rights in key areas, including education, health, economic empowerment, and violence against women.

Sustainable Development Goals (SDGs)

- The SDGs, which were adopted in 2015, include a specific objective (objective 5) that is dedicated to the empowerment of all women and girls and the attainment of gender equality.
- Targets consist of the complete elimination of violence, the cessation of discrimination, and the guarantee of full participation in decision-making and leadership.

Resolution 1325 of the United Nations Security Council (2000)

- Acknowledges the significance of women's involvement in peace and security processes.
- Demands that women be included in peace-building and decision-making initiatives.
- Conventions of the International Labour Organisation (ILO)
- Convention No. 111 on discrimination in employment and Convention No. 100 on equal remuneration are among the numerous conventions that emphasise gender equality in the workplace.

The Global Action on Women and Health

- An initiative that prioritises the health and well-being of women as essential components of development, with a particular emphasis on reproductive rights, maternal health, and access to healthcare.

The 2030 Agenda for Sustainable Development

- This agenda underscores the necessity of gender equality in order to achieve sustainable development and advocates for the systematic empowerment of women and girls.

Representation and Political Participation

Although there have been substantial advancements in the representation of women in politics in India, obstacles continue to exist at the local, state, and national levels. The following is a comprehensive examination:

At the local level

- Panchayati Raj System: The 73rd Amendment, which was implemented in 1992, required a minimum of 33% reservation for women in local governance bodies (panchayats). This has resulted in a substantial increase in the representation of women in rural areas.
- Statistics: According to recent data, women occupy approximately 45% of the seats in panchayat raj institutions, which indicates a significant level of grassroots engagement.
- Impact: The prioritisation of sanitation, education, and health by women in local politics contributes to the empowerment and development of the community.

At the state level

- Women's representation in state legislatures has been more inconsistent. As of the most recent elections, the proportion of women in state assemblies is approximately 10-15%, with some states performing better than others.
- Barriers: These include limited party support, a paucity of financial resources, and patriarchal attitudes. Women from marginalised communities encounter additional obstacles.
- State Initiatives: While certain states, such as Kerala and Bihar, have implemented policies and initiatives to enhance women's political engagement, the results have been inconsistent.

At the national level

- Parliamentary Representation: Currently, women hold approximately 14% of seats in the Lok Sabha (the lower house of Parliament) and approximately 11% in the Rajya Sabha (the upper house). These figures are progressively increasing, but they continue to be low in comparison to the global average.
- Gender Quotas: The Women's Reservation Bill, which is currently under consideration, is designed to allocate 33% of seats in Parliament and state assemblies to women. Nevertheless, it has yet to be enacted due to political obstacles.

- Influence of Women Leaders: Although prominent women leaders, including Indira Gandhi, Sonia Gandhi, and Mamata Banerjee, have significantly influenced the political landscape, they are the exception rather than the rule.

Social and Cultural Factors

- Patriarchal Norms: Women are frequently discouraged from engaging in politics due to the deep-seated cultural norms that consider it a masculine domain.
- Education and Awareness: The political participation of women is being positively impacted by their increased educational attainment; however, it is still essential to be aware of their political rights.

Prospective Courses of Action

- Policy Reforms: The Women's Reservation Bill and policies that support female candidates can improve representation.
- Grassroots Mobilisation: The empowerment of women and the facilitation of their entry into politics can be achieved by encouraging grassroots movements and women's organisations.
- Training and mentorship programs for prospective female politicians can assist in bridging the disparity in confidence and skills.
- The implementation of reservations for women in local governance in India, particularly through the 73rd Amendment to the Constitution in 1992, has had a profound impact. The following is an examination of its consequences:

Enhanced Representation

- Quantitative Growth: The representation of women in local governance has been substantially enhanced by the reservation of 33% of seats in panchayat raj institutions. This has resulted in a more inclusive decision-making process at the grassroots level.
- Empowerment: The visibility and credibility that women who hold these positions have achieved have motivated a greater number of women to engage in politics.

Prioritisation and Policy Focus

- Local Concerns: Women representatives frequently prioritise issues that directly impact their communities, including health, sanitation, education, and women's rights. Their presence has the potential to redirect the focus of governance towards policies that are more inclusive.
- Sustainable Development: The overall development of communities has been positively impacted by women-led initiatives in areas such as education and health.

Disrupting Gender Stereotypes

- Social Change: The progressive alteration of societal attitudes towards female leadership is facilitated by the increased visibility of women in leadership roles, which challenges traditional gender norms and perceptions about women's capabilities.

- Role Models: Successful women leaders can serve as role models, inspiring young females to pursue leadership positions.

Leadership Development and Capacity Building

- Skill Development: In an effort to fortify the confidence and governance abilities of women who have been elected to local bodies, numerous state administrations and NGOs have implemented training programs.
- Networking Opportunities: Women can enhance their influence and capabilities by participating in local governance, which enables them to establish connections with other leaders.

Obstacles and Restrictions

- Sarpanch Pati System: In certain instances, women serve as intermediaries for their male relatives (frequently referred to as "sarpanch pati"), which undermines their efficacy and agency in governance.
- Cultural Barriers: The effectiveness of women's roles can be restricted in rural areas by patriarchal norms, which can still restrict their active participation and decision-making authority.

Influence on Governance

- Accountability and Transparency: The inclusion of women has been associated with increased accountability in local governance. Women leaders are frequently perceived as more approachable and attentive to the requirements of the community.
- Community Engagement: The mobilisation of resources for local development and the promotion of community participation have been significantly facilitated by women in local governance.

Effects on Gender Equality in the Long Term

- Civic Engagement: The involvement of women in municipal governance fosters a greater sense of civic engagement and participation among women in other aspects of public life.
- Influence on Higher Politics: The experience acquired at the local level can encourage women to pursue higher political positions, thereby promoting gender equality in politics.

Case Study Relating To The Empowerment Of Women

Several groundbreaking case statutes in India have made a substantial contribution to the empowerment of women and the establishment of gender equality. The following is a summary of several noteworthy cases:

Vishaka v. State of Rajasthan (1997)

- Background: This case was initiated in response to the gang rape of a social worker, which resulted in widespread outrage.
- Judgement: The Supreme Court established guidelines to prevent sexual harassment of women in the workplace, acknowledging that such harassment infringes upon the fundamental rights of women to equality and dignity as outlined in Articles 14, 15, and 21 of the Constitution.

- Impact: The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was enacted as a result of this case.

Mohini Jain v. State of Karnataka (1992)

- Background: The Supreme Court ruled in this case that the right to education is a fundamental right under Article 21.
- Decision: The Court underscored that the denial of education to females is a violation of their rights.
- Impact: This decision served to underscore the significance of women's educational rights, thereby influencing policies that were designed to enhance female literacy and education.

Shayara Bano v. Union of India (2017)

- Context: This case contested the practice of immediate triple talaq (talaq-e-biddat) among Muslims.
- Decision: The Supreme Court pronounced the practice to be unconstitutional, asserting that it infringed upon the fundamental rights of Muslim women.
- Impact: This groundbreaking decision resulted in legislative modifications, such as the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

Indira Sawhney v. Union of India (1992)

- Background: This case delineated the issue of reservations for underprivileged groups in educational institutions and government employment.
- Decision: The Supreme Court maintained the principle of affirmative action, underscoring the necessity of reservations for women and marginalised groups.
- Impact: This case has been crucial in the promotion of the incorporation of women in affirmative action policies.

Nandini Sundar v. State of Chhattisgarh (2011)

- Background: The rights of indigenous women and their protection from discrimination and violence were the focus of this case.
- Judgement: The Supreme Court emphasised the significance of protecting women's rights in conflict zones and condemned violence against women.
- Impact: It underscored the necessity of policies that safeguard vulnerable women in conflict zones.

Laxmi v. Union of India (2014)

- Background: A survivor of an acid assault filed this case in order to obtain justice and assistance.
- Judgement: The Supreme Court mandated that the government implement stringent regulations regarding the sale of acid and offer medical treatment and rehabilitation to survivors of acid attacks.
- Impact: The ruling resulted in the modification of laws governing the sale of acid and the increase of awareness of the rights of survivors.

Navtej Singh Johar v. Union of India (2018)

- Context: Although the primary objective was to decriminalise homosexuality, this case also had implications for women's rights and gender identity.
- Judgement: The Indian Penal Code's Section 377, which criminalised consensual same-sex relationships, was invalidated by the Supreme Court.
- Impact: This decision strengthened the rights of LGBTQ+ individuals, including women, and encouraged more comprehensive discussions about gender equality and empowerment.

Conclusion and Recommendations

In summary, the empowerment of women is essential for the advancement of a progressive India. Empowering women guarantees that half of the population can make a meaningful contribution to societal progress as we endeavour to achieve economic development and social equity. Representation in leadership positions, education, and equal opportunities in the workforce are indispensable components of this endeavour. Families prosper, communities flourish, and the nation as a whole becomes more resilient and innovative when women are empowered. In addition to upholding its dedication to gender equality, India is also paving the way for sustainable development and a brighter future for all by creating an environment in which women can pursue their aspirations without hindrance. A more inclusive and prosperous society will result from the adoption of this vision, which will benefit all citizens. It will be imperative to prioritise women's rights and empowerment in order to achieve sustainable development and guarantee that all citizens can flourish in an inclusive and equitable environment as India continues to develop. Investing in women is an investment in the destiny of the nation.

Despite the significant progress and development that India has made, it remains 136th out of 187 countries in the Human Development Index. This indicates that action is required at the grassroots level. Additionally, India was ranked 112th in the 2020 Global Gender Gap Report. Gender inequality and discrimination persist in numerous regions of the nation and continue to go unnoticed. The following are a few suggestions that can be implemented to enhance the prosperity of women:

The majority of women are not reached by the laws and initiatives that are implemented to empower women. The majority of women are unaware of these laws. Therefore, it is crucial to raise awareness and promote these laws. In the present day, women are unable to openly discuss women-centric issues. This phenomenon is typically observed in rural and impoverished social environments. Therefore, it is imperative to establish a secure environment in which women can convene to discuss women-centric issues and provide mutual support.

The preponderance of women in India are illiterate. This creates a situation in which women are extremely vulnerable, and things become challenging. Therefore, it is imperative that education be mandated for all females in the nation. Additionally, women who are unable to purchase basic reading and writing materials should be provided with them.

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Chapter – 3

Under Representation of Women in Indian Politics

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Abstract

An ideal democracy has the sovereign power vested in its citizens. A democratic form of government is one which protects the citizen's desire of equality, liberty, dignity, participation and contribution to the working of the system. One key element of democracy is equal rights in all spheres of life. Thus, gender equality in political participation is one of the essentials of democracy. There has been underrepresentation of women in different fields including politics. Various documents and legislations across the globe provide for gender equality in politics, yet there is underrepresentation. The laws in India dealing with women political rights is the Constitution of India and the Representation of People's Act, 1951. An attempt has been made through doctrinal research to analyze the equal political rights as given under the international perspective and the Indian legal regime. In addition to this, the factors that prevent women from actively participating in politics have been studied which include cultural barriers, party bias, violence against women, delayed implementation of the reservation etc. The issue whether the laws and reservations alone can tackle the issue of underrepresentation of women in politics has been pondered upon. It is felt that to bring in equality, cooperation is needed from different stakeholders to support women, to spread awareness and encourage women to actively be part of the democratic system.

Key words: Gender Equality, Women Rights, Democracy, Political Rights, Contest.

Introduction

Democracy is 'the form of government in which the sovereign power resides in and is exercised by the whole body of free citizens, as distinguished from monarchy, aristocracy or oligarchy'.[1] Democracy arises from people's desire for dignity, equality, justice, liberty, and participation by way of desire for a voice. Democracy consists of four key elements: a system for choosing and replacing the government through free and fair elections, the active participation of the people, as citizens, in politics, protection of the human rights of all citizens and a rule of law, in which the laws and procedures apply equally to all citizens.[2] Participation in politics is not just voting, it includes the freedom to speech, assemble, associate and opportunity to be a candidate, to campaign and to be elected at all level of the government.[3]The government of a country cannot be democratic without the active participation and cooperation of its citizens. Such participation is assured through political rights. The political rights include the right to vote, the right to become members of the legislature, the right to become ministers and presidents. The right to vote makes the people feel they are ultimate sovereign in the country. The right to vote and alone is not sufficient, people should also have the

[1]The Law Dictionary, Democracy, *available at:* https://thelawdictionary.org/democracy/ (last visited on Aug 18, 2021)
[2]Office of the United Nations High Commissioner for Human Rights and The Carter Centre, *Human Rights and Election Standards, A Plan of Action* (December 2017), 4.
[3]United Nations, *Women and Elections, Guide to promoting the participation of women in elections* (2005), 33.

right to become members of the legislatures.[4]The political rights, to be specific the right to vote and contest elections flows from the civil and political rights of free expression of opinion of the people and rights of participation. The right to vote is bestowed by the governments on the individuals as a duty to elect their representatives.[5] In the earlier days, in English 'Suffrage' meant and was used to denote vote, political support and the right to vote. All around the world, people had to fight to get voting as their 'Right'. The history of suffrage, or franchise, is one of the gradual extensions from limited, privileged groups in society to the entire adult population. In many countries, only men had the right to vote and at some places men with property could vote. It took long for the democracies around the globe to become better, for women and every citizen to get the right.[6]The right to vote and contest elections is one of the most basic democratic rights without which democracy has no meaning. Like all the other rights, these rights can be infringed. The laws and regulations of the nations should be such that encourage the people to participate by ensuring that voting is quick, easy and safe.[7] Any kind of failure on part of the government to enforce the political rights or to eliminate any constitutional impediments to those rights would lead to rejection of democracy.

Political Rights: International Perspective

At the international level, the main legal documents that are concerned with the civil and political rights are the Universal Declaration of Human Rights (UDHR), which has the status of customary law, the International Covenant on Civil and Political Rights (ICCPR), which is signed and ratified by more than 160 countries and is legally binding on all the ratifying countries. These instruments have not just legal force but strong political and moral force also. Other treaties include International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPWD). The significance of free and fair elections is enshrined in Article 21 of the Universal Declaration of Human Rights. Every citizen shall have the right to take part in the government of his country, directly or through freely chosen representatives. Northern Ireland (1998): Everyone is entitled to equal access to public service in his country. Article 25 of the International Covenant on Civil and Political Right (ICCPR) also Provides for the Right to Vote. It is fundamental to the principle of equality of people. Universal suffrage: The right of every citizen to vote in elections and stand for public office.[8]

Further, the United Nations is working for better democracies around the world. It has 'Democracy' as one of its core values and principles. The organization through its programmes and agencies like United Nations Human Rights Office of the High Commissioner (OHCHR), United Nations Development Programme (UNDP), the United Nations Democracy Fund (UNDEF), Department of Political Affairs (DAP), the United Nations Entity for Gender Equality and Empowerment of Women (UN Women) is doing its part for democracy in selected regions. These agencies and programmes give their recommendations, which helps the nations in improving their election process, spread awareness through workshops and voter education that the right to vote and contest is a right available for men and women equally.[9]

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[4]V.D. Mahajan, *Political Theory*, 326 (S. Chand Publishers, New Delhi, 2005).
[5]V. Jaichand, "The Promise in the Right to Vote", Vol. 26, No. 1, *The Comparative and International Law Journal of Southern Africa*, 3 (March 1993).
[6]Luca Powel, *What Democracy and Voting Rights look like around the World*, Global Citizen, *available at*: https://www.globalcitizen.org/en/content/its-2016-here-is-the-state-of-voting-rights-around/ (last visited on Oct. 19, 2021).
[7] Salvatore Babones, *Sixteen for 16*, 108 (Bristol University Press, 2015)
[8]International Covenant on Civil and Political Rights, 1966, art. 25, *available at*: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (last visited on Mar. 19, 2021).
[9]United Nations, *available at:* https://www.un.org/en/global-issues/democracy. (last visited on May 20, 2023)

The United Nations also has 'Gender Equality and Women Empowerment' as its Sustainable Development Goal. According to the latest Sustainable Development Goal Report of 2023, the world is not moving in the right direction to achieve Gender Equality by 2030. As per the report, it will take 300 years to end child marriage, 286 years to remove discriminatory laws and 140 years to achieve leadership in work places.[10] "With respect to political representation of women as of January 1, 2023, in National Parliaments, it has reached 26.5 per cent, i.e. improvement of 4.2 per cent since 2015. At the Local Level, women have reached 35.5 per cent."[11]

The Indian Legal Regime

Men have not been equally represented when it comes to political rights with women in India. In India, there exists some gender disparity that is being drawn at every stage of human development. The suffrage question was illuminated by the independence movement. Other women including Annie Besant met with Montague to persuade him to grant voting rights to women in 1917. Other women organizations were being formed during that same period. "The Women's Indian Association, a great feminist group above others had been established in 1917 itself by Annie Besant, Dorothy Jinarajadasa, Malathi Patvardhan, Ammu Swaminathan, Dadbhoy, Ambujamal which represented the interests of women suffrage, labour problems, relief and nationalist work.[12] In the 1920 Sarojini Naidu, joined hands with Congress and Muslim League." In 1917, she joined the Indian National Congress and was also elected the President of Indian National Congress for the first time as a women. In 1918 she addressed a special session of Congress in Bombay on behalf of women suffrage. By her, it was said that 'the enfranchisement of women was in every way rational, scientifically and politically sound, traditional and consistent with human rights.' So, based on these factors, during 1920-1929 period, some of the provinces in India were given limited procreant rights to women. The first provinces to give women the vote were Bombay and Madras, in 1921. This was followed by United Provinces in 1923, Punjab and Bengal in 1926 and Assam, the Central Provinces and Bihar and Orissa in 1930[13]. By 1930, women gained the right to vote, which benefited women belonging to elite families only. The suffrage rights were granted to narrow section of women in India based upon their property qualifications. The Government of India Act, 1935 widened the scope of women suffrage but still it was limited to qualifications like literacy, property ownership or marriage to propertied men. But it was because of the women's contribution towards independence that helped them get equal rights to suffrage through the Constitution in 1947.[14]

The Constitution of India provides equal status to men and women. Part III guarantees fundamental rights equally without any discrimination. The Directive Principles of State policy also ensure economic empowerment in terms of equal pay to men and women. Then, part XV of the Constitution contains provisions of elections from Article 324 to 329. The equal political rights including the right to vote are given under Article 325 and 326 of the Constitution.[15] After providing equality, the Constitution and the Representation of People's Act, 1961 specifies certain qualifications and disqualifications to become members

[10]United Nations Office of Economic and Social Affairs, *available at*: https://sdgs.un.org/goals/goal5 (last visited on May 20, 2024)
[11]United Nations, *Sustainable Development Goal Report*, 22, (2023).
[12]Maroju Rama Chary, *Women and Political Participation in India, A Historical Perspective*, Vol. LXXIII, No. 1, IJPS, 119, 120, (Jan-March 2012).
[13] Sumita Ray, *The Women's Reservation Bill of India: A Political Movement towards equality for Women*, *Temple International and Comparative Law Journal, 56, 56* (1999)
[14] *Supra* note 13 at 121.
[15]Ambar Kumar Ghosh, "Women Representation in India's Parliament: Measuring Progress, Analysing Obstacles", Observer Research Foundation (last visited on May 15), *available at:* https://www.orfonline.org/research/women-s-representation-in-india-s-parliament-measuring-progress-analysing-obstacles.

of the houses of the Parliament. The right to vote and contest elections in India are statutory rights. These rights are not inherent in a person. The right to be elected is not a fundamental right nor a common law right. As stated in *K. Prabhakaran* v *P. Jayarajan*[16], the right to contest provided by the statute also specifies certain qualifications to be eligible to exercise such a right. The person should also not be subjected to any disqualifications as may be imposed by the statute.[17]

Despite the laws in place, women were not part of the government, at the local and national level. Thus, it was through the 73rd and 74th Constitutional Amendment in 1992, women were given reservation of one-third of total number of seats in the Panchayati Raj Institutions and the Municipal Bodies.[18] Then, in the year 1997, the proposal for reservation of seats for women in the Parliament and State Assemblies was also put forward. However, it was kept pending for a long period of time. Then, in September, 2023, the Law Ministry through its notification informed that the women reservation bill, which provides 33% reservation to women in Lok Sabha and State Assemblies has received President Draupadi Murmu's assent. It is the Constitution (128th Amendment) Bill, 2023.[19] However, it will become effective after the next census (expected to be conducted in 2024, after Lok Sabha elections) and the subsequent delimitation, which will determine the particular seats that are to be reserved for women.

The Issue and Challenge of Under-Representation of Women

Studies have shown that the right to vote has still been exercised by increasing number of women when compared to other forms of political participation, which is still comparatively low. Women have been denied social, political, civil and economic rights in many spheres. In the past, women have had no place in the political system and even in the political parties as decision making partners. In 2023, India ranked at 148th place among 193 countries in terms of women representation in the Parliament. There are only 78 women members out of 543 in Parliament, which accounts for just 14.4 percent. This is less than the global average.[20]Certain prevalent societal value systems and male dominance in political institutions stops women from exercising their political rights and in participating fairly in the elections. Further, the lower the women representation, the lower is the bargaining power of women during the allotment of key cabinet berths in India, such as finance, home, defense, health etc., which are usually allotted to men and are considered heavy weight ministries. The women participation in Indian politics is much discussed issue with different opinions and views. Some believe that the electoral process in India is full of male patriarchy and dominance that prevents women participation. While others have the view that increased women participation in the elections as voters since 1990's and sharing of political power in India is no more gender exclusive but it's quite inclusive.[21]

In India, both in the past and present, there have been powerful women in top political positions, known for their strong personalities and governance. While on the other hand, women in political parties and parliament have been very few. It has been alleged that the former have reached the position because they are either wives or daughters of well-known political leaders. We can see two features of dynastic succession

[16] AIR 2005 SC 688.
[17] *Id*. at 758 para 29.
[18] *Supra* note 16.
[19]The Constitution (128th Amendment) Bill, 2023, *available at*: https://images.assettype.com/barandbench/2023-09/819222ac-c75c-4f01-bfa0-f6e362993b10/Constitution__128th_Amendment__Bill__2023.pdf (last visited on Oct. 2, 2023).
[20]Raju Kumar, "Women's Reservation Bill: BJP, Opposition on same page, but why the issue still hangs fire", *India Tv*, Mar. 10, 2023.
[21] Praveen Rai, "Electoral Participation of Women in India, Key Determinants and Barriers", Vol. 46, No. 3, *Economic and Political Weekly*, 47-55 (January 15-21, 2011)

in South Asian countries. "The first feature is 'emergency dynastic succession', which is due to assassination or military coup, which has brought to power leaders like Bandaranayake, Benazir Bhutto, Corazon Aquino or Aung San Suu Kyi in Sri Lanka, Pakistan, Philippines and Myanmar, respectively and provided them legitimacy." The second feature is 'dynastic continuation of a family', including women over a number of generations, the congress party in India, giving an example. However, in the recent years, we can see the trend changing, which shows women's role in politics a little differently. There has been rise of political parties with leaders such as Mayawati, Mamata Banerjee or Late Jayalalitha, who were strong in their States.[22] On 25th July, 2022, Smt. Draupadi Murmu was sworn in as the 15th Indian President. Before this, she was the Governor of Jharkhand from 2015-2021. She was the first women tribal Governor of a tribal-majority state, and she had received appreciation from the society for supporting the rights of the tribal communities.[23]

Despite this, one of the area's where women are inadequately represented is still the political sphere, after years of movements for women rights. The women movements did make attempts to empower women, but they largely focused on issues like dowry, alcohol, violence and economic opportunities rather than gender equality. Across India, women can be seen voting more, thus bridging the gender gap in the voter turnout. The parties can be seen making efforts to attract their new electorate, i.e., women. BJP has gained a significant edge over the women voters. As per the exit polls conducted by Axis My India, the party had a remarkable 7 and 12 percentage point gender advantage over its closest competitors in Madhya Pradesh and Uttar Pradesh in the 2019 elections. The success of BJP does not extend only to the ballot box but also participation in electoral events and rallies. The campaigns and welfare schemes are important to get more women to vote. However, the political communications and organizational outreach are essential in overcoming the domestic and other barriers that prevent women from entering politics.[24]

Factors Preventing Women from Entering Politics

There are various factors that prevent women from entering politics, some of them include cultural barriers, limitation of voting rights of women, lack of proper implementation of the laws, delayed implementation of reservation, low success rate and violence against women.

- **Cultural Barriers**

  Despite the rights being guaranteed by the Indian Constitution and other Statutes, the women are deprived of their rights because of various social and cultural barriers that are prevalent in their own families and the societies they live in. Many issues relating to women i.e., dowry, infanticide, discrimination in their own families, early marriage, feticide, deprive the women of their personal freedom and liberty.

- **Lack of Implementation of Constitutional Principles in Spirit**

  The Constitution and other legislations guarantee rights to women, but their effective implementation is not present. Even though Article 324 and 325 of the Constitution guarantees political equality to all, yet the political space is male dominated. Women are not seen as a political entity but a means to meet their

[22]Sudha Pai, "From Dynasty to Legitimacy: Women Leaders in Indian Politics", Vol 39, No. 3 / 4, *India International Centre Quarterly*, 107-121(Winter 2012-Spring 2013)
[23]"Profile of the President", *available at:* https://presidentofindia.nic.in/profile.htm (last visited on Mar. 2, 2023).
[24] Anirvan Chowdhury, "Why women prefer Modi's BJP", *The Indian Express*, Jan. 3, 2024.

own rights by the political parties. It can be evidenced by the decrease in women participation. Even the women who are present in politics are sidelined and given light portfolios like welfare or education. [25]

- **Party and Voter Bias**

  One of the reasons contributing to low women participation to contest elections is the denial on part of the parties and the voters. It can be because of political party competitions, as the parties not only discriminate in terms of seat allotments but also in party rank, file and chain of command. The parties are reluctant to give tickets to women candidates as their ability to win the elections is low. Again, this can be attributed to the party competition structure in the Indian subcontinent which has male dominance and patriarchal mindset. "This is a major reason despite the fact that four prominent political parties in India are headed by women leaders, namely Congress by Sonia Gandhi, Bahujan Samaj Party (BSP) by Mayawati, Trinamool Congress (TMC) by Mamta Banerjee and All India Anna Dravida Munetra Kazhagam (AIADMK) was headed by Late Jayalalithaa."

- **Violence against Women**

  GBVAW covers any form of violence on women under such a broad category of Gender-based violence against women, such as violence committed against women simply because they are women, Including violence against a woman in a political position. "Well, it is any act or threat, of physical, sexual or psychological violence which inhibits women in the exercise of their political and other human rights. Examples of violence include physical violence, sexual violence, and psychological violence. Physical violence can take the form of assassinations, kidnapping and beating to force women to step down or withdraw from political life. Sexual violence incorporates harassment, unwanted advances and sexual assault, rape, sexualized threats and sexualized images to undermine women's credibilities and embarrass them. Psychological violence includes stalking, threats, online abuse and economic violence including denial of salary or political financing. Victims can include holders of political office, women candidates, aspirants, political supporters, voters, election workers, observers, public office holders, and public servants. So are the family members and activists connected to the targeted women. [26]Violence against women in elections has become a defined category of violence against women, as it has become a hindrance for women in exercising their political rights. The violence has far reached effects not only on the individuals concerned but wider society. The categorization of violence against women with respect to their political rights can be gender-based violence before registration and voting, during campaigning, after the result announcement and government formation. Most of violence at the time of sexual nature (also include but not limited to threats to their personal security, many sexualness were include threats to their family and attack to their moral strength and confidence). Women have also been more likely to experience sexual harassment than men, in their own political parties, by their families, or to be demeaned in a sexualized way. The immediate consequence of such violence is manifested in number of women contesting elections, fewer women elected, and lower voter turn outs. Moreover, violence at the polling places and against the electoral staff further dissuade women from administration, resulting in even lower women voters' turnout and a decrease in women's confidence in the electoral system in place.[27]

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[25] *Supra* note 22.
[26]UN Women, Leadership and Governance Section, New York, *Guidance Note-Preventing Violence against Women in Politics,* (July 2021)
[27]United Nations General Assembly, The Special Rapporteur, *Report on Violence against Women in Politics*, 9/22, (2018).

Reports of assaults, intimidation and abuse of politically engaged women have been growing. These events, which have received unprecedented media and public attention, have highlighted violence against women in politics as a global problem. One was Australian Prime Minister Julia Gillard's famous "misogyny speech" from 2012 attacking the sexist attitudes and behavior of her then-opposition leader, Tony Abbot. The speech sparked discussions about sexism in Australian politics. The 2016 Presidential American elections had misogyny and sexism as the very nature of the election campaign itself. [28] In 2021 in India, the District President of Trinamool women wing, Suchismita Deb Sharma and her party colleague Parbati Chanda were allegedly beaten by BJP supporters on the outskirts of Cooch Behar town. Suchismita stated that since 2019 Lok Sabha elections, where BJP won the elections in Cooch Bihar, the BJP workers have spread terror and do not allow them to hold party functions.[29] Further a new research report i.e., Troll Patrol India: Exposing Online Abuse faced by Women Politicians in India of Amnesty International India shows that Indian Women politicians face abuse on Twitter. They analyzed more than 114000 tweets sent to 95 politicians. The research found out that 13.8% of tweets in the study were either 'problematic' or 'abusive'. Shazia Illmi from BJP stated that she faces online harassment with respect to what she looks like, her marital status or all the other filthiest things one can think of. Atishi from Aam Aadmi Party stated that if a women access social media on Twitter, it becomes the responsibility of the platform to ensure it is secure.[30]

- **Delayed Implementation of 33% Reservation for Women in Parliament**

  It is through the reservations that the states recognize the imbalances between groups of individuals and attempt to create a balance. With the help of reservations, the quantitative representation of women would obviously increase but the quality of women representation will also improve as it would allow the women to implement and enforce laws in their favour while keeping in mind the existing laws. "The women reservation bill which had been pending since the last 27 years, which received the President's assent in 2023. It was initiated in 1996 by Deve Gowda. Before the bill received the assent, MLC Kalvakuntla Kavitha questioned "How can you grow if you keep half of the population outside. In 1992-93, the 72nd and 73rd Amendment gave 50% of women reservation in local bodies and if we give 33% reservation now in Parliament and Assemblies, in few years we might reach 50% women in Parliament".[31]

  "On September 29, the Law Ministry through its notification informed that the women reservation bill, which provides 33% reservation to women in Lok Sabha and State Assemblies has received President Draupadi Murmu's assent. It is the Constitution (128th Amendment) Bill, 2023.[32] The bill has been passed with close unanimity with two members opposing it. In the earlier session's Prime Minister Modi had described this law as 'Nari Shakti Vandan Adhiniyam'. However, the law will become effective after the next census (expected to be conducted in 2024, after Lok Sabha elections) and the subsequent delimitation, which will determine the particular seats that are to be reserved for women. The amendment is providing

[28]Mona Lena Krook, *Global Feminist Collaborations and the Concept of Violence against Women in Politics*, Vol. 72, No. 2, *Journal of International Affairs*, 77, 88 (Spring/Summer-2019).

[29] "Two Trinamul women's wing members attacked in Cooch Behar, finger at BJP", *The Telegraph Online*, July 23, 2021, *available at:* https://www.telegraphindia.com/west-bengal/two-trinamul-womens-wing-members-attacked-in-cooch-behar-finger-at-bjp/cid/1823548 (last visited on Jan 20, 2024).

[30]Amnesty International, *available at:* https://www.amnesty.org.uk/press-releases/india-women-politicians-face-shocking-scale-abuse-twitter-new-research (last visited Jan. 1, 2024),

[31] Koride Mahesh, "Won't rest till Parliament passes women's quota bill, says K Kavitha", *The Times of India*, Mar. 11, 2023.

[32]The Constitution (128th Amendment) Bill, 2023, *available at*: https://images.assettype.com/barandbench/2023-09/819222ac-c75c-4f01-bfa0-f6e362993b10/Constitution__128th_Amendment__Bill__2023.pdf (last visited on Oct. 2, 2023).

quota within quota for Scheduled Castes and Scheduled Tribes women whereas the opposition was demanding the extension of the benefit to Other Backward Classes (OBC) as well."[33]Soon after, on October 16, 2023, the Congress leader Jaya Thakur, moved to Supreme Court through Public Interest Litigation, for implementation of the bill before the 2024 elections without waiting for the fresh delimitation exercise. In the petition it has been stated that a constitutional amendment cannot be stayed for an uncertain time. The matter is pending in the court. Thus, the new bill has not been implemented.[34]

Studies have shown that reservations lead to increase in women representation. Further, with respect to women leadership, it was found that women tend to invest more in infrastructure like roads, water and fuel which is more relevant to the needs of the rural people. Also, women leaders also tend to give priority to women issues.[35]"In 2024 Lok Sabha elections, women constituted only 8% of the total 2823 candidates in the first two phases. The women candidates were 235 in the two phases, out of which Tamil Nadu had the maximum 76 women in the first phase and Kerala had maximum 24 women in the second phase. Party wise, BJP had 69 women candidates and Congress had 44 women." Such a gender bias is raising concerns as it seems that the political parties are waiting for the reservation bill to be implemented and only then there will be more women. However, the need is for the parties to proactively bring in women on their own before the bill.[36] Hereafter, it can be seen from the past that many women have become Prime Ministers and Chief Ministers, yet the women in the parliament remain low. The major blocks that women face when it comes to their political participation are the social and economic disadvantages. In order to make increased women participation a reality, the need is to first achieve economic and social empowerment as seat reservation alone is not enough.

Conclusion and Recommendations

Elections are conducted all across the globe but there has been evidence of problems in democracies. The issues need to be resolved, which otherwise can take away a citizen's right to vote, right to contest elections, which contributes to lower confidence of society in politics or even lead to political instability. One such issue which needs to be resolved is under-representation of women in politics. The need is to have increased women participation in politics. It cannot be achieved by providing equality in writing, in the laws alone, the need is to have them implemented and followed in true spirit. There should be gender sensitive reforms that will help the leaders in promoting gender equality through the public policies and their effective implementation. Another method to bring in gender equality is through increased support from different stakeholders like the women societies and non-governmental organizations that can help spread awareness, support the agenda of women in politics and at the same time train women for better participation as a candidate and voter. At the administrative level, women should also be included in Election Body, i.e., the Election Commission of India. One seat can be reserved for a women Election Commissioner to bring in gender equality, which can further help in inclusion of women at lower levels. Other than this, there should be implementation of the women reservation law, i.e., the Constitution (128th Amendment) Bill, 2023, as soon as possible. However, till the time it is not implemented, the political parties should on their own accord include more women in the party. The political parties within their system should adopt transparent

[33] The Hindu Burea, "President gives assent to women's reservation Bill", *The Hindu,* Sep. 29, 2023.
[34]Satyendra Wankhade, "Congress leader files PIL in Supreme Court for implementing Women's Reservation Bill before 2024 elections". *Bar and Bench News*, 16 Oct, 2023.
[35] Radhika Santhanam, "What will hold up women's reservation bill? Explained", *The Hindu*, Sept 24, 2023.
[36] Print Trust India, "Just 8% women candidates in the first two phases of the Lok Sabha polls", *The Hindu*, Apr. 28, 2024.

nomination procedure, which will increase the confidence of women in the election process. Also, there should be lesser dominance of political parties or their male candidates on the women candidate and women should be encourage bring in their own ideas. Lastly, stricter laws should be put in place to deal with violence against women, which will provide sense of security to the women who are in politics and who wish to enter politics. The issues faced by women has lowered their confidence. There have been reforms in the electoral system to deal with the issues, yet they are not full proof, as the wrongdoers manage to escape the laws. Such issues are not just present in the electoral system of India but in other nations as well. The need is cooperation among the voters, candidates, the parties and the administrative bodies to abide by laws and policies and to eliminate anything that hinders women's participation in politics.

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Chapter – 4

Glass Ceiling in The Legal Profession for Women: A Socio-Legal Analysis

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Abstract

The glass ceiling in the legal profession for women persists despite progress in gender equality. Women lawyers face barriers such as gender bias, discrimination, unequal pay, and challenges balancing work and family life. The male-dominated culture of the legal field often prioritizes career over other responsibilities, disadvantaging women who manage both professional and familial duties. Breaking this barrier requires comprehensive strategies. Institutional reforms, cultural shifts, and individual empowerment are crucial. Law firms are starting to support women through flexible work arrangements and mentorship programs. However, more needs to be done to ensure women have equal access to leadership positions and opportunities. By addressing these challenges, the legal profession can create a more equitable environment where women can thrive based on their merits.

Introduction

Historically, the Indian women was not privileged enough to be enrolled as a member of the Bar. In the year 1921, the High Court of Allahabad took the matter into its hand and allowed the application of Miss Cornelia Sorabji to practice law. Thus, she became the first woman to be enrolled as an advocate in India. With the enactment of the Legal Practitioners (Women) Act, 1923, right of the women to practice law was made a statutory right.[37] After independence the principle of equality was enshrined in our Constitution of India which provides equality before law, equal protection of law, rights against discrimination on the basis of gender and equal opportunities in employment.[38] However, whether these affirmative measures incorporated in our Constitution by the drafters are successful in putting women at par with men in various professions and specifically in Indian courts always remains as a question.

This phenomenon of professions gender discrimination is called "Glass ceiling". Its basically an overt or covert form of sex- discrimination which is unwritten and unspoken in general yet extremely inherent and extensive. Its presence in legal profession is evidenced by the statistics. The sheer lack of visibility that we have, based on available data with regard to representation of women in critical roles, such as that of partners in law firms, judges, or members of tribunals and commissions, is our reality check.[39]

[37] Ashwin Kunal Singh et al., A Socio-Legal Analysis of the Status of Indian Women in the Legal Profession, 9 PRAMANA RESEARCH JOURNAL 148, (2019).

[38] Indian Constitution, Article 14 to 18.

[39] Akshay Pathak & Neha Kumari, Glass Ceiling in the Legal Profession—A Curse to the Indian Legal System, DNLU STUDENT LAW JOURNAL (Apr. 4, 2023), available at https://dnluslj.in/glass-ceiling-in-the-legal-profession-a-curse-to-the-indian-legal-system/

The primary aim of the present study is to conduct a holistic and comprehensive study of Glass Ceiling in the Legal Profession for Women. The study will focus on the socio-legal aspects. To achieve this end, a combination of descriptive and doctrinal methods of research have been used.

A wide variety of sources, including legislation, rules, regulations, explanations, treaties, legal journals, rulings, and publications, have been systematically consulted in the pursuit of a doctrinal perspective. These resources serve as the foundation for assessing the current state of women working in the legal profession, issues and challenges faced by them. Concurrently, the descriptive method has also been used to clarify the present scenario. This approach makes use of qualitative analysis to give a rich and complex picture of the topic at hand.

Representation of Women in Judiciary

In 1989, Justice Fathima Beevi ji became the first woman to be appointed as a judge to the Supreme Court in India. What is to be sad that an independent and democratic country had to wait 40 years to appoint its first woman judge to its Apex Court. Justice Beevi had been the first Muslim woman judge at the Supreme Court and also the first woman Supreme Court Justice of Asia. She accepted that the judiciary in India was a patriarchal institution. Yet it is undeniable that her appointment had "opened the door" to women in this male dominated institution. "She also was of this view and has justifiably said so".[40]

It is so ironical that the Supreme Court which has been established for 75 Years has only seen 11 women judges in its corridors so far. A word of scream trying to echo some sense is the average tenure of a woman judge is 4.5 years, that is a whole year lesser than the average tenure of all 11 judges. "Justice Hima Kohli retired on 01st September, 2024 and the women judges at the Supreme Court are back again to 2 out of 33 judges. Currently Justice Trivedi and Justice Nagarathna are operational Supreme Court Judge.[41]"

But The Apex court was able to make appointment of three female judges in one go, it was landmark appointment in the history of Supreme Court, as The Justice Kohli, Justice Nagarathna and Justice Trivedi were appointed in the Apex court to be part of the bench. And also, this is the highest number of judges we can have and this was the first case when we had four women judges in the Supreme Court. Besides these three appointments, there have been a total of only eight other female judges in the history of India's top court. "They were Justice Sujata Manohar, Justice Ruma Pal, Justice Gyan Sudha Misra, Justice Ranjana Desai, Justice R. Banumathi, Justice Indu Malhotra and Justice Indira Banerjee and Justice Fathima Beevi. This translates to just 11 females in the total of 268 judges in the Supreme Court till now. This equates to only 4.1% of fully all Supreme Court judges have been women and 96% were men."

This is a dismal rate compared to the total number of judges appointed thus far, i.e. 4% of the total 276 judges. According to the rule of seniority, Justice B.V. Nagarathna will be the first woman Chief Justice of India in 2027. But I will only be in office for 36 days.

There is not much difference if we see situation in various High Courts. "The statistics with respect to High Court states that, 14.1% of all judges are women, i.e. 106 out of 754 judges. Out of 25 Chief Justices in the country, currently only 01 of them is women i.e. of Gujarat High Court".[42] This is a matter of concern. The

[40] Khadija Khan, Does the Indian Judiciary Have a 'Patriarchy Problem?', THE INDIAN EXPRESS, Nov. 26, 2023, at 01:14 PM, available at https://indianexpress.com/article/explained/explained-law/indian-judiciary-fathima-beevi-women-justices-9041769/

[41] Supreme Court of India, Chief Justice & Judges, available at https://www.sci.gov.in/chief-justice-judges/ (last visited Nov. 7, 2024).

[42] Department of Justice, Government of India, available at https://doj.gov.in/ (last visited Nov. 7, 2024).

appointments to the Supreme Court and High Courts are made through Collegium System[43], consisting of 5-member body who recommends names of judges to the government. It has often commented that the selection pool at the high court level itself has very few women which results in limited scope for recommendations.[44]

The Punjab and Haryana High Court tops the list in absolute numbers with 14 women judges out of total strength but the data indicates that improvement in gender discrimination is largely inadequate. "If we consider the percentage of women judges among sitting judges of High Courts then it can be analysed that Sikkim is the state with the highest percentage of women judges i.e. 33.33%, the second in the list is Telangana High Court at 29.63%, then Gujarat High Court at 27.59%, Punjab and Haryana High Court 25.45%, and Delhi High Court at 23.08%. In Meghalaya and Tripura there are no female judges".[45] The inequality faced by women in the Courts is more of a behavioural one, more importance is given to the words of the male advocate as compared to their female counterparts.

"In a study conducted by Vidhi Centre for Legal Policy in 2018, it is mentioned that the women representation in lower judiciary is relatively higher, at 27% but it faces a glass ceiling at higher appointment i.e. at district level and subsequently in the higher judiciary as discussed above. Women do not have a quota per se in the higher judiciary, but a number of states have some level of reservations for women in the lower judiciary, including Andhra Pradesh, Assam, Bihar, Chhattisgarh, Jharkhand, Karnataka, Odisha, Rajasthan, Tamil Nadu, Telangana and Uttarakhand. 40 seats for men and 60 seats for women. It is to lay down that about 30% to 35% of the total number of seats be reserved for women for which recruitment takes place through direct appointments. Appointments to the higher judiciary are made under Articles 124[46], 217[47], and 224[48] of the Constitution, which does not provide reservation for any caste or class of persons."[49]

The system itself does not seem terribly supportive of a woman's success. As Justice Kohli once said, the top court is like the old boys' club. Justice Leila Seth, the first woman Chief Justice of a High Court, writes in her autobiography "On Balance" about the pressures of being a woman in the mostly male judiciary. She needed to be strict but compassionate. She faces a constant pressure to not screw up and endure derogatory and sexist jokes.

Representation of Women in Litigation

"It found that only 15.31% of practicing advocates were women, according to the data for 15 states from the Bar Council of India.[50] Though the numbers prove a need for implementing more women-friendly policies, there has been a healthy influx of students in the field of law. We are also seeing a healthy increase in the number of girls taking the Common Law Admission Test (CLAT) exam. From 32% in 2011, the girl

[43] In Re: Under Article 143(1) of the … v. Unknown, AIR 1999 SC 1, RLW 1999(1) SC 168, 1998(5) SCALE 629, [1998] SUPP 2 SCR 400.

[44] Gauri Kashyap, Gender Diversity at the Supreme Court of India, SUPREME COURT OBSERVER, Nov. 4, 2024, at 10:28 AM, available at https://www.scobserver.in/75-years-of-sc/gender-diversity-at-the-supreme-court-of-india/

[45] Gauri Kashyap, Representation of Women Judges in High Courts Has Improved Only by 3 Percent in Three Years, SUPREME COURT OBSERVER, Nov. 4, 2024, at 10:28 PM, available at https://www.scobserver.in/journal/representation-of-women-judges-in-high-courts-has-improved-only-by-3-percent-in-three-years-august-2024/

[46] Establishment and Constitution of Supreme Court.

[47] Appointment and conditions of the office of a Judge of a High Court.

[48] Appointment of additional and acting Judges.

[49] Khadija Khan, Does the Indian Judiciary Have a 'Patriarchy Problem?', THE INDIAN EXPRESS, Nov. 26, 2023, at 01:14 PM, available at https://indianexpress.com/article/explained/explained-law/indian-judiciary-fathima-beevi-women-justices-9041769/

[50] Akshat Khetan, Fair law: How do we empower more women in legal practice?, Columns (Jun 20, 2024, 05:21 PM), file:///C:/Users/Dell/Zotero/storage/CRUQ78IP/fair-law-how-do-we-empower-more-women-in-legal-practice.html

participation rate increased to 56% for CLAT 2022. In 2024 CLAT, 57% of the candidates were females".[51] However, while statistics on the ground level spur optimism there is a fear when women reach the middle level they tend to leave the profession so there's a need to have a relook at our working environment.

The gender gap widens in litigation, possibly because long hours and low early income may make litigation less appealing. As is well known, in the first two years of practice in a High Court, a lawyer earns an average of ₹5,000-20,000, barely enough to pay rent in most cities. By the time a woman lawyer has settled into the practice, family responsibilities such as moving between cities due to marriage, rearing children, etc., interfere with her progress. These are some major reasons why the majority of women lawyers preview litigation as an impracticable career path.[52]

Barriers to Achieve Gender Equality in The Legal Profession

In any line of work, barriers exist to achieving gender equality. Some common ones which exists across professions are implicit gender bias and gender stereotypes. In the year 1980s, a program in America was planned by the lawyers of the National Organization for Women's Legal Defense and Education Fund, in partnership with the National Association of Women Judges. The point of the program was to draw attention to "gender bias" in the law, decision making and interaction in state judicial systems. It has rightly defined the term called gender bias. It was defined as either: where people are denied rights or required to observe responsibilities only by reason of gender; when people are subjected to generalisations about the correct conduct of males and females which have no regard for their circumstances; people are treated differently on the basis of gender in situations where gender should not matter; [and] men or women as a class can be subjected to a legal rule, policy or practice which leads to worse consequences for them than for the other class. So, gender bias includes both direct discrimination and indirect behaviours.[53] Example of subtle practices can be given by citing the words of senior lawyer Indira Jaising. She has also faced the gender discrimination in the Supreme Court, and she has been recorded saying. To quote her words, positive expressions such as "*You are an empowered woman, who can put you down*" are a "*disguised form of gender stereotyping*."[54]

These reasons which lead to gender disparity in legal profession can be highlighted as follows:

- Challenges on the personal and professional front
- A scarcity of effective mentors and support networks
- No transparency in the appointment process

Apart from the above, other reasons such as sexual harassment of women lawyers, clients not getting comfortable with women advocates to represent them for high-stake cases and absence of a women-friendly

[51] Aditaya Wadhawan, Registration of Female Candidates in CLAT Increases as More Women Get Interested in Legal Profession, TIMES OF INDIA, Dec. 21, 2023, at 08:00 PM, available at https://timesofindia.indiatimes.com/education/news/registration-of-female-candidates-in-clat-increases-as-more-women-get-interested-in-legal-profession/articleshow/106167700.cms

[52] Aastha, Abysmal Gender Ratio in the Legal Profession: Concern Raised by CJI, STATE LAW UPDATES, Oct. 6, 2024, at 11:47 PM, available at https://indianlawwatch.com/abysmal-gender-ratio-in-the-legal-profession-concern-raised-by-cji/

[53] *Women Entering the Legal Profession, Change and Resistance, in DOING JUSTICE, DOING GENDER 107 (2006).*

[54] Tushar Kohli, Indira Jaising Writes to the CJI on Subtleties of Gender Stereotyping, Suggests Combat Measures, THE LEAFLET, Nov. 7, 2024, at 11:05 PM, available at https://theleaflet.in/indira-jaising-writes-to-the-cji-on-subtleties-of-gender-stereotyping-suggests-combat-measures/

infrastructure from toilets to maternity leave are also taking a toll on women in judiciary and litigation resulting in a higher attrition rate.[55]

An unwritten rule that has emerged in the legal fraternity in India. Women practicing law have been traditionally corralled into roles dealing with cases of family and divorce laws. This precludes their chance of succeeding in corporate, criminal and other sorts of legislation.[56]

Constitutional and Legal Perspective

Constitution of independent India has provided the citizens various rights such as right to equality[57] and the right against discrimination based on their gender[58], right to education[59], right to practicing any profession of their choice[60] and many more. No statutory provision either stops / restricts entry of women in Bar which offends the constitutional mandate. Even with these rights, being a lawyer was not a popular career option for women. The explanation is simple to know these rights women should have a minimal level of education. Higher education was not just a dream but a distant dream for the majority of the female population because of multiple reasons-poverty, stringent caste restrictions, restrictive social customs, working women was considered as a curse for the social customs.[61] Chief Justice D.Y. Chandrachud has also recognized that there is a lack of diversity in the courts.

Conclusion and Suggestions

When it comes to empowering women in practice, the ecosystem cannot continue with this stereotypical treatment and needs to progress towards being able to identify the different capabilities and functions where female legal professionals can thrive. Here are some of the recommendations:

Changing Women and changing Men: There has been legal change to ensure women can enter the legal profession if they wish, though there has been no parallel legal change to incentivize men to take on the unpaid work of the home. To remove the gender divisions at the office and in the home, restructuring of both the workplace and the home is in order. The long-term solution is changing the mentality of society in general, and the gender attitudes assigned to a woman must be renounced.

Family-oriented policies and transformation in working culture: Another short-term measure for gender discrimination can be family-oriented policies for women advocates in India i.e., paternal leaves, childcare Centres, and flexible working hours. These issues resonate with women advocates — and wouldn't make them choose between personal and professional life. This requires a change in the workplace culture. Policies regarding work should provide parity for women with men.

Sensitization of male members of the Judiciary and Bar: The Judiciary and Bar have male members. The requirement to conduct training of judges at all levels of the judicial hierarchy in components of gender sensitization at regular intervals would be through the National Judicial Academy and the State Judicial

[55] Khadija Khan, Does the Indian Judiciary Have a 'Patriarchy Problem?', THE INDIAN EXPRESS, Nov. 26, 2023, at 01:14 PM, available at https://indianexpress.com/article/explained/explained-law/indian-judiciary-fathima-beevi-women-justices-9041769/

[56] Akshat Khetan, Fair law: How do we empower more women in legal practice?, Columns (Jun 20, 2024, 05:21 PM), file:///C:/Users/Dell/Zotero/storage/CRUQ78IP/fair-law-how-do-we-empower-more-women-in-legal-practice.html

[57] Indian Constitution, Article 14.

[58] Indian Constitution, Article 15.

[59] Indian Constitution, Article 21-A.

[60] Indian Constitution, Article 19(1)(g).

[61] Ashwin Kunal Singh et.al, A Socio-Legal Analysis of the Status of Indian Women in the Legal Profession, 9 Pramana Research Journal 148, (2019).

Academies compulsorily. Gender sensitization should be extended to judges at all levels of the judiciary, both as something that this is needed as all judges are sourced from the public (whether through examinations or collegium recommendations). Consequently, they share the same stereotypes and, at times, the same prejudices as the general population. Hence the importance of education in this aspect should commence at the primary stage in law schools to gradually be percolated up to be included in continuing legal education of one and all. There is now no compulsory course on gender being taught in law schools. Some law schools now offer the subject as a specialization or an elective.

The All-India Bar Examination also does not include even a single question or section on gender sensitization and the Bar Council of India may take adequate measures in this regard. The next level where gender sensitization needs to be incorporated is when one is in the process of exams to the judiciary. Training on judgments about women and the law, training on biases, stereotypes, approaches must be trained. High Courts may prepare a detailed curriculum with the assistance from subject matter experts.

Sisterhood: Come together as women in the law and support one another. The root of all these social problems Lead to a need for community development programs. Women empower each other when they support, help to develop, and create initiatives for each other. Some of the features to be considered while training are social women integration, technology savvy, economic independence, tendency to take leadership.

Thus, as final remarks, combating gender discrimination would require a holistic yet straightforward approach to the fundamental reason for the gender imbalance which incorporates efforts directed at both a structural and a social level to bridge the gender gap in the Indian legal system. As observed by the Chief Justice of India DY Chandrachud, we need to create dignified conditions in which women can work. If we are to get more and more women in the legal field, data suggests, this country needs more than just infrastructure. Justice D Y Chandrachud, called for institutional support for women who would like to balance work with family care and stressed on the need to forge equal opportunities for women. To strive for a "gender just" and "equal" society, there is no place, let alone space, for misogynistic lexica to be used, tolerated, or promoted in political, social or legal period.

Suggestive Reading and References

Articles and Research Papers:

- "Glass Ceiling in the Legal Profession—A Curse to the Indian Legal System" (2021), DNLU-SLJ(Online).
- "Influence of Glass Ceiling on Women Lawyers", JETIR February 2019, Volume 6, Issue 2
- "The Effects of the Glass Ceiling on the Legal Profession: A Challenge to the Indian Legal System in Comparison with Various Nations", IJARSCT, Vol. -2, Issue 2, September 2022.
- "Gently Shattering the Glass Ceiling: Experiences of Indian Women Managers" (2023) Women Management Review 15(1).
- "The Impact of Personality Traits on Glass Ceiling Beliefs Among Women Advocates' Career Development" (2020) MGES Journals Vol. 8, No. 3, May 2020.

Books:

- "Lady Lawyers in India: Socio-Legal Perspectives" – G. Mallika
- "Gender and Judiciary in India" – Archana Parashar
- "Feminist Perspectives on Law and Legal Education" – Amita Dhanda & Archana Parashar
- "Women and Law in India" – Flavia Agnes

Reports & Case Studies:

- "Women in Judiciary: A Report on Representation and Challenges" – Published by the Supreme Court of India & Bar Council of India
- "Breaking Barriers: Women in the Legal Profession" – Report by the Vidhi Centre for Legal Policy
- "Gender Diversity in the Indian Judiciary" – Study by PRS Legislative Research
- "Representation of Women in Indian Judiciary: The Way Forward" – Report by Centre for Policy Research

Landmark Cases & Judgments:

- Vishaka v. State of Rajasthan (1997) – Landmark case on workplace harassment, impacting female legal professionals.
- Mary Roy v. State of Kerala (1986) – Women's property rights, highlighting gender bias in legal interpretation.
- Indira Jaising v. Supreme Court of India (2018) – Case on senior advocate designation and gender bias in legal appointments.
- Shayara Bano v. Union of India (2017) – Triple Talaq case, argued significantly by women lawyers.

Chapter – 5

An Analysis on Women's Rights in The Digital Era

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Abstract

This chapter explains the changing environment of women's rights in the digital age, emphasising the opportunities and obstacles that technological advancements present. As digital platforms become more and more conducive to activism and empowerment, they also expose women to novel forms of discrimination, harassment, and privacy violations. The chapter explores the legal responses to these issues, including the examination of existing laws and proposed reforms that are designed to protect women's rights online. It critiques the efficacy of current legal frameworks in addressing cyberbullying, online surveillance, and digital gender-based violence, as well as examines case studies of digital activism and the role of social media in amplifying women's voices. Ultimately, the chapter advocates for a comprehensive strategy that integrates societal change, technological solutions, and legal reform to establish a digital environment that is safer for women.. In order to promote a more equitable digital environment that respects women's rights in the 21st century, policymakers and stakeholders are advised to implement the following measures.

Key words : Legal services, digital technology, and women's rights in India

Introduction

The digital revolution has undoubtedly transformed the modern world, significantly influencing the ways in which individuals, particularly women, interact with society, access opportunities, and exercise their rights. The emergence of digital platforms, including blogs, online marketplaces, social media, and digital services, has presented women with unprecedented opportunities to assert their autonomy, connect with like-minded individuals, and engage in public life. The digital space has become an essential component of the contemporary woman's experience, whether or not through online activism, professional networking, or social engagement.

Digital platforms have been employed by women worldwide to challenge patriarchal structures, participate in political discourse, and amplify their voices on a variety of topics, including gender equality, violence, and discrimination. The role of digital spaces as catalysts for social change has been demonstrated by social media movements such as #MeToo, #TimesUp, and #BringBackOurGirls. In addition to bringing international attention to gender-based violence and inequality, these movements have also empowered women to reclaim their narratives, challenge systemic injustices, and demand accountability from institutions, corporations, and governments.

Nevertheless, the digital era has also introduced a new set of challenges, particularly for women, in addition to these empowering developments. The internet's global reach and anonymity have rendered

digital platforms both a source of vulnerability and a site of empowerment. The hazards of online abuse, harassment, and exploitation are on the rise, particularly for women who express dissent or participate in public spheres. The digital realm has also become a nurturing ground for new forms of gender-based violence that disproportionately affect women, including cyberstalking, revenge porn, online misogyny, and doxing.

The vulnerability of women in digital spaces Is further exacerbated by the absence of robust legal frameworks that can effectively address and prevent online violence. The distinctive characteristics of online harassment and abuse are frequently not adequately addressed by the existing laws, many of which were established prior to the digital era. Furthermore, the internet's global and borderless nature presents obstacles to the enforcement of legal protections, as perpetrators frequently operate anonymously or from jurisdictions where laws regarding digital violence are either non-existent or extremely feeble.

In the digital age, the necessity for more comprehensive and robust legal protections for women has never been greater. The legal responses to issues such as cyberbullying, online harassment, revenge porn, and digital gender-based violence are still inconsistent, as many jurisdictions are unable to keep up with the rapid development of technology. Although some countries have implemented reforms to address online abuse, the absence of a unified, global strategy for digital violence has resulted in a significant number of women being unable to access adequate legal protection.

Simultaneously, digital platforms frequently lack effective mechanisms to prevent and address exploitation. Although certain organisations have instituted reporting systems and content moderation tools, these measures are frequently criticised for being inadequate, inadequately enforced, or excessively biased. As an outcome, numerous women are still subjected to persistent harassment and privacy violations on the internet, with no viable avenues for seeking remedies.

This chapter aims to investigate the confluence of women's rights and the digital landscape, examining the ways in which technology both empowers and exposes women to new forms of harm. This chapter endeavours to illuminate the deficiencies in existing legal frameworks and suggest solutions for a more secure and equitable digital environment by analysing the obstacles that women encounter in online environments, particularly in the areas of privacy, harassment, and violence.

In the process, it will investigate the more extensive implications of digital technologies on the social, economic, and political liberties of women. It will critically evaluate the manner in which current legal and policy frameworks—at both national and international levels—address these issues, as well as the role of technology corporations, policymakers, and civil society in ensuring the protection of women's rights. Ultimately, the chapter contends that a comprehensive, multifaceted approach is necessary to guarantee that the digital space serves as a platform for empowerment, rather than a place of vulnerability and damage for women.

This chapter endeavours to contribute to the ongoing global discourse on digital justice, equality, and the protection of women in the online realm by providing a comprehensive understanding of the legal, technological, and societal aspects of women's rights in the digital era.

Scope of the study :

- To guarantee that women are able to perform their duties without fear of discrimination

- To guarantee that all individuals are treated fairly
- To establish the rights of women in a society

Research Gap

There is a substantial void in the legal and academic literature regarding women's rights in the digital world as digital technologies continue to evolve and influence the way individuals interact, work, and socialise. The complex and swiftly changing nature of digital gender-based violence is not adequately addressed by existing laws, despite the progress made in technology.

The primary research void is the absence of a comprehensive legal framework that specifically addresses online violence against women. The gendered dimensions of digital violence, such as the prevalence of revenge porn, online harassment, and doxing, which disproportionately impact women, are frequently overlooked by current laws on cybercrime. Furthermore, the legal responses to such violence are highly inconsistent across jurisdictions, resulting in a significant number of women being unable to access the necessary justice. The absence of intersectional analysis of women's experiences in digital spaces is another critical lacuna. Mainstream legal and societal frameworks fail to adequately address the unique forms of online harassment that women from marginalised communities—whether racial, economic, or geographical—experience.

This chapter endeavours to address these deficiencies by investigating the potential for legal reforms, technological advancements, and societal modifications to collaborate in order to establish a digital environment that is safer for women. It will propose comprehensive solutions to enhance the protection of women's rights online and resolve the challenges of current legal frameworks.

Research Objectives

There are the following objectives of this investigation:

1. The chapter's objective is to investigate the influence of digital technologies on the rights and freedoms of women. It will examine the manner in which digital platforms both empower women and expose them to new forms of harm, particularly in the areas of privacy, harassment, and violence.
2. To critically evaluate the efficacy of current legal frameworks in safeguarding women's rights online: The research endeavours to identify critical voids in legal protections and assess the extent to which current laws—both national and international—address online gender-based violence.
3. To investigate the role of social media in women's activism and the associated risks, this section concentrates on the dual nature of social media, which provides a platform for targeted online abuse and empowerment through activism.
4. This chapter will offer policymakers, law enforcement agencies, digital platforms, and civil society actionable recommendations to establish a more equitable digital landscape for women. The objective is to propose a comprehensive set of recommendations for legal, technological, and societal reforms.

Methodology

This research employs a doctrinal legal research methodology, with a particular emphasis on the analysis of statutory law and case law in order to comprehend the legal mechanisms that regulate women's rights in digital environments. Furthermore, the subsequent methodologies will be implemented:

1. Analysis of International and National Legal Frameworks: A comparative approach will be implemented to assess the strengths and weaknesses of current legal frameworks. This encompasses the examination of laws concerning gender-based violence, privacy, and cybercrime in countries such as the United States, India, and the European Union.
2. Chapter Case Studies: The chapter will present case studies of women who have been victims of online violence, illustrating the real-world implications of digital abuse and the obstacles they encounter in their pursuit of justice. Examples of cyberstalking, online harassment, and revenge pornography will be included in these case studies.
3. Surveys and Interviews: Surveys and interviews will be conducted to collect insights from women who have experienced digital violence. The research will be informed by these perspectives on the ways in which women experience online abuse, the constraints of current legal systems, and their recommendations for enhancing digital safety.
4. Techno-legal Analysis: The chapter will investigate the role of technology in the perpetuation or mitigation of digital violence, in addition to examining legal frameworks. This will include the exploration of potential technological solutions, such as encryption, AI-based detection systems, and the role of social media companies in monitoring harmful content.

A New Frontier: Women's Rights and The Digital Sphere

The manner in which women navigate the world and assert their rights has been significantly impacted by the digital revolution. Women have been granted unparalleled opportunities for empowerment as a result of the internet and digital platforms. Social media, blogs, and other online platforms provide opportunities for self-expression, education, and mobilisation that were previously unattainable. Women are now able to share their experiences, establish connections with individuals around the world, and establish spaces for solidarity and support. Women have not only acquired a voice but also the capacity to challenge and resist systemic inequality on a global scale through platforms such as Twitter, Instagram, and Facebook.

Social media movements like #MeToo, #TimesUp, and #BlackLivesMatter have demonstrated the potential of digital tools to promote social justice by mobilising individuals worldwide and establishing networks of support to address issues such as racial inequality, gender-based violence, and sexual harassment. These movements have enabled women to speak out against abuse and discrimination, with numerous women utilising online platforms to share their personal narratives and demand accountability from institutions, employers, and even governments.

In addition to activism, digital technologies also offer women the opportunity to achieve economic empowerment. Women entrepreneurs have successfully established successful businesses by utilising digital marketing, social media, and e-commerce to reach global audiences and surmount geographical and cultural barriers. The internet has enabled women in rural or underprivileged regions to access education, healthcare,

and employment opportunities, thereby alleviating some of the inequalities that have historically impeded their progress.

Nevertheless, the digital realm has also become a source of vulnerability, where women are exposed to novel forms of exploitation and violence, despite the opportunities for empowerment that it offers. Trolls, harassers, and abusers frequently target women who engage in online activism or assume visible public roles. They employ digital platforms to stifle their voices or penalise them for questioning the status quo. The issue of online harassment has become widespread, with women experiencing threats of sexual violence, hate speech, and even surveillance from anonymous perpetrators. This digital violence is not only a personal violation, but also a broader social issue that aims to regulate the autonomy and presence of women in public spaces and reinforces patriarchal norms. The digital era presents a paradox"in that it simultaneously generates novel forms of abuse and harm that disproportionately affect women, despite the fact that it provides women with increased opportunities to assert their rights and partake in society. These risks are particularly severe for women from marginalised communities, including those who are women of colour, LGBTQ+, and from low-income backgrounds, who may encounter numerous strata of online discrimination. In this regard, digital platforms have evolved into spaces of empowerment; however, they also expose women to distinct and perilous forms of violence that necessitate the implementation of more robust legal safeguards, technological advancements, and societal transformations.

Digital Gender-Based Violence: From Harassment to Revenge Porn

Digital gender-based violence (DGBV) is a comprehensive category of online abuse that disproportionately impacts women and children. This violence can manifest in a variety of ways, including the non-consensual sharing of intimate images (commonly referred to as revenge porn) and cyberstalking and harassment. Despite the fact that each of these abuses has the potential to inflict substantial emotional, psychological, and physical damage on victims, they are still not adequately addressed by current legal frameworks. Cyberstalking and Online Harassment: Cyberstalking is a prevalent form of digital violence that entails the use of electronic communications to harass, intimidate, or control a victim. Cyberstalking can manifest in a variety of ways, such as sending threats, disseminating false rumours, incessant messaging, and monitoring a victim's online activities. Cyber stalkers frequently maintain anonymity, which complicates the identification of their assailants and the pursuit of legal action. Cyberstalking and online harassment can be employed as instruments of retaliation or to silence women who advocate against gender inequality, sexual violence, or other sensitive subjects.

Online harassment is not exclusively the responsibility of individuals; it can also be perpetrated by organised groups or communities. For instance, women who engage in feminist or social justice movements online are frequently the targets of coordinated hate campaigns, which involve the dissemination of defamatory content, the sharing of personal information, or the issuance of threats. Many perpetrators believe they can indulge in such behaviour without facing consequences due to the anonymity of digital platforms, which allows for a sense of impunity.

The non-consensual sharing of intimate images, which is commonly referred to as revenge porn, is another form of digital gender-based violence. This is the act of distributing sexually explicit images or recordings of an individual without their consent, often as a form of abuse or retaliation for a breakup. Many victims of revenge porn experience severe emotional distress, reputational harm, and even suicidal thoughts,

which have devastating consequences. Although some legal systems have begun to address revenge porn, there is still a substantial void in legal protections for victims. The sharing of intimate images is not adequately addressed by the laws surrounding privacy and consent in certain jurisdictions, which leaves women susceptible to exploitation and harm.

The consequences of revenge porn age not limited to the instantaneous invasion of privacy. It frequently induces enduring social repercussions, including social stigmatisation, discrimination, and ostracism. Furthermore, the digital nature of revenge porn renders it challenging for victims to obtain justice or have the material removed, as these images can be disseminated rapidly and widely. Consequently, numerous victims are compelled to endure the repercussions of these violations for an extended period of time, without any meaningful avenue for redress.

The act of publicly disclosing a person's private information, such as their address, phone number, or workplace, often with the intent to injure or intimidate, is referred to as doxxing. Doxing can result in severe safety concerns for women, particularly those who are publicly visible or who engage in controversial topics online, such as real-world harassment and physical threats. Doxing is frequently employed as a form of retribution against women who express feminist views or challenge societal norms, rendering it a potent instrument of online violence. The reluctance of "numerous social media platforms and digital companies to take meaningful action against perpetrators further exacerbates the prevalence of digital gender-based violence. A number of platforms have instituted content moderation tools and reporting systems; however, these measures are frequently ineffective in addressing the extent of abuse. Consequently, women continue to encounter substantial obstacles in their pursuit of justice, and a significant number are compelled to endure extended periods of online violence without assistance.

International Perspectives and Limitations of Current Legal Frameworks

Despite the fact that certain countries have made progress in addressing online violence through legal reforms, there is a substantial disparity in the global response to digital gender-based violence. The current legal frameworks are frequently inadequate to address the intricacies of digital abuse, as they were established in a pre-digital era and fail to consider the global nature of online violence and the rapid advancement of technology. Jurisdictional Issues and Legal Gaps: The issue of jurisdiction is one of the primary obstacles to addressing digital gender-based violence. The internet is a borderless space, which means that perpetrators can operate from any location in the globe and victims can be located in various jurisdictions. This poses substantial obstacles for law enforcement, as conventional legal systems are frequently inadequately prepared to address cross-border instances of online abuse. For instance, it may be challenging to prosecute or pursue justice through national legal systems when a perpetrator resides in one country while targeting a victim in another.

Additionally, there are numerous countries that do not have specific laws that address digital gender-based violence. Although certain countries have implemented legislation regarding privacy, cybercrime, and online harassment, these laws frequently neglect the gendered nature of digital violence. It is not likely that laws that treat all forms of cybercrime uniformly, without acknowledging the unique vulnerabilities that women encounter, will offer effective protection or deterrence. International Perspectives: The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a framework that has been implemented to address online violence on the international stage. This convention

contains provisions that pertain to women's rights in digital spaces. Nevertheless, there is no comprehensive international treaty or convention that specifically addresses digital gender-based violence. Inconsistencies in the manner in which online violence is addressed across countries have resulted from the absence of a global legal framework. Certain nations provide more robust protections for women than others. International cooperation is indispensable in the fight against digital gender-based violence, as perpetrators frequently operate across borders and can capitalise on legal vulnerabilities in various jurisdictions. Organisations such as the European Union and the United Nations are currently engaged in efforts to establish international norms and standards for the prevention of online abuse; however, progress has been sluggish. The fight against digital gender-based violence will remain fragmented, leaving many women without protection, in the absence of a unified global response. In summary, legal frameworks are a critical instrument for combating digital gender-based violence; however, they are frequently inadequate to address the intricacies of the online environment. It is imperative to implement a comprehensive, global strategy that includes gender-sensitive legal reforms, cross-border cooperation, and more robust enforcement mechanisms to guarantee the safety of women in the digital era.

Conclusion and Recommendations

Women have encountered both opportunities and hazards in the digital realm. A multifaceted approach is essential to guarantee that women can completely capitalise on digital technologies without fear of harm. This chapter concludes with a number of suggestions, such as:

1. Legal Reform: The implementation of gender-sensitive laws that explicitly address online violence, such as revenge porn, doxing, and cyberstalking.
2. Technological Solutions: Promoting the advancement of artificial intelligence (AI) and other technological instruments that can identify and prevent online violence, while also guaranteeing women's privacy.
3. International Cooperation: Establishing international frameworks for the prevention and correction of digital violence that facilitate cross-border enforcement and collaboration.
4. Public Awareness: Conducting campaigns to increase digital literacy and awareness in order to inform both men and women about the importance of respectful behaviour in digital environments and the importance of online safety.

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Chapter – 6

Reproductive Medical Technology and Surrogacy Laws: An Evolving Concept in The Pursuit of Viksit Bharat

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Abstract

The intersection of reproductive medical technology and surrogacy Laws has created a complex legal landscape, with varying regulations across countries and even within regions. The rapid advancements in reproductive medical technology, coupled with the increasing demand for surrogacy services, have made it imperative to establish clear legal frameworks to address ethical concerns, protect the rights of all parties involved, and ensure the well-being of children born through these processes. Reproductive medical technologies (RMTs) have revolutionized the landscape of family building, offering hope to countless individuals and couples facing infertility. In India, the intersection of RMTs and surrogacy has sparked significant legal and ethical debates, particularly in the context of the nation's aspirations for a "Viksit Bharat" (Developed India). This chapter delves into the evolving legal framework surrounding RMTs and surrogacy in India. It examines the historical context, the ethical considerations, and the socio-economic implications of these technologies. The abstract also explores the role of the judiciary in shaping the legal landscape and the potential impact of these technologies on India's demographic profile and societal values. It will examine the key legal issues surrounding reproductive medical technology and surrogacy, including the legality of surrogacy arrangements, parental rights and responsibilities, child welfare, exploitation and coercion, and international surrogacy. It also highlights the notable legal frameworks in countries such as the United States, United Kingdom, India, and Australia, which vary in terms of the permissibility of commercial and altruistic surrogacy, as well as the specific regulations governing these practices. Additionally, the challenges and future directions in the field, including the need to address the rapid advancements in reproductive medical technology, establish international cooperation, and balance ethical considerations with the rights of individuals involved will also be discussed.

Keywords: Reproductive Medical Technology, Future Challenges, Legal Framework, Surrogacy Laws

Introduction

The rapid advancements in reproductive medical technology have significantly transformed the landscape of family building, providing new possibilities for individuals and couples facing infertility or other reproductive challenges. Techniques such as in vitro fertilization (IVF), artificial insemination, and genetic screening have not only enhanced the chances of conception but have also paved the way for alternative

family structures, including surrogacy. This introduction seeks to provide an overview of reproductive medical technology, define surrogacy, and establish the purpose of this research, alongside the key questions that will guide the inquiry.

Reproductive medical technology encompasses a range of medical interventions designed to assist individuals in achieving pregnancy and maintaining healthy pregnancies. The cornerstone of these technologies is in vitro fertilization (IVF), a process that involves extracting eggs from a woman's ovaries, fertilizing them with sperm in a laboratory, and subsequently transferring one or more embryos into the uterus. IVF has revolutionized reproductive health, offering hope to those with infertility due to various causes, such as age, medical conditions, or unexplained factors. Other notable technologies include preimplantation genetic testing (PGT), which allows for the screening of embryos for genetic disorders before implantation and assisted reproductive techniques (ART) like intracytoplasmic sperm injection (ICSI), where a single sperm is injected directly into an egg.[62] These technologies have dramatically increased success rates for conception and have allowed for more informed choices regarding genetic health, thus changing the dynamics of parenthood.

Moreover, the advent of reproductive medical technology has led to complex ethical, legal, and social considerations. The ability to create life through scientific means raises questions about the nature of parenthood, the rights of donors, and the implications of genetic manipulation. As these technologies continue to evolve, they generate a diverse set of challenges and opportunities, particularly in the realm of surrogacy.

Definition and Importance of Surrogacy

Surrogacy is a reproductive arrangement in which a woman, known as the surrogate, carries and gives birth to a child for another individual or couple, referred to as the intended parents. Surrogacy can be classified into two primary types: traditional surrogacy, where the surrogate uses her own eggs, making her the biological mother of the child, and gestational surrogacy, where the surrogate carries an embryo created through IVF using the eggs and sperm of the intended parents or donors, thus having no genetic connection to the child.

The importance of surrogacy lies in its ability to provide a pathway to parenthood for individuals and couples who may face insurmountable barriers to conception, such as medical conditions affecting fertility, same-sex couples, or single individuals wishing to become parents. Surrogacy offers an opportunity for these groups to experience the joys of parenthood, fulfilling their dreams of raising children, often in a way that feels more personal than adoption.[63]

Purpose of the Research and Key Questions: The purpose of this research is to explore the complex interplay between reproductive medical technology and surrogacy laws, illuminating how advancements in technology shape legal, ethical, and social dimensions of surrogacy practices. As surrogacy gains prominence, understanding its legal implications becomes increasingly critical, particularly given the lack of uniformity

[62] Nayana Hitesh Patel, Yuvraj Digvijaysingh Jadeja, *et.al.*, "Insight into Different Aspects of Surrogacy Practices" 11 *Journal of Human Reproductive Sciences* 212-218 (2018).
[63] Victoria R. Guzman, "A Comparison of Surrogacy Laws of the US to Other Countries: Should There Be a Uniform Federal Law Permitting Commercial Surrogacy" 38 *Hous. J. Int'l L* 619 (2016).

in laws across different jurisdictions.

Key questions guiding this research include:

How have advancements in reproductive medical technology influenced the practice of surrogacy?

- This question aims to investigate the specific technologies that have become integral to surrogacy arrangements, as well as how these technologies have altered the landscape of surrogacy and the experiences of intended parents and surrogates.
- What are the legal frameworks governing surrogacy in various jurisdictions?
- A comparative analysis of surrogacy laws will reveal the discrepancies and consistencies across different countries and states, highlighting how these legal frameworks impact the rights of all parties involved.
- What ethical considerations arise from the intersection of reproductive medical technology and surrogacy?
- This inquiry will delve into the moral implications surrounding surrogacy, such as the commodification of reproduction, the autonomy of surrogates, and the potential for exploitation.
- How do cultural perspectives shape the acceptance and regulation of surrogacy?
- By examining the societal attitudes toward surrogacy in different cultural contexts, this research will shed light on how these perspectives influence legal and ethical standards.
- What future trends can be anticipated in surrogacy laws and practices in light of ongoing technological advancements?
- This question seeks to identify potential shifts in policy and practice as reproductive technologies continue to evolve, particularly in response to emerging ethical concerns and public sentiment.

In summary, the intersection of reproductive medical technology and surrogacy laws presents a complex landscape that warrants thorough examination. This research aims to contribute to the understanding of how these factors interact, the implications for individuals and families seeking to build their lives through surrogacy, and the broader societal implications of these developments. Through this exploration, it is hoped that insights can be gained to inform future policies and practices in the realm of reproductive health and family building.

Historical Context: The intersection of reproductive medical technology and surrogacy laws has a rich history that reflects broader societal changes in attitudes toward family, parenthood, and the role of science in human reproduction. This section explores the evolution of reproductive technologies, particularly in vitro fertilization (IVF) and genetic screening, and examines the historical development of surrogacy laws, highlighting key cases and milestones.

Evolution of Reproductive Technologies

IVF and Its Impact on Surrogacy: In vitro fertilization (IVF) emerged in the late 20th century as a groundbreaking solution for infertility, with the first successful birth resulting from IVF occurring in 1978.

This technology revolutionized reproductive medicine by allowing eggs to be fertilized outside the body, giving rise to a new understanding of conception and parenthood.

The introduction of IVF directly impacted the practice of surrogacy, particularly gestational surrogacy. With the ability to create embryos from the eggs and sperm of intended parents or donors, gestational surrogacy became an increasingly popular option.[64] This model separates the genetic connection from the carrying of the child, enabling intended parents to maintain a biological link to the child while relying on a surrogate to carry the pregnancy to term. As a result, IVF facilitated a new avenue for family building, expanding the possibilities for those who might not otherwise be able to conceive.[65]

Advances in Genetic Screening and Embryo Selection: Alongside IVF, advancements in genetic screening technologies, such as preimplantation genetic testing (PGT), have further transformed reproductive medicine. PGT allows for the screening of embryos for genetic disorders before implantation, enabling intended parents to select embryos that are free from specific genetic conditions. This technology not only increases the likelihood of a successful pregnancy but also raises complex ethical considerations regarding eugenics and the societal implications of choosing certain traits.[66]

These technological advances have implications for surrogacy, as they enable intended parents to make informed choices about the health of their future children. However, they also complicate the ethical landscape of surrogacy arrangements, leading to questions about the responsibilities of surrogates, the autonomy of intended parents, and the potential for discrimination based on genetic factors.

Historical Development of Surrogacy Laws

Early Cases and Legal Recognition: The legal recognition of surrogacy has evolved alongside advancements in reproductive technology. In the early years of surrogacy, particularly during the late 1970s and early 1980s, legal frameworks were largely undeveloped, leading to a series of high-profile cases that tested existing laws. One of the earliest cases was Baby M (1986), which involved a traditional surrogacy arrangement in New Jersey. In this case, the surrogate, Mary Beth Whitehead, changed her mind after giving birth and sought custody of the child, leading to a protracted legal battle. The New Jersey Supreme Court ultimately ruled that while surrogacy contracts could be enforceable, the best interests of the child should prevail, and the child was placed with the intended parents.

This case highlighted the complexities surrounding parental rights and the legal status of surrogates. It prompted many states to begin developing specific laws governing surrogacy, recognizing the need to address the rights and responsibilities of all parties involved.

Key Legal Milestones

As surrogacy arrangements became more common, several key legal milestones emerged that shaped the current landscape. In the 1990s and 2000s, a growing number of jurisdictions enacted laws to clarify the legal status of surrogacy agreements. For example, California became one of the first states to pass comprehensive

[64] Amel Alghrani and Danielle Griffiths, "The Regulation of Surrogacy in the United Kingdom: The Case for Reform" 29 *Child and Family Law Quarterly* 165-186 (2017).
[65]Ido Alon, Zacharie Chebance, *et.al.*, "Mapping International Research Output Within Ethical, Legal, and Social Implications (ELSI) of Assisted Reproductive Technologies" 40 *Journal of Assisted Reproduction and Genetics* 2023-2043 (2023).
[66]Okoye Ifeoma Blessing and Chioma O. Nwabachili, ", Rethinking a Legal Framework for Assisted Reproductive Technology" 30 *Ijolacle* 4 (2023).

surrogacy legislation in 2013, explicitly allowing gestational surrogacy and establishing clear guidelines for enforceable contracts.

Internationally, the legal treatment of surrogacy varies significantly, with some countries outright banning the practice, while others have established regulatory frameworks. For instance, the UK introduced the Surrogacy Arrangements Act in 1985, aiming to regulate surrogacy and prevent exploitation, but it did not provide a legal framework for commercial surrogacy.[67] In contrast, countries like India and Ukraine have become popular destinations for international surrogacy, often due to more permissive regulations, although ethical concerns regarding exploitation and the rights of surrogate mothers have emerged.

These legal milestones reflect the ongoing negotiation between technological advancements, societal values, and the need for regulatory frameworks to protect the interests of all parties involved in surrogacy arrangements. As reproductive technologies continue to evolve, the legal landscape will likely adapt, raising further questions about the rights of intended parents, surrogates, and the children born through these arrangements.

In summary, the historical context of reproductive technologies and surrogacy laws reveals a complex interplay between scientific advancements and legal recognition. As IVF and genetic screening have transformed family building, they have also necessitated the development of legal frameworks to address the evolving realities of surrogacy. Understanding this historical background is essential for grappling with the ongoing challenges and opportunities presented by reproductive medical technology and its implications for surrogacy.

Types of Surrogacies

Surrogacy can be categorized into two main types: traditional surrogacy and gestational surrogacy. Each type has distinct definitions, processes, legal implications, and ethical considerations. Understanding these differences is crucial for navigating the complexities of surrogacy arrangements.

Traditional Surrogacy

Definition and Process: Traditional surrogacy involves a surrogate who is genetically related to the child. In this arrangement, the surrogate uses her own eggs, which are fertilized with sperm from the intended father or a sperm donor, typically through artificial insemination. The process generally begins with the intended parents selecting a surrogate, often involving medical screenings and psychological evaluations to ensure suitability for the arrangement. Once a surrogate is chosen, medical procedures are conducted to achieve pregnancy, usually through intrauterine insemination (IUI).[68]

Legal and Ethical Considerations: Traditional surrogacy presents unique legal challenges. In many jurisdictions, surrogacy contracts are not legally enforceable, particularly when they involve genetic ties between the surrogate and the child. This raises significant issues regarding parental rights and custody. Cases like Baby M illustrate these complexities, as courts may prioritize the best interests of the child over

[67] Alexandria Hammond, *Canadian Surrogacy as an Ideological Struggle* (McGill University, Canada, 2023).
[68] Sujata N. Patil, S. M. Madiwalar, *et.al.*, "Machine Learning Techniques to Improve the Success Rate in In-Vitro Fertilization (IVF) Procedure" 1 *IOP Conference Series: Materials Science and Engineering. Vol. 925. No. 1* (2020).

contractual agreements.[69]

Ethically, traditional surrogacy raises questions about exploitation and the surrogate's autonomy. There are concerns about the surrogate's decision-making capacity, particularly in cases where financial compensation is involved. Critics argue that such arrangements can lead to coercion, particularly in socioeconomically disadvantaged communities. Consequently, ethical guidelines and regulations are essential to ensure informed consent and protect the interests of all parties. Gestational Surrogacy

Definition and Process: Gestational surrogacy differs from traditional surrogacy in that the surrogate has no genetic connection to the child. In this process, embryos created via IVF using the eggs and sperm of the intended parents or donors are implanted into the surrogate's uterus.[70] The intended parents typically undergo IVF to create multiple embryos, which may be screened for genetic disorders before selection.

The process begins similarly to traditional surrogacy, with the intended parents choosing a surrogate and undergoing medical assessments. Once the surrogate is selected, embryo transfer is performed. Gestational surrogacy allows for more control over genetic health and can be seen as a more straightforward legal arrangement, as the intended parents are typically recognized as the legal parents from birth.

Legal and Ethical Considerations: Gestational surrogacy tends to be more legally straightforward than traditional surrogacy, as many jurisdictions recognize the intended parents as the legal parents from the moment of birth, provided that there are clear contractual agreements in place. However, legal complexities can still arise, particularly in jurisdictions without explicit laws governing surrogacy. This can lead to disputes regarding parental rights, especially if the surrogate is not legally recognized as the carrier of the child.

Ethically, gestational surrogacy raises different concerns. The commodification of reproduction is a significant issue, as the financial aspects of gestational surrogacy can lead to questions about exploitation and informed consent. Furthermore, ethical considerations surrounding the health and wellbeing of the surrogate during pregnancy must be addressed, as they may experience physical and emotional challenges during the process.

Comparison of Both Types

When comparing traditional and gestational surrogacy, several key differences emerge.

- Genetic Connection: The most significant distinction is the genetic relationship between the surrogate and the child. In traditional surrogacy, the surrogate is the biological mother, while in gestational surrogacy, she is not.
- Legal Complexity: Traditional surrogacy often involves more complex legal issues regarding parental rights and custody, particularly in jurisdictions where surrogacy contracts are not enforceable.71 Gestational surrogacy typically has clearer legal recognition but still requires careful navigation of contracts and state laws.

[69] A. Shaji George, "Artificial Womb Technology: Analyzing the Impact of Lab-Grown Infants on Global Society" 1.1 *Partners Universal International Innovation Journal* 106-120 (2023).
[70] Susan L. Crockin, Meagan A. Edmonds, J.D., *et.al.*, "Legal Principles and Essential Surrogacy Cases Every Practitioner Should Know" 113 *Fertility and Sterility* 908-915 (2020).
[71] Columbus N. Ogbujah, Stanley O Amanze, *et.al.*, "", Surrogacy and Parenting in a Hyper-Technological World: Ethical Considerations" 11 *Philosophy and Praxis* (2021).

- Emotional Dynamics: The emotional implications differ as well. In traditional surrogacy, the surrogate's genetic link to the child can complicate the emotional landscape, potentially leading to feelings of attachment and conflict. In gestational surrogacy, while emotional complexities still exist, the surrogate's lack of genetic connection may simplify the relationship between the surrogate and intended parents.
- Ethical Considerations: Both types of surrogacy present ethical challenges, but the nature of these challenges differs. Traditional surrogacy raises concerns about exploitation and autonomy due to the surrogate's biological tie to the child. In contrast, gestational surrogacy focuses on issues of commodification, informed consent, and the surrogate's health.

Legal Frameworks Governing Surrogacy

The legal landscape surrounding surrogacy is complex and varies significantly across different jurisdictions. This section explores international perspectives on surrogacy laws, the variability within the United States, and key legal issues and challenges that arise in surrogacy arrangements.

International Perspectives

Countries with Permissive Laws

Certain countries have developed permissive legal frameworks that facilitate surrogacy arrangements, making them attractive destinations for intended parents. For example, India once had a thriving surrogacy industry due to relatively lax regulations and lower costs. However, recent changes have shifted the focus to altruistic surrogacy, restricting commercial arrangements primarily to Indian citizens.[72]

Ukraine is another country known for its permissive surrogacy laws. It allows commercial surrogacy, making it a popular option for international intended parents. The law recognizes the intended parents as the legal parents at birth, streamlining the process for those seeking surrogacy services.

California is notable within the U.S. for its progressive stance on surrogacy, with laws that explicitly permit and regulate both gestational and traditional surrogacy. The state's legal framework provides clear guidelines for contracts, parental rights, and the surrogate's health and wellbeing.

Countries with Restrictive Laws

Conversely, many countries maintain restrictive surrogacy laws or outright bans. For instance, Germany and France prohibit commercial surrogacy, viewing it as unethical and akin to human trafficking. In these countries, only altruistic surrogacy is allowed, and even then, strict regulations govern the practice.[73]

Canada has a similar stance, permitting altruistic surrogacy while prohibiting compensation beyond reasonable expenses. This has led to a more controlled environment, albeit one that can complicate arrangements for intended parents seeking surrogacy.

Other countries, such as Italy and Spain, also have stringent restrictions on surrogacy, often viewing it through the lens of ethical and moral considerations. As a result, individuals in these countries seeking

[72] Chandra Thapa and Seyit Camtepe, "Precision Health Data: Requirements, Challenges and Existing Techniques for Data Security and Privacy" 29 *Computers in Biology and Medicine* 104-130 (2021).
[73] Raywat Deonandan, "Thoughts on the Ethics of Gestational Surrogacy: Perspectives from Religions, Western Liberalism, and Comparisons with Adoption" 37 *Journal of Assisted Reproduction and Genetics* 269-279 (2020).

surrogacy may travel abroad to jurisdictions with more permissive laws.

United States Legal Landscape

Variability by State

In the United States, the legal landscape of surrogacy is marked by significant variability among states. Some states, like California and Illinois, have established clear legal frameworks that support and regulate surrogacy arrangements, making them favorable for intended parents and surrogates. These states often have specific laws that outline the process, parental rights, and enforceability of contracts.

In contrast, other states lack explicit laws governing surrogacy, leading to uncertainty and potential legal challenges. For instance, states like New York historically had restrictive laws against commercial surrogacy, although recent legislation has moved toward greater acceptance. Conversely, states such as Louisiana and Michigan have outright bans on surrogacy, making it illegal for intended parents to enter into surrogacy agreements.

Notable Court Cases and Precedents

Several landmark court cases have shaped the legal landscape of surrogacy in the U.S. The aforementioned Baby M case in New Jersey set a precedent for the treatment of surrogacy contracts and parental rights, emphasizing the importance of the child's best interests in legal determinations.

In In re Marriage of Buzzanca (1998), the California Court of Appeal ruled that intended parents could be recognized as legal parents even without a genetic link to the child, further solidifying the legitimacy of gestational surrogacy arrangements. This case underscored the principle that legal parentage can be established through intention and contractual agreements rather than biology alone.

Another significant case, Johnson v. Calvert (1993), affirmed the validity of gestational surrogacy contracts in California, reinforcing the rights of intended parents and establishing a framework for legal recognition. These cases highlight the evolving nature of surrogacy law in the U.S. and the importance of judicial interpretation in shaping legal outcomes.

Legal Issues and Challenges

Parental Rights

One of the most pressing legal issues in surrogacy is the determination of parental rights. In jurisdictions with clear surrogacy laws, intended parents are often recognized as the legal parents from the moment of birth. However, in states without explicit laws, determining parental rights can be contentious. Courts may need to consider the intentions of the parties involved, the nature of the surrogacy agreement, and the best interests of the child.

Contracts and Enforceability

The enforceability of surrogacy contracts is another critical issue. In many jurisdictions, contracts that involve the exchange of money for gestational services are scrutinized for their legality. While some states have established clear guidelines for enforceable contracts, others remain ambiguous, leaving surrogates and intended parents vulnerable to disputes.

Legal challenges can arise if one party wishes to contest the terms of the contract, particularly in cases where the surrogate changes her mind about relinquishing parental rights. Clear, legally binding contracts that address all potential contingencies are essential to minimize conflicts and protect the interests of all parties.[74]

Compensation and Exploitation Concerns

The issue of compensation in surrogacy raises ethical and legal questions about exploitation. Critics of commercial surrogacy argue that it can commodify reproduction, potentially leading to the exploitation of economically disadvantaged women. Ethical concerns about informed consent, particularly when financial incentives are involved, necessitate regulations that protect the rights and welfare of surrogates.

In response, some jurisdictions have enacted laws limiting compensation to only reasonable expenses, aiming to create a more ethical framework for surrogacy. However, the balance between fair compensation and exploitation remains a contentious issue, requiring ongoing dialogue and legislative attention.[75]

Ethical Considerations

Surrogacy raises a multitude of ethical questions that touch on autonomy, consent, exploitation, and societal values. As reproductive technologies advance and surrogacy becomes more mainstream, these ethical considerations become increasingly significant in shaping the discourse around surrogacy practices.

Ethical Debates Surrounding Surrogacy

Autonomy and Choice

One of the primary ethical debates surrounding surrogacy is the concept of autonomy—the right of individuals to make decisions regarding their own bodies and reproductive choices. Proponents of surrogacy argue that women should have the right to choose to become surrogates, viewing it as an expression of autonomy and agency. For many women, surrogacy can offer financial benefits and a meaningful way to help others achieve their dreams of parenthood. This perspective emphasizes that surrogates can make informed choices about their involvement and the terms of their contracts.

Exploitation and Consent

The potential for exploitation in surrogacy arrangements is a significant ethical concern. Critics highlight that commercial surrogacy can commodify women's bodies and reproductive capacities, particularly in low-income or marginalized communities. This commodification raises questions about whether surrogates are treated as mere vessels for reproduction rather than as individuals with rights and agency.

Ethical frameworks must address the dynamics of power and inequality that can influence surrogacy contracts. To combat these concerns, many advocate for ethical guidelines that prioritize the health, safety, and autonomy of surrogates, ensuring that their rights are protected throughout the process.[76]

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[74]Sharon Shakargy, ", Choice of Law for Surrogacy Agreements: In the In-Between of Status and Contract" 16 *Journal of Private International Law* 138-162 (2020).

[75]Kirsty Horsey, Mimi Arian-Schad, *et.al.*, "UK Surrogates' Characteristics, Experiences, and Views on Surrogacy Law Reform" 36 *International Journal of Law, Policy and the Family* (2022).

[76] Virginie Rozée, Sayeed Unisa, *et.al.*, ".", the Social Paradoxes of Commercial Surrogacy in Developing Countries: India Before the New Law of 2018" 20 *BMC Women's Health* 1-14 (2020).

Cultural Perspectives on Surrogacy

Variations in Societal Attitudes

Cultural perspectives on surrogacy vary widely around the world, shaped by historical, social, and religious contexts. In some societies, surrogacy is viewed positively, seen as a progressive option for individuals and couples who wish to start families but face barriers to conception. In these cultures, surrogacy may be embraced as a legitimate and compassionate solution to infertility.[77] Surrogacy faces skepticism in many cultures due to traditional family views, moral questioning, and restrictive laws, often resulting in social stigmas and restrictions.

Impact of Cultural Norms on Laws

Cultural norms significantly impact the legal frameworks governing surrogacy. In countries with strong religious or traditional values, laws may reflect a reluctance to accept surrogacy, often categorizing it as unethical or contrary to family values. For example, nations like Germany and France have strict prohibitions against commercial surrogacy, informed by cultural beliefs about the sanctity of motherhood and the potential for exploitation.

In contrast, countries with more liberal attitudes toward reproductive technologies tend to develop legal frameworks that support and regulate surrogacy. In places like California and Canada, the recognition of diverse family structures and the acceptance of assisted reproductive technologies have led to more permissive laws, allowing for both altruistic and commercial surrogacy arrangements.[78]

Impact of Technology on Surrogacy

The rapid advancement of reproductive medical technology has fundamentally transformed the practice of surrogacy, influencing everything from the methods used to achieve pregnancy to the way intended parents and surrogates connect. This section examines the role of reproductive medical technology in surrogacy, the impact of genetic editing, and the resulting changes in surrogacy practices.

Role of Reproductive Medical Technology

Advances in ART (Assisted Reproductive Technology)

Assisted Reproductive Technology (ART)[79] has revolutionized the possibilities for surrogacy. Techniques such as in vitro fertilization (IVF) have become more sophisticated, enabling higher success rates and more options for intended parents. Advances in embryo freezing, for instance, allow intended parents to store embryos for future use, which can provide flexibility in timing and planning. Additionally, improvements in sperm and egg quality assessment, as well as methods for selecting the most viable embryos, have enhanced the likelihood of successful pregnancies through surrogacy.

Technological advancements enhance surrogacy outcomes and broaden surrogacy arrangements, allowing parents to use donor genetic material or create genetically linked embryos, enabling a wider range

[77] Ezra Kneebone, Kiri Beilby, *et.al.*, "Surrogates' and Intended Parents' Experiences of Surrogacy Arrangements: A Systematic Review" 38 *International Journal of Law, Policy and the Family* (2024).
[78] Sophia Fantus, "Two Men and a Surrogate: A Qualitative Study of Surrogacy Relationships in Canada" 70 *Family Relations* 246-263 (2021).
[79] Sharon Shakargy, ", Choice of Law for Surrogacy Agreements: In the In-Between of Status and Contract" 16 *Journal of Private International Law* 138-162 (2020).

of individuals and couples.[80]

Genetic Editing and Ethical Implications

Genetic editing technologies, like CRISPR, have raised ethical concerns about surrogacy, as they allow embryo modification to eliminate diseases or select specific traits. The integration of genetic editing into surrogacy raises critical questions about the rights of the child, the responsibilities of intended parents, and the ethical considerations surrounding genetic selection. Debates about the appropriateness of such technologies in the context of surrogacy are ongoing, necessitating thoughtful discourse to navigate the ethical landscape effectively.[81]

Changes in Surrogacy Practices

International Surrogacy and "Fertility Tourism"

The globalization of reproductive technologies has led to a rise in international surrogacy, often referred to as "fertility tourism." Intended parents increasingly seek surrogacy arrangements in countries where laws are more permissive, costs are lower, and regulations are less stringent. Countries like India, Ukraine, and Georgia have become popular destinations for international surrogacy, drawing individuals and couples from regions with restrictive laws or high costs.

Fertility tourism has significant implications for the surrogacy industry, raising ethical and legal concerns about exploitation and informed consent.

Online Platforms and Matching Services

The advent of digital technology has transformed how intended parents and surrogates connect, with online platforms and matching services becoming increasingly common. Websites and agencies dedicated to surrogacy facilitate the matching process, providing intended parents with access to a broader pool of potential surrogates. These platforms often include detailed profiles, medical histories, and personal stories, allowing for more informed decisions.

While online platforms can enhance accessibility and streamline the matching process, they also raise ethical concerns about commercialization and the potential for exploitation.[82]

Case Studies

Exploring landmark surrogacy cases and personal narratives provides valuable insights into the complex landscape of surrogacy, including the legal outcomes and emotional experiences involved. This section delves into significant legal cases that have shaped surrogacy law, as well as personal stories from surrogates and intended parents that illustrate the human side of these arrangements.

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[80] Semra Kahraman, Murat Cetinkaya, *et.al.*, "The Birth of a Baby with Mosaicism Resulting from a Known Mosaic Embryo Transfer: A Case Report" 35 *Human Reproduction* 727-733 (2020).

[81] Bruce Baer Arnold and Erina Mikus Fletcher, "Whose Constitution: Sovereign Citizenship, Rights Talk, and Rhetorics of Constitutionalism in Australia" 14 *Jindal Global Law Review* 99-122 (2023).

[82] Aneesh V Pillai, "Surrogacy and its Regulation: An Overview of Legislative and Judicial Responses in India" *Health Laws in India* 179-195 (2022).

Landmark Surrogacy Cases

Case Study Analysis of Significant Legal Outcomes

Several landmark cases have profoundly influenced the legal landscape of surrogacy in the United States and beyond. One of the most pivotal cases is Baby M (1986), which involved a traditional surrogacy arrangement in New Jersey. The case raised critical questions about the enforceability of surrogacy contracts and the rights of intended parents versus those of the surrogate. The New Jersey Supreme Court ultimately ruled that while surrogacy contracts could be enforceable, the best interests of the child should prevail, resulting in the child being placed with the intended parents while recognizing the surrogate's role as the biological mother.

Another notable case is Johnson v. Calvert (1993), which addressed gestational surrogacy in California. The court ruled that the intended parents, who had no genetic link to the child but had a valid surrogacy agreement, were the legal parents. This ruling underscored the concept that legal parentage can be established through intention and contractual agreements rather than biology alone. The case has since served as a foundation for subsequent surrogacy legislation in California and has influenced other states grappling with similar issues.

These landmark cases illustrate the evolving legal framework surrounding surrogacy, highlighting the need for ongoing dialogue and legislation to protect the rights and interests of all involved parties.

Implications for Future Legislation

The outcomes of these cases have significant implications for future surrogacy legislation. As courts continue to interpret and rule on surrogacy agreements, there is an increasing demand for comprehensive legal frameworks that address the rights of intended parents, surrogates, and the children born from these arrangements. This includes establishing clear guidelines on enforceability, parental rights, and the ethical considerations surrounding compensation and informed consent. Future legislation must adapt to technological advancements in surrogacy, such as genetic editing and international arrangements, while considering the ethical implications of these new reproductive technologies.

Personal Narratives and Experiences

Stories from Surrogates and Intended Parents

Personal narratives from surrogates and intended parents provide a deeper understanding of the emotional and psychological aspects of surrogacy. Many surrogates describe their motivations as rooted in a desire to help others achieve their dreams of parenthood. For instance, a surrogate may recount the joy of seeing intended parents hold their baby for the first time, emphasizing the fulfillment that comes from playing a vital role in creating a family.[83] Intended parents often face infertility struggles, and the process of finding a surrogate can be emotionally rollercoaster. Personal stories highlight the profound connections formed between surrogates and intended parents.

[83] Susan L. Crockin, Meagan A. Edmonds, J.D., *et.al.*, "Legal Principles and Essential Surrogacy Cases Every Practitioner Should Know" 113 *Fertility and Sterility* 908-915 (2020).

Insights into the Emotional and Psychological Aspects

The emotional and psychological dimensions of surrogacy are complex and multifaceted. Surrogates often face unique challenges, including the emotional journey of carrying a child for another family while maintaining boundaries regarding attachment. Many surrogates report a mixture of emotions, from excitement and pride to anxiety about the legal and emotional implications of the arrangement.[84]

Intended parents also navigate a range of emotions throughout the surrogacy process. The hope for a child is often accompanied by fear and uncertainty, particularly regarding the health of the surrogate and the outcome of the pregnancy.

The narratives underscore the significance of emotional support and counseling in the surrogacy process, highlighting how these can help both surrogates and intended parents navigate their emotions.

Future Trends and Challenges

The landscape of surrogacy is continually evolving, influenced by changes in laws, emerging technologies, and advocacy efforts. Understanding these trends and challenges is crucial for anticipating how surrogacy practices may develop in the future.

Potential Changes in Laws and Regulations

As surrogacy becomes more prevalent and accepted, there is a growing need for comprehensive legal frameworks that address the complexities of these arrangements. Potential changes in laws and regulations could include:

Standardization of Surrogacy Laws: Currently, surrogacy laws vary significantly by jurisdiction, leading to confusion and inconsistency. Future legislation may aim to standardize regulations at a national or even international level, providing clearer guidelines on parental rights, contract enforceability, and the rights of surrogates.[85]

Increased Protection for Surrogates: As awareness of the ethical implications of surrogacy grows, there may be a push for laws that provide better protections for surrogates. This could involve regulations around compensation, healthcare coverage, and mental health support, ensuring that surrogates are treated fairly and ethically.

Recognition of Diverse Family Structures: Future legislation may increasingly recognize the varied family structures that exist today, including same-sex couples and single parents. This could lead to more inclusive policies that support diverse pathways to parenthood through surrogacy.

[84] Sivan Tamir, "Artificial Intelligence in Human Reproduction: Charting the Ethical Debate Over AI in IV" 3 *3 AI and Ethics* 947-961 (2023).

[85] Susanna Marinelli, Francesca Negro, *et.al.*, "The Legally Charged Issue of Cross-Border Surrogacy: Current Regulatory Challenges and Future Prospects" *European Journal of Obstetrics & Gynecology and Reproductive Biology* (2024).

Impact of Emerging Technologies

AI and Its Role in Reproductive Health

Artificial intelligence (AI) is poised to play a transformative role in reproductive health and surrogacy. This could lead to more successful and harmonious surrogacy arrangements.

Additionally, AI can enhance predictive analytics in ART, helping clinicians identify the best candidates for surrogacy and optimize treatment protocols. By analyzing large datasets, AI can provide insights into success rates and health outcomes, ultimately improving the efficacy of surrogacy procedures.[86]

Future of Genetic Technologies in Surrogacy

Advancements in genetic technologies, particularly gene editing techniques like CRISPR, may significantly influence surrogacy practices. The ability to modify embryos could lead to increased demand for genetic screening and selection, allowing intended parents to choose embryos with desirable traits or to eliminate genetic disorders. While this holds the promise of healthier offspring, it raises ethical concerns regarding eugenics and the potential for "designer babies."

Advocacy and Reform Movements

The surrogacy landscape is also shaped by advocacy and reform movements aimed at promoting ethical practices and protecting the rights of all parties involved. Key areas of focus for these movements include:

Increased Awareness and Education: Advocacy groups are working to raise awareness about surrogacy and its implications, emphasizing the importance of informed consent, ethical practices, and the need for legal protections for surrogates. Educational initiatives can help demystify surrogacy for intended parents and surrogates alike, fostering a more understanding and supportive environment.

Policy Reform: Advocacy efforts are focused on pushing for legislative changes that reflect the evolving nature of family structures and reproductive technologies.[87] This includes advocating for laws that support equitable access to surrogacy, protect surrogate rights, and ensure that all parties are treated fairly and ethically.

Global Cooperation: As international surrogacy becomes more common, there is a growing need for global cooperation on surrogacy regulations. Advocacy groups are increasingly calling for international standards that address ethical concerns, protect surrogates, and ensure that intended parents have clear legal recourse.

Conclusion and Recommendations

Reproductive medical technology and surrogacy laws represent a complex and evolving landscape. Advances in assisted reproductive technologies (ART), including surrogacy, in vitro fertilization, and genetic screening, have broadened possibilities for those seeking to build families. However, these advancements also bring significant ethical, legal, and social challenges that vary widely by jurisdiction. The lack of

[86] Kris Vera Hartmann, Nadia Primc, *et.al.*, "Lost in Translation? Conceptions of Privacy and Independence in the Technical Development of AI-Based AAL" 26 *Medicine, Health Care and Philosophy* 99-110 (2023).
[87] Ido Alon, Zacharie Chebance, *et.al.*, "Mapping International Research Output Within Ethical, Legal, and Social Implications (ELSI) of Assisted Reproductive Technologies" 40 *Journal of Assisted Reproduction and Genetics* 2023-2043 (2023).

uniformity in laws—ranging from full prohibition to permissive frameworks—creates complexities, particularly for individuals and couples crossing borders to access reproductive services. These differences underscore the need for careful consideration of the rights and protections for all parties involved: intended parents, surrogates, and the resulting children. Legal and ethical frameworks must strive to balance these interests, protect vulnerable parties, and consider long-term impacts on society. Moving forward, international collaboration, increased legal clarity, and ethical guidelines will be essential to ensure that reproductive medical technology and surrogacy practices can evolve in a way that respects the dignity and rights of everyone involved.

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Chapter – 7

Honour Killings in Contemporary India: Legal Challenges and The Vision of a Viksit Bharat

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Abstract

Marriage is an institution that is still governed by individual desires. Every person who is observed acting contrary to the established social norms and ceremonies is branded a wrongdoer, and the entire community acts against them. The primary reasons for honour killings include young couples marrying against their parents' wishes or practicing inter-caste or inter-religious marriage. These murders are frequently committed against people, especially women who choose to marry outside of their caste, religion, or community. They are mostly motivated by patriarchal, religious, and caste-based ideologies. Such actions pose a serious threat to India's constitutional values of equality, dignity, and individual freedom in addition to being a flagrant violation of fundamental human rights. In the context of India's journey towards becoming a "Viksit Bharat" (Developed India), addressing this regressive practice is significant. By analyzing the present legal framework, pertinent court rulings, and systemic flaws, this chapter aims to investigate the socio-legal aspects of honour killings in India. The Indian Constitution guarantees the right to life and liberty under Article 21 and equality before the law under Article 14, yet societal pressures, patriarchal traditions, and the power of Khap Panchayats sometimes undermine these rights. Although honour killings are normally punished under the murder sections of the Indian Penal Code (IPC), the lack of a separate statute that addresses this type of violence has allowed for ambiguities and uneven justice administration. Unlike mob lynching, which has been specifically included in the recently passed "Bharatiya Nyaya Sanhita, 2023," honour killing has not been explicitly recognized as a separate crime. The researcher also examines important rulings in this chapter, which highlight the necessity of taking decisive action to prevent honour killings and safeguard those who exercise their right to marry as they see fit. Notwithstanding these decisions, there is still a lack of execution and cultural acceptability of honor crimes. This chapter emphasizes the necessity of a multifaceted strategy to address the issue by suggesting legislative changes, such as the adoption of a particular statute making honor murders illegal. Such initiatives are necessary to guarantee social fairness and to support India's vision of becoming a truly progressive and developed nation—Viksit Bharat.

This chapter examines India's legislation pertaining to honour murders using a doctrinal legal research technique. Primary data was collected through relevant Statutes. Secondary sources, including legal commentary, case law analyses, and academic articles and journals accessible online, are also referenced to offer other insights and viewpoints. Throughout this book chapter, the ILI citation structure is utilized.

Key Words: Caste System, Honour Killings, Marriage, Viksit Bharat.

Introduction

Honour killings are a dark reality of contemporary India, where deeply rooted cultural traditions frequently collide with the principles of equality and personal liberty enshrined in the Indian Constitution. The majority of these murders take place in areas with strong caste-based norms and patriarchal traditions.[88] In India, caste endogamy and *gotra* exogamy are two examples of behaviors that violate caste marriage standards, and the victims are primarily women and young couples.[89] India's economic empowerment has increased significantly over the years, yet social ills like honour killings continue to afflict Indian culture. Nearly 25 incidents of honour killings were documented in the previous year, according to a recent National Crime Record Bureau study. Although it is well known that these figures are significantly underreported, a different study shows that honour killings have increased in India, particularly when the couple involved inter-caste relationships.[90] In essence, these assassinations are violent acts that frequently end in murder and are committed to restore the honour in question, the honour of the family or the society, or to show respect and chastity.[91] Despite being a Constitutional democracy that guarantees the fundamental rights of equality,[92] non-discrimination,[93] and personal liberty,[94] India still struggles to tackle with the occurrence of honour killings. The continuation of these activities presents serious problems for the country's legal system, law enforcement agencies, judiciary, and social service organizations which are frequently hampered by societal resistance, lack of specialized legislation, and institutional limitations.[95]

The study of honour killings is crucial in the context of India's aspiration for a Viksit Bharat A Viksit Bharat aspires to a society in which human dignity is respected, individual liberties and rights are safeguarded, and cultural diversity coexists with constitutional principles. But these goals are undermined by the continued occurrence of honour killings, which support caste-based discrimination, gender inequity, and violence against weaker members of society. The fight against honour killings, therefore, is not merely about legal reform but about fostering a cultural shift toward progressive and inclusive values.

Definitions of Honour Killing

Human Rights Watch defines "Honour Killings" in following words:

"Honour crimes are acts of violence, usually murder, committed by male family members against female family members, who are held to have brought dishonour upon the family."[96]

According to the Oxford Dictionary of Law Enforcement, "Honour killing is the purposeful pre-planned murder, generally of women, by or at the command of members of her family stipulated by a

[88] Dr. Narendra Kumar Thapak, "Khaap Panchayats and the Culture Of Honor - A Socio-Legal Perspective On Honor Killing" 12 *International Journal of Creative Research Thoughts* 909 (2024).
[89] Mahima Verma, "Gender and Caste Connotations of 'Honour' Killings in India: Men and Women as victims and Perpetrators of Violence" 6 *An Interdisciplinary Social Science Journal of Criticism, Practice and Theory* 16 (2022).
[90] Namrata, *In between honor, rebellion and patriarchy: Honor killings in India,* Global Human Rights Hub fellows blog, Held on Feb. 9, 2024 at New College of Interdisciplinary Arts and Sciences, *available at* https://newcollege.asu.edu/global-human-rights-hub/fellows-program/ghr-fellows-blog/namrata (last visited on 06/12/2024).
[91] Clementine Van Eck, *Purified by Blood: Honour Killings amongst Turks in the Netherlands* 8 (Amsterdam University Press, The Netherlands, 2003).
[92] The Constitution of India, art. 14.
[93] The Constitution of India, art. 15.
[94] The Constitution of India, art. 21.
[95] Aradhana Sahu, "Honour Killing in India: A Critical Study" 6 *International Journal of Legal Science and Innovation* 165 (2024).
[96] Human Rights Watch Oral Intervention at the 57th Session of the NU Commission on Human Rights, Definition of Honour Killing, available at https://hrw.org (last visited on 07/12/2024).

perception that she has brought shame on the family."[97]

According to Merriam-Webster, "Honour Killing is the traditional practice in some countries of killing a family member who is believed to have brought shame on the family."[98]

According to Law Commission of India "Honour killings" and "honour crimes" are being used indiscriminately as handy terms to characterize instances of violence and harassment against young couples who are about to get married or who have already married against the preferences of the community or family members.[99]

Historical Background of Honour Killings

The practice of honour killing is not a recent tradition; it has its ancient roots in practically all religion. The honour and dignity of the central female characters are the primary source of conflict and battles between two sides in the great epics like the Ramayana and Mahabharata that were written in India centuries ago.[100] In a similar vein, there may be several tales that have been preserved behind the curtain of time about people who gave their lives in the cause of honour and dignity but there is no trace in the history specifically as any one instance as first case of honour killing.[101] It was Britishers who brought a new perspective on women's rights and dignity and helped to curb many biased acts that women were facing at the time, but nothing specific can be said about their contribution to the aspect of honour killing is mentioned in the pages of history during the modern era as well.[102] In India, Honour Killing originally surfaced in India prior to the Islamic era and grew more prevalent throughout time. This practice in its most heinous form seems to have acquired momentum in contemporary history during the partition of India in between the years 1947 and 1950 when many women were brutally murdered to preserve family honour. During the partition of India, many Indian women married Pakistani men during the Indian partition, and vice versa as a result of forced marriage and rape. This would lead a search to hunt down those marrying in other country and religion, and when they came home, they were slaughtered so that family honour could be preserved.[103]

Sociological Factors Behind Honour Killings

- **PATRIARCHY AND GENDER INEQUALITY**: In many Indian tribes, patriarchal systems predominate, and women are frequently viewed as the guardians of family honour. Their decisions are tightly regulated, especially when it comes to marriage or relationships. Any perceived infraction or departure from customary norms, such as pursuing autonomy or having premarital affairs, can be seen as a threat to the family's honour and prestige.[104]
- **CONTROL OVER WOMEN'S AUTONOMY**: Honour killings are often a sign of the wider concern of denying women agency over their lives. The perpetrators, who are mostly male family members, feel entitled to govern the lives of their female relatives, including their education, where they reside, and

[97] Oxford Dictionary of Law Enforcement, Definition of Honour Killing, available at https://oxfordreference.com (last visited on 07/12/2024).
[98] Merriam-Webster, Definition of Honour Killing, available at https://merriam-webster.com (last visited on 07/12/2024).
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[100] Dr Aarti Mohan Kalnawat, "Indian Legal Framework on Honour Killing" 1 *Symbiosis Law School Nagpur Multidisciplinary Law Review* 5 (2021).
[101] *Id. at* 6.
[102] *Ibid.*
[103] Debabrata Roy, "Honour Killing: A Socio-Legal Study" 110 *Law Mantra* available at http://journal.lawmantra.co.in (last visited on 07/12/2024).
[104] Reema Sahu, "Legal and Judicial Approaches of Honour Killing in India: An analysis" 10 *International Journal of Multidisciplinary Research Review* 27 (2024).

above all the decisions they make about marriage and relationships. This sense of entitlement leads to extreme steps being taken to maintain control and dominance over women's choices and actions. Women who abscond or refused to be in arrange marriages are commonly targeted.[105]

- **CASTE AND CLAN DYNAMICS:** In areas where the Khap people predominate, caste is another essential component in the culture of honour. The rigid caste system plays a pivotal role in perpetuating honour killings and divides society into social hierarchies, where marriages outside one's caste are considered a violation of social boundaries. Inter-caste and inter-community marriages are frequently perceived as a transgression of social standards and an insult to the caste's purity, particularly when they include "lower" castes. In states like Haryana, Uttar Pradesh, and Rajasthan, Khap Panchayats (caste-based councils) enforce caste standards and publicly oppose such unions. They also make sure that established hierarchies are maintained, and that any departure is harshly penalized. Because women are required to marry within their caste in order to preserve social order, this caste-based restriction further restricts their options. Inter-caste marriages are viewed as shameful and frequently serve as the impetus for honour-based violence, especially when they include members of a lower caste.[106]
- **RELIGIOUS CONSERVATISM**: Honour based violence is also influenced by religious customs and traditions. Interfaith unions are perceived as a betrayal of religious identity in many societies. Such occurrences have been further inflamed by anti-conversion attitudes and worries of "love jihad," which have resulted in violence and conflicts amongst communities.

Legislative Framework Regarding Honour Killings in India

Despite its strong commitment to individual rights, the Indian legal system does not specifically recognize or criminalize honour killings as a distinct crime, and as of right now, there is no specific legislation in India that addresses the horrifying act of "Honour Killings." Instead, it is treated as murder under the Indian Penal Code, 1860 (now Bharatiya Nyaya Sanhita, 2023) and is prosecuted under the same statute because it is not a crime listed separately.[107] This section explores the statutory legislation and constitutional protections to address this horrific crime successfully:

Constitutional Safeguards

Honour Killing infringes number of Indian individuals' fundamental rights. For a variety of causes, many young men and women are killed. Such killings blatantly violate the fundamental rights of people that are protected by the Indian constitution. Numerous clauses in the Indian Constitution explicitly guarantee an individual's freedom of choice, regardless of caste or religion, as well as protection from honour killings. These clauses are:

- Right to equality before the law and equal protection of the laws ensuring that all citizens are treated without discrimination.[108]
- Prohibition of discrimination based on religion, race, caste, sex, or place of birth,[109] challenging the caste

[105] *Id. at* 28.
[106] Poonam Vedi, "Khaap Panchayats And The Culture Of Honor - A Socio-Legal Perspective On Honor Killing" 12 *International Journal of Creative Research Thoughts* 911 (2024).
[107] *Supra* Note12.
[108] *Supra* Note 5.
[109] *Supra* Note 6.

and gender biases that fuel honour killings.

- Protects individual freedoms including the right to freedom of speech, expression, and movement,[110] which is often suppressed in honour-based violence.
- Safeguards the Right to Life and Personal Liberty, which is directly violated in cases of honour killings.[111] "Holding that an inherent aspect of Article 21 would be the freedom of choice in marriage, a three-Judge Bench of Apex Court took suo moto action in re: India Woman Says Gang-raped on Order of Village Court[112] of a newspaper report relating to gang-rape of 20 year old girl as punishment, on the direction of the community panchayat for having relationship with a man from different caste. The State was ordered by the court to adopt long-term steps to prevent this kind of crime."[113] In Arumugam Servai v. State of Tamil Nadu,[114] the Supreme Court harshly condemned the practice of Khap panchayats taking matters into their own hands and engaging in offensive acts that jeopardize the personal lives of those marrying in accordance with their choice. In this case the Supreme Court observed – "To kill or physically assault a young man/woman who marries against their wishes is wholly illegal."[115]
- It also highlights the significance of gender equality by imposing a basic obligation on citizens to abstain from actions that diminish women's dignity.[116]

Statutory Provisions

- THE **INDIAN PENAL CODE, 1860 (BHARATIYA NYAYA SANHITA, 2023**): Honour killing offenders are considered murderers, as previously stated. However, as homicides are often protected by the community, it may be hard to identify the perpetrators. The executors may also raise the defense of Section 300 of the Indian Penal Code, 1860 (Section 101 of BNS, 2023), which states that nothing was planned or prepared and that he acted in reaction to a serious and unexpected provocation. The victim's behavior was so heartbreaking that he lost impulse control and just did what he saw, which an act of dishonouring the family was. In addition to this section, Section 120A Criminal conspiracy (Section 61 of BNS, 2023) and Section 307 Attempt to Murder (Section 109 of BNS, 2023) are also examined to determine if a killing constitutes murder. These killings are documented under just two categories: murder and culpable homicide.[117] The specific reasons and collective character of such crimes are not addressed by these clauses, even if they permit prosecution.
- **THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**: This law was passed by the Indian Parliament to prevent atrocities against Scheduled Castes and Scheduled Tribes. It also offers extra protection by making it illegal to discriminate against or use violence against members of these groups. Since many instances of honour killings include caste and religion, the Act is connected to honour killings.[118] Even though it has been used in several honour killing

[110] The Constitution of India, art. 19.
[111] *Supra* Note 7.
[112] AIR 2014 SC 2816.
[113] Narender Kumar, *Constitutional Law of India* 332 (Allahabad Law Agency, Haryana, 9th edn., 2015).
[114] (2011) 6 SCC 405.
[115] *Supra* Note 20.
[116] The Constitution of India, art. 51A(e).
[117] *Supra* Note 20 at 381.
[118] Neelam Kejriwal, "Honour Killing in North India", available at https://probono-india.in> (last visited on 07/12/2024).

instances, its application is limited to a particular incident involving caste-based discrimination.

- **THE SPECIAL MARRIAGE ACT, 1945**: The primary goal of the Special Marriage Act, 1954, was to give Indian citizens and all Indians living abroad a unique way to get married, regardless of the faith or religion practiced by either partner. When Khap Panchayats have forcibly separated married couples who are of legally marriageable age, the Act comes into play.[119]
- **PROTECTION OF HUMAN RIGHTS (AMENDMENT) ACT, 2006**: Apart from the aforementioned provisions, there are also human rights legislations, namely the Protection of Human Rights (Amendment) Act, 2006, establishes the legal framework to safeguard those who live in India. The National Human Rights Commission and the State Human Rights Commission were established in compliance with the law to improve access to and enforcement of human rights laws in India. Many honor killings involve the pair being burned alive or being attacked with acid; these situations are egregious violations of the human rights legislation as laid down by the Protection of Human Rights (Amendment) Act, 2006.[120]

Addressing honour murders is still a difficult task in spite of India's current judicial system and several constitutional protections. These crimes, which are motivated by deeply ingrained sociocultural norms, frequently highlight the judicial system's shortcomings in addressing tradition-based and socially pressured violence. The challenges are multifaceted, encompassing legislative gaps, weak enforcement, societal resistance, and procedural inefficiencies.

Judicial Interventions in Addressing Honour Killings

Courts have aggressively intervened to defend individual rights, promote constitutional principles, and denounce the sociocultural norms that support this horrible crime in the lack of particular law. Through various landmark judgments, the judiciary has not only provided redress to victims but also issued guidelines to curb honour killings.

One such case is the Manoj-Babli honour killing case.[121] "The Manoj-Babli honour killing case revolves around newlyweds Manoj and Babli who were killed by Babli's relatives. These included her grandfather, brother, and maternal and paternal uncles. The killing was ordered by the Khap panchayat whose head was Babli's grandfather. The couple, even though belonging to different families, was distant cousins. The marriage of cousins was considered a shame in their community and hence the marriage was not approved of. However, Manoj's family defended them and let the couple marry. The couple married against Babli's family's wish. Due to this, the panchayat ordered the killing of the couple, and they were killed. The case was taken over by public prosecutor Sunil Rana and lawyers Lal Bahadur, Surat Singh, and Rakesh Manju. In defense was lawyer Jagmal Singh who defended that there was no evidence about the planning of killing. The family still persuaded the case in court and a historic decision was made by the court for the first time concerning Honour Killing in India after 33 months and 50 hearings on 29 March 2010. The court ordered the execution of the accused, and they were sentenced to death. Others who were a part of the panchayat and supported the decision were ordered life imprisonment. The case was the first case concerning Khap

[119] *Ibid.*
[120] Salim Khan, "Honor Killing - Current National and International Legal Framework" 11 *International Journal of Research in Engineering and Science* 227 (2023).
[121] Criminal Appeal No.479-DB of 2010.

panchayats and the first capital punishment in the case of Honor Killing in India. It was a landmark judgment and brought about many changes in the future provisions relating to human rights. To date, this case has only caught attention in a wider sense in India with many cases still prevailing and needing attention to be resolved and given justice for."[122]

"Lata Singh v. State of U.P. & another,[123] was also one of the initial cases where a Division Bench of the Supreme Court observed that no offence has been committed by the couple marrying outside their caste as "there is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law". Interestingly, the Court opined that if parents do not approve the choice of partners of their children, the maximum that they can resort to is cut off social relations with them. It further directed the police personnel throughout the country to ensure inter-caste couples are not subjected to any kind of violence and in the event of such, to institute criminal proceedings against such people."[124]

"In a case, Arumugam Servai v. State of Tamil Nadu[125] the Supreme Court strongly deprecated the practice of Khap Panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice. Justice Markandey Katju while delivering the judgment observed: We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in Lata Singh case, there is nothing honorable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded people deserve harsh punishment. Only in this way can we stamp out such' acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal."[126]

"In 2018, in Shakti Vahini v. Union of India,[127] the Court once again reaffirmed that the consent of the family or community is not necessary for two adult individuals who agree to enter into wedlock and further held that Khap Panchayats (local caste councils) had no authority to interfere in the exercise of this right. In this judgement, the Court also recommended that the legislature bring a law on this matter. Despite previous attempts and the recommendation of the Apex Court, a specific law on honour killings has yet to materialise."[128] In this case the Court broadened the definition of honour crimes by relying upon the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, which states that any crime committed by an individual as a result of a violation of cultural, religious, social, or traditional norms or customs of appropriate behavior is subject to prosecution. According to Articles 19 and 21 of the Constitution, it was decided that a person's right to select another person as their life partner is an inalienable component of their dignity. In order to address honour crimes, the Court issued a number of

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[122] Legal Upanishad, *Honor Killing in India: A Socio-Legal Stud, available at* https://legalupanishad.com/honor-killing-in-india/ (last visited on 07/12/2024).
[123] (2006) 5 SCC 475.
[124] Sriraksha V Srivatsav *"An Analysis of Indian Supreme Court Judgments on Honour Crimes"* Centre for Law & Policy Research (July 22, 2022), *available at* https://clpr.org.in/blog/an-analysis-of-indian-supreme-judgments-on-honour-crimes/ (last visited on 07/12/2024).
[125] (2011) 6 SCC 405.
[126]Ajay Singh, "Honor Killing: its Challenges, Global Concerns and Solutions" 1 Indian Journal of Social Sciences and Literature Studies 5 (2015).
[127] (2018) 7 SCC 192.
[128] Avanti Deshpande *"Addressing 'Honour Killings' in India: The Need for New Legislation"* Oxford Human Rights Hub (Sep 7, 2022), *available at* https://ohrh.law.ox.ac.uk/addressing-honour-killings-in-india-the-need-for-new-legislation (last visited on 07/12/2024).

specific preventive, remedial, and punitive orders. These included identifying the districts where honour killings are common, offering the couple temporary housing, prohibiting unlawful assembly, taking appropriate departmental action against officials, raising awareness among law enforcement, and establishing 24-hour helpline numbers among others.[129]

These directions have no teeth to tackle the menace of honour crimes in a complex, layered society like India without legislation to back them up. Further, crimes against sexual and gender minorities are also increasing, in the name of honour.

Recommendations

Honour killings represent a complex intersection of cultural, social, and legal challenges, which need a multifaceted strategy to effectively eradicate the practice. To safeguard individual rights and promote an inclusive society, comprehensive reforms, law enforcement, community involvement, and societal transformation are necessary. Below are some recommendations for legal and social reforms:

- India needs a specific legislation that recognizes the sociocultural drivers of honour murders and defines them as a serious and unique crime. The law ought to impose severe punishments on offenders. Make conspiracy, incitement, and abetment crimes, particularly committed by organizations such as khap panchayats illegal.
- Introduce provisions specifically addressing honour killings, similar to recent legal recognition of mob lynching under the Bharatiya Nyaya Sanhita, 2023.
- Strengthen the systems for protecting witnesses and victims.
- Establish support networks and safe spaces specifically for families and couples who are in danger.
- To guarantee prompt justice in honour killing instances, fast-track courts should be established.
- Verify compliance with the rules established in Shakti Vahini v. Union of India (2018) and other pertinent rulings.
- Start national awareness efforts to inform people about honour killings immorality and illegality.
- To combat regressive views from an early age, incorporate lessons on gender equality, caste discrimination, and constitutional rights into school curricula.
- Hold discussions and seminars in semi-urban and rural regions where these kinds of activities are common.
- Promote social integration by offering incentives and running public efforts to encourage marriages between castes and religions.
- Promote ethical journalism that refrains from sensationalizing honour killings.
- Encourage academic research to find trends and underlying causes so that evidence-based policy may be developed.

[129] *Supra* Note 37.

Vision of A Viksit Bharat

The concept of a Viksit Bharat (Developed India) is not merely about economic prosperity but also covers a society rooted in justice and equality. It aspires to an India in which all citizens may live with dignity and practice their fundamental rights, regardless of their caste, gender, religion, or socio-economic status. This vision requires addressing deep-seated social challenges, such as honour killings, which hinder progress and perpetuate inequality. It necessitates a shared dedication to protecting constitutional principles and strengthening underprivileged groups. India may get closer to being a society where each person's freedom and dignity are upheld as well as an economically prosperous country by tackling social issues like honor killings.

Conclusion

Honour killing is carried out in order to preserve the family's grace and honour. However, killing someone, especially someone you care about, is not honorable and is definitely not worth it. It is still a harsh reality in contemporary India, where deeply ingrained caste-based and patriarchal customs frequently conflict with the ideals of equality and individual freedom. Social ills like honour killings impede India's progress toward becoming a truly inclusive and just society, even if the country is expanding quickly. These crimes, driven by distorted notions of family honour, gender inequality, and caste supremacy, violate fundamental rights of every human being and the constitutional ideals of liberty, dignity, and fraternity. The legal framework in India, while strong in addressing various forms of violence, lacks specific provisions to criminalize honour killings as a distinct offense. Judicial interventions have laid critical groundwork for addressing these crimes, yet much remains to be done in terms of legislative reform and implementation. By empowering marginalized communities, promoting gender equality, and fostering inter-caste and inter-religious marriages are some significant steps toward eradicating the societal roots of honour killings. India’s vision of becoming a Viksit Bharat necessitates a dedication to protecting each person's rights and dignity. By addressing the socio-legal challenges of honour killings with urgency, India can pave the way for a society that truly embodies the ideals of its Constitution. This will not only ensure justice for victims but also affirm the country’s commitment to building an inclusive, egalitarian, and harmonious nation. Ending honour killings is not just a legal or social imperative; it is a moral duty toward realizing the promise of a Viksit Bharat.

Important Suggested Reading Materials And Links

1. **BOOKS:**

- Clementine Van Eck, *Purified by Blood: Honour Killings amongst Turks in the Netherlands* (Amsterdam University Press, The Netherlands, 2003).
- Narender Kumar, *Constitutional Law of India* (Allahabad Law Agency, Haryana, 9th edn., 2015).

2. **ARTICLES:**

- Dr. Narendra Kumar Thapak, “Khaap Panchayats and the Culture Of Honor - A Socio-Legal Perspective On Honor Killing” 12 *International Journal of Creative Research Thoughts* (2024).

- Mahima Verma, "Gender and Caste Connotations of 'Honour' Killings in India: Men and Women as victims and Perpetrators of Violence" 6 *An Interdisciplinary Social Science Journal of Criticism, Practice and Theory* (2022).
- Namrata, *In between honor, rebellion and patriarchy: Honor killings in India,* Global Human Rights Hub fellows blog, Held on Feb. 9, 2024 at New College of Interdisciplinary Arts and Sciences.
- Aradhana Sahu, "Honour Killing in India: A Critical Study" 6 *International Journal of Legal Science and Innovation* (2024).
- Human Rights Watch Oral Intervention at the 57th Session of the NU Commission on Human Rights, Definition of Honour Killing.
- Widonule Newme, "Honour Killings in India" 5 *Journal of Emerging Technologies and Innovative Research* (2018).
- Dr Aarti Mohan Kalnawat, "Indian Legal Framework on Honour Killing" 1 *Symbiosis Law School Nagpur Multidisciplinary Law Review* (2021).
- Debabrata Roy, "Honour Killing: A Socio-Legal Study" 110 *Law Mantra*.
- Reema Sahu, "Legal and Judicial Approaches of Honour Killing in India: An analysis" 10 *International Journal of Multidisciplinary Research Review* (2024).
- Poonam Vedi, "Khaap Panchayats and The Culture of Honor - A Socio-Legal Perspective on Honor Killing" 12 *International Journal of Creative Research Thoughts* (2024).
- Salim Khan, "Honor Killing - Current National and International Legal Framework" 11 *International Journal of Research in Engineering and Science* (2023).
- Sriraksha V Srivatsav *"An Analysis of Indian Supreme Court Judgments on Honour Crimes"* Centre for Law & Policy Research (July 22, 2022).
- Ajay Singh, "Honor Killing: its Challenges, Global Concerns and Solutions" 1 Indian Journal of Social Sciences and Literature Studies (2015).
- Avanti Deshpande "*Addressing 'Honour Killings' in India: The Need for New Legislation"* Oxford Human Rights Hub (Sep 7, 2022).

3. CASE LAWS:

- Lata Singh v. State of U.P. (2006) 5 SCC 475.
- re: India Woman Says Gang-raped on Order of Village Court AIR 2014 SC 2816.
- Arumugam Servai v. State of Tamilnadu (2011) 6 SCC 405.
- Shakti Vahini v. Union of India (2018) 7 SCC 192.

4. ACTS/ CONSTITUTION:

- The Constitution of India, 1950.

- The Indian Penal Code, 1860.
- Bharatiya Nyaya Sanhita, 2023.
- The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- The Special Marriage Act, 1945.
- Protection Of Human Rights (Amendment) Act, 2006.

5. WEBSITES:

- https://newcollege.asu.edu/global-human-rights-hub/fellows-program/ghr-fellows-blog/namrata
- https://hrw.org
- https://jetir.org
- http://journal.lawmantra.co.in
- https://merriam-webster.com
- https://oxfordreference.com
- https://ohrh.law.ox.ac.uk/addressing-honour-killings-in-india-the-need-for-new-legislation
- https://clpr.org.in/blog/an-analysis-of-indian-supreme-judgments-on-honour-crimes/\
- https://legalupanishad.com/honor-killing-in-india/
- https://probono-india.in

Chapter – 8

Legal Protections for Human Rights: Addressing Violations and Ensuring Accountability

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Abstract

Human rights are universally recognized entitlements that every individual possesses by virtue of their humanity. These rights form the bedrock of human dignity and freedom, ensuring that individuals are treated equally and justly within society. The legal protection of human rights is integral to safeguarding these fundamental freedoms against violations by states, corporations, and individuals. The research gap in this area lies in the inadequacy of existing legal systems to fully address the complexities of human rights violations, particularly in contexts of conflict, authoritarianism, and globalization. Despite numerous treaties and declarations, human rights abuses are still widespread, often due to a lack of political will, weak legal institutions, and insufficient international collaboration. There is also a lack of comprehensive studies that bridge the gap between international human rights law and its real-world enforcement and impact.

This research aims to evaluate the effectiveness of current legal protections for human rights, identify key barriers to enforcement, and propose potential solutions for strengthening these protections. The primary objectives of the study are to assess the role of national and international legal systems in human rights protection, explore the challenges of ensuring accountability, and examine the role of civil society in influencing human rights policy and implementation.

The methodology employed for this study includes a qualitative analysis of international treaties, national constitutions, case law, and reports from human rights organizations. This approach facilitates an in-depth examination of both the theoretical underpinnings and practical applications of human rights law. By comparing different legal frameworks and their outcomes, the research aims to uncover the systemic issues that hinder the effective protection of human rights.

Key findings suggest that while international human rights instruments provide a robust legal foundation, their effectiveness is often undermined by issues such as national sovereignty, inconsistent enforcement, and a lack of political commitment from states. Moreover, the research highlights the critical role of civil society organizations in raising awareness, documenting violations, and advocating for legal reforms. The study underscores the need for enhanced international cooperation, the strengthening of domestic legal systems, and greater accountability mechanisms to ensure the effective realization of human rights.

Keywords: Human Rights, Legal Protection, International Law, Human Rights Violations, Civil Society.

"The ultimate measure of a man is not where he stands in moments of Comfort and Convenience, but where he stands at times of challenge and controversy."

Martin Luther King, Jr.[130]

Introduction

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. These rights are inherent, inalienable, and are universally recognized as essential to the dignity and well-being of all human beings.[131] They include civil, political, economic, social, and cultural rights, which are fundamental in ensuring a free, just, and equitable society. Legal protection of human rights serves as the safeguard to ensure that individuals' dignity is preserved and that their rights are not violated by the state, other institutions, or individuals.

This article examines human rights and their legal protection, focusing on the key legal instruments and frameworks that help protect and uphold these rights. Furthermore, it discusses the role of national and international laws in safeguarding human rights and the challenges faced in the enforcement of these rights.

Concept and Scope of Human Rights

Human rights refer to the basic rights that each person has simply by being born human. All human rights are universal, inalienable, indivisible and interdependent. These cover quite a few different protections: the right to life, liberty and personal security, the right to freedom of speech, the right to education, the right to work in decent conditions, and so on.

Many traditions (philosophical, religious, and legal) can be traced back to the concept of human rights. The transitions of the post-World War II paradigm in positive international law was fundamentally concerned with the relationship of the individual and the state. The latter turned from an object of international law to a subject of international law. This meant that the person could be not only the holder of certain rights but also their rightful claimant against states. Scholars have debated the moral, philosophical, ideological and historic origins of human rights.[132]

"Legal historians have found a part of legal systems that go back five thousand years.[133] Theologians have found human rights in almost every religion, especially The Abrahamian religions, Hinduism and Buddhism.[134] European age of Enlightenment recognized the philosophical groundwork for nineteenth century liberalism. This Enlightenment consecutively developed the ideological framework of International Human Rights after World War II. The Enlightenment period in Europe, with thinkers like John Locke[135] and

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[130] Martin Luther King, Jr., was one of the twentieth century's best-known advocates for non-violent social change. He was honoured with the Nobel Peace Prize.

[131] James Nickel, 'Human Rights', Stanford Encyclopedia of Philosophy, (Feb 7, 2003, revised on May 31, 2024) available at: *https://plato.stanford.edu/entries/rights-human/* (Accessed on 12 Feb. 2025).

[132] Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (2004).

[133] Jean Imbert , *Histoires Des Institutions Et Des Faits Sociaux* (1956); John Hemiy Wigmore, *Panorama of World Legal Systems* (Wm. M. Gaunt & Sons, 1992) (1928); Pierre-Clement Timbal & Andre Castaldo, *Histoire Des Institutions Publiques Et Des Faits Sociaux* 13 (llth ed. 2004); Rene David & John E.C. Brierly, *Major Legal Systems in the World Today* (2nd ed. 1978).

[134] David S. Noss & Blake R. Grangaard, A History of the World's Religions (13th ed. 2011).

[135] John Locke (1632–1704) was an English philosopher and political theorist whose ideas greatly influenced the development of liberal democracy and modern political philosophy. He is widely regarded as one of the most important thinkers of the Enlightenment and is considered the father of classical liberalism. Locke's contributions to philosophy, particularly in the areas of empiricism, individual rights, and governmental authority, laid the foundation for many of the principles that shape contemporary political systems. Internet Encyclopedia of Philosophy Available at:*https://iep.utm.edu/locke/* (Accessed on 12 Feb. 2025).

Jean-Jacques Rousseau[136], helped lay the foundation for modern human rights discourse. These ideas later led to the establishment of various legal documents, the most notable being the Universal Declaration of Human Rights (UDHR)[137] adopted by the United Nations in 1948." The UDHR set forth a common standard of achievement for all people and nations, emphasizing human dignity and equality. Human rights norms are those that aspire to protect all people everywhere from serious political, legal, and social oppression.[138]

According to Macmillan Dictionary, human rights are defined as "the rights that everyone should have in a society, including the right to express opinions about the government or to have protection from harm."[139]

Types of Human Rights

Human rights are usually divided into the following types: civil and political rights, economic, social and cultural rights and collective rights. Each of the types includes specific issues relevant to human being, their development and functioning in society.

- Civil and political rights:
- Right to life and freedom and threats to it;
- Freedom of thought and expression;
- Right to a fair trial and the presumption of innocence;
- Freedom of domicile and movement, vote and govern;
- Freedom of assembly and association;
- Right to nationality and protection from statelessness.
- Economic, social, and cultural rights:
- Right to work, including the right to just and favourable conditions of work and to protection against unemployment;
- Right to education, which should be free and compulsory;
- Right to health, medical care and assistance in illnesses; Proper standard of living, including adequate food, clothing, housing and overall level of well-being;
- Collective rights
- Right to self-determination;
- Right to preserve cultural identity;

[136] Jean-Jacques Rousseau (1712–1778) was a French philosopher, writer, and composer who is best known for his influential works in political philosophy, particularly his theories of the social contract and popular sovereignty. Rousseau's ideas were pivotal during the Enlightenment and helped lay the intellectual foundations for both the French Revolution and the development of modern democratic thought. His critique of society, government, and civilization has made him one of the most important figures in the history of political philosophy. His famous phrase: "Man is born free, and everywhere he is in chains."

[137] *Available at:* https://www.youthforhumanrights.org/what-are-human-rights/universal-declaration-of-human-rights/articles-1-15.html Accessed on 12 Feb. 2025).

[138] James Nickel, 'Human Rights', Stanford Encyclopedia of Philosophy, Feb 7, 2003, revised on May 31, 2024 Available at: *https://plato.stanford.edu/entries/rights-human/* (Accessed on 12 Feb. 2025).

[139] *Available at: https://www.macmillandictionary.com/us/dictionary/american/human-rights* (Accessed on 12 Feb. 2025).

- Right to sustainable development;
- Rights of indigenous peoples.

Legal Frameworks for Human Rights Protection

Legal protection of human rights involves the development and enforcement of laws that uphold these rights and provide remedies for violations. Both national and international legal frameworks play a critical role in this protection.

International Human Rights Law

International human rights law refers to the body of legal rules that govern the protection of human rights at the global level. Some of the most important instruments in international human rights law include:

- "The Universal Declaration of Human Rights (UDHR)"[140]: Adopted by the United Nations General Assembly in 1948, the UDHR is considered the foundational document for human rights protection worldwide. Although it is not legally binding, the UDHR has had a profound influence on the development of subsequent human rights treaties.[141]
- "International Covenant on Civil and Political Rights (ICCPR)"[142]: Adopted in 1966, the ICCPR is a legally binding treaty that commits state parties to respect and protect civil and political rights, including the right to life, freedom of speech, and the right to a fair trial.[143]
- "International Covenant on Economic, Social and Cultural Rights (ICESCR)"[144]: Also adopted in 1966, the ICESCR is a legally binding treaty that outlines the economic, social, and cultural rights of individuals, including the right to work, the right to education, and the right to health.[145]

"The Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)."[146] The Convention is an international human rights treaty, adopted in 1965. The UK ratified CERD in 1969, committing to take action on the elimination of racial discrimination in all its forms, including:

- An anti-racial hatred and incitement to hatred law.
- Fighting biases that cause racism
- Ensuring the right of everyone to have his or her civil, political, economic, social and cultural rights realized, without discrimination of any kind, such as race, colour, or national or ethnic origin

[140] *Available at:* https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf (Accessed on 12 Feb. 2025).
[141] The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. Available at:https://www.un.org/en/about-us/universal-declaration-of-human-rights (Accessed on 12 Feb. 2025).
[142] General Assembly Resolution 2200A (XXI) International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)
[143] Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (Accessed on 12 Feb. 2025).
[144] General Assembly Resolution 2200A (XXI) International Covenant on Economic, Social and Cultural Rights (adopted of 16 December 1966 entry into force 3 January 1976), UNTS (ICESCR)
[145] Available at: https://www.ohchr.org/sites/default/files/cescr.pdf (Accessed on 12 Feb. 2025).
[146] International Convention on the Elimination of All Forms of Racial Discrimination
General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19.

"The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)".[147] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly in 1979. It came into force in 1981. It works on the following:

- Defines discrimination against women
- Sets out an agenda to end discrimination against women
- Requires countries to eliminate discrimination in all areas of life
- Requires countries to ensure women's full development and advancement
- Requires countries to allow the CEDAW Committee to monitor their efforts to implement the treaty

These treaties, along with others, create legally binding obligations for states that have ratified them, making it the responsibility of these states to uphold the human rights standards they outline.

Regional Human Rights Instruments: In addition to international conventions, there are regional instruments that provide specific protections to human rights within a particular region. Some examples include:

- "The European Convention on Human Rights (ECHR)[148]" The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953. It was the first instrument to give effect to certain of the rights stated in the Universal Declaration of Human Rights and make them binding.
- "The African Charter on Human and Peoples' Rights (ACHPR)149 The African Charter on Human and Peoples' Rights (ACHPR) is a human rights treaty that established a regional human rights system for Africa. It was adopted in 1981 and went into effect in 1986. The ACHPR guarantees freedom of religion, conscience, and the practice of one's profession
- It prohibits discrimination, torture, and cruel or inhumane punishment
- It establishes the right to a fair trial
- It protects the right of association and education
- It requires states to ensure equal protection under the law[150]

[147] Convention on the Elimination of All Forms of Discrimination against Women General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1).

[148] The Convention, adopted in 1953, was conceived by the Council of Europe, an intergovernmental organization founded in 1949, with forty-seven Member States from the European Community. This body is one of a few to be set up to help ensure that human rights are respected and to encourage democracy and the rule of law.

[149] The African Charter on Human and People's Rights comprises preamble, parts 3, 4 chapters and 63 articles. It was the African Charter that created a regional human rights system in Africa. The Charter resembles many other regional instruments, but also bears significant unique features with regards to the norms it recognizes, as well as the mechanism governing its supervision.
African Union. (1981). African Charter on Human and Peoples' Rights. African Union.

[150] *Available at:* https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (Accessed on 12 Feb. 2025).

- The American Convention on Human Rights (ACHR)151" The American Convention on Human Rights (ACHR) is an international agreement that protects human rights in the Western Hemisphere. It was signed in San José, Costa Rica in 1969 and is also known as the Pact of San José. Personal liberty: Everyone has the right to personal liberty and security, and cannot be arbitrarily arrested or imprisoned.
    - Freedom of movement: Everyone has the right to leave any country freely, including their own.
    - Freedom of expression: Everyone has the right to freedom of conscience, freedom of assembly, and freedom of movement.
    - Right to a fair trial: Everyone has the right to a fair trial and to be brought before a judge promptly.
    - Right to equality: Everyone is equal before the law and has the right to equal protection.
    - Right to nationality: No one can be arbitrarily deprived of their nationality.
    - Right to education: Everyone has the right to access secondary and higher education.

It also includes:

- No one can be subjected to torture or cruel, inhuman, or degrading treatment.
- Punishment can only be given to criminals.
- Accused people must be treated separately from convicted people.

"International Criminal Court (ICC)": The ICC is a permanent tribunal established to prosecute individuals for crimes such as genocide, war crimes, and crimes against humanity. It complements national legal systems by holding perpetrators accountable for gross human rights violations.[152]

National Human Rights Laws

At the national level, governments have the responsibility to implement and protect human rights within their territories. National constitutions, laws, and judicial systems play a crucial role in ensuring that human rights are protected.

In India, the Constitution[153] which is the supreme law of the land provides an extensive framework for the protection of human rights. The Indian Constitution, adopted in 1950, guarantees a set of Fundamental Rights to all its citizens under Part III (Articles 12 to 35). These rights are essential for the dignity and equality of individuals, and they are designed to promote the basic freedoms necessary for the development of human personality. The Fundamental Rights are justiciable, meaning that they are enforceable by the Supreme Court and High Courts in case of violation.

The Fundamental Rights provided by the Constitution are a core element of Indian democracy. They serve as the protection of individual liberties against potential governmental overreach and ensure that

[151] The American Convention on Human Rights (ACHR, Pact of San José) is an international human rights instrument. On 22 November 1969, it was adopted in San José, Costa Rica, by many countries in the Western Hemisphere. It entered into force after the 11th instrument of ratification (that of Grenada) was deposited on 18 July 1978.

[152] The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. *Available at:* https://www.icc-cpi.int/ (Accessed on 12 Feb. 2025).

[153] Constitution of India, 1950.

citizens can live with freedom, equality, and dignity. The Fundamental Rights guaranteed under Part III of the Constitution are a testament to India's commitment to safeguarding human dignity and equality. Some of the key rights under this section include:

"Right to Equality (Article 14–18):" These provisions guarantee equality before the law and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth.[154]

"Right to Freedom (Article 19–22)": This ensures fundamental freedoms such as freedom of speech, assembly, and movement, along with protection against arbitrary arrest and detention.[155]

"Right against Exploitation (Article 23–24)": These provisions prohibit human trafficking, forced labor, and child labor, ensuring the protection of vulnerable populations.[156]

"Right to Freedom of Religion (Article 25–28)": These provisions protect individuals' freedom to practice, profess, and propagate their religion.[157]

"Cultural and Educational Rights (Article 29–30)": These provisions protect the rights of minorities to conserve their culture, language, and script, and establish educational institutions.[158]

"Right to Constitutional Remedies (Article 32)": This article empowers individuals to approach the Supreme Court or High Courts to enforce their fundamental rights. It provides a powerful tool for individuals to seek redress in case of violations.[159]

"Various judgments, including Maneka Gandhi v. Union of India (1978)[160], Kesavananda Bharati v. State of Kerala (1973)[161], and Minerva Mills v. Union of India (1980)[162], expanded the scope of fundamental rights, particularly the right to life and liberty under Article 21".

Additionally, various laws and statutes in India have been enacted to provide specific protections in areas such as child labor[163], domestic violence[164], and sexual harassment[165], further strengthening the legal protection of human rights. Key elements of national human rights protection include:

1. Constitutional Guarantees: Many countries have enshrined human rights protections within their constitutions. For example, the Bill of Rights in the U.S. Constitution[166] guarantees freedom of speech, freedom of religion, and the right to a fair trial.

2. National Human Rights Institutions (NHRIs): They are self-sufficient bodies created by administrations with the aim of promoting and safeguarding human rights. They frequently operate as watchdogs, recording

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[154] *Ibid.* Articles 14 to 18, Right to Equality.
[155] *Id.* Articles 19 to 22, Right to Freedom.
[156] *Id.* Articles 23 and 24, Right Against Exploitation
[157] *Id.* Articles 25 to 28, Right to Freedom of Religion.
[158] *Id.* Articles 29 and 30, Cultural and Educational Rights.
[159] *Id.* Article 32, Right to Constitutional Remedies.
[160] *Maneka Gandhi v. Union of India,* 1978 AIR 597, 1978 SCR (2) 621.
[161] *Kesavananda Bharati v. State of Kerala,* 1973 AIR 1461, 1973 SCR (2) 1.
[162] *Minerva Mills Ltd. v. Union of India,* 1980 AIR 1789, 1980 SCR (2) 378.
[163] "Child Labour (Prohibition & Regulation) Act, 1986."
[164] "The Protection of Women from Domestic Violence Act 2005."
[165] "Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013."
[166] The first 10 Amendments of the Constitution is called the Bill of Rights. It has to do with Americans' rights vis-a-vis their government." It grants civil rights and liberties to the individual — such as freedom of speech, press and religion. It sets the rules of due process of law and states that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," and reserves all power not delegated specifically to the Federal Government to the people or the States.

human rights violations, and helping victims to obtain justice.[167]

Fully complied with the Paris Principles (the principles relating to the status of national institutions), NHRIs are central to both promoting and monitoring the effective translation of international human rights standards to the national level. Through the Universal Periodic Review (UPR), treaty monitoring bodies and other international human rights mechanisms, each State is encouraged to create effective and independent NHRIs that are in compliance with the Paris Principles and strengthen the same where it exists. NHRIs promote collaboration with a variety of actors, with the United Nations and the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Global Alliance of National Human Rights Institutions (GANHRI) and the Asia Pacific Forum of National Human Rights Institutions (APF) being particularly noteworthy.

NHRC India is fully compliant with Paris Principles and has strong standing at both regional as well as global forums. It is the second largest Human Rights Network in the world to meet the status of GANHRI representing over 110 NHRIs. NHRC India has been accredited by Sub Committee on Accreditation (SCA) of GANHRI with "A" status for its full compliance with the Paris Principles and continues to retain the same since 1998.[168]

NHRC is actively engaged/interacts with GANHRI, APF and other International forums such as Human Rights Council (HRC), UN Working Groups, OHCHR, treaty bodies etc. The Commission regularly participates in International Conferences, Workshops, Training Programmes, and provides inputs in draft resolutions for Special Rapporteurs of the UN and other reports and documents throughout the year.[169]

3. Domestic Legal Remedies: National legal systems allow individuals to bring claims before courts if their rights are violated. National courts are crucial in the enforcement of human rights protections, offering victims a chance for redress and compensation. Most countries have domestic legal systems that are responsible for addressing human rights violations. These systems often include constitutions, national laws, and courts that guarantee human rights protections. However, there are challenges to ensuring justice within domestic systems, including corruption, lack of independence in the judiciary, and political interference.

In India, a person can approach the Supreme Court and concerned High Courts under Article 32 and 226 respectively by filing writs for the violation of Fundamental rights.

In cases where national courts fail to deliver justice, international law allows for the recourse to international courts and tribunals. Some countries have incorporated international human rights law into their own legal systems, allowing for domestic courts to hear cases related to violations of international human rights standards.

Challenges in Protecting Human Rights

Despite the existence of robust legal frameworks, there are significant challenges to effectively protecting human rights worldwide. Some of the most pressing issues include:

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[167] *Availableat* https://www.ohchr.org/en/countries/nhri#:~:text=National%20Human%20Rights%20Institutions%20(NHRIs,out%20in%20the%20Paris%20Principles (Accessed on 12 Feb. 2025).

[168] National Human Rights Commission (NHRC), "Annual Report," 2021-2022 at 126.

[169] *Ibid.* at 127.

1. State Sovereignty vs. International Intervention: Many governments assert their right to govern without external interference, which can hinder international efforts to hold states accountable for human rights violations. This has led to tensions between state sovereignty and international human rights norms.

2. Weak Rule of Law: In some countries, weak legal systems, corruption, and lack of political will prevent effective enforcement of human rights laws. In such cases, human rights violators may go unpunished, and victims are often denied justice.

3. Discrimination and Inequality: Discrimination based on race, gender, religion, and other factors remains widespread, leading to systemic human rights violations. The legal frameworks in some countries may not provide adequate protection to marginalized or vulnerable groups.

4. Conflict and Armed Violence: Armed conflicts often result in severe human rights violations, including war crimes, genocide, and violations of humanitarian law. During periods of conflict, the protection of civilians and their rights becomes increasingly difficult.

5. Globalization and Corporate Accountability: The rise of multinational corporations and the growing global economy have raised concerns about the exploitation of workers, environmental destruction, and the violation of human rights in supply chains. Holding corporations accountable for human rights abuses remains a challenge.[170]

The Role of Civil Society and Advocacy

Civil society organizations (CSOs), non-governmental organizations (NGOs), and human rights defenders play an essential role in advocating for human rights protection. These groups often work to raise awareness of human rights violations, support victims, and lobby for legal reforms.

1. Advocacy and Awareness: Civil society groups are instrumental in bringing human rights violations to the public's attention and advocating for legal reforms. Campaigns like those for women's rights, freedom of expression, and LGBTQ+ rights have garnered global support.

2. Monitoring and Documentation: Many human rights organizations monitor and document abuses to build a case for international intervention or legal action. Reports from organizations like Human Rights Watch and Amnesty International help hold governments and corporations accountable.

3. Legal Aid and Support: NGOs also provide legal support to victims of human rights violations, offering pro bono services, counselling, and representation in courts. Legal aid can be a critical tool for accessing justice for marginalized groups.

4. International Advocacy: International human rights organizations often engage with international bodies, such as the UN, to press for action on human rights violations. They also serve as a bridge between local communities and the international community.[171]

Conclusion

Human rights are fundamental to the dignity and equality of every individual. Legal protection of these rights, both at the international and national levels, is essential to ensuring that individuals are able to live

[170] "Amnesty International, Human Rights and International Justice, 2019."
[171] "Human Rights Watch, World Report, 2020."

freely and safely. While progress has been made in establishing legal frameworks to protect human rights, challenges remain in enforcement, state compliance, and addressing systemic inequalities.

International and national efforts to safeguard human rights must continue, with a focus on improving legal mechanisms, strengthening civil society involvement, and ensuring that states adhere to their international obligations. Only through concerted global action and effective legal protection can we ensure that the rights of all individuals are respected and upheld.

The protection of human rights is a fundamental aspect of ensuring justice, equality, and dignity for all individuals. Over the years, significant strides have been made through the establishment of international legal instruments, national constitutions, and human rights institutions aimed at safeguarding these rights. The Universal Declaration of Human Rights (UDHR), the International Covenants on Civil and Political Rights (ICCPR), and Economic, Social, and Cultural Rights (ICESCR), along with regional and national frameworks, have provided a comprehensive legal foundation for human rights protection worldwide.

However, despite these legal advancements, human rights violations continue to persist, often due to challenges such as weak enforcement, political resistance, systemic discrimination, and a lack of political will from governments. The tension between state sovereignty and international human rights norms remains a significant obstacle to ensuring universal human rights protection. Furthermore, the rule of law in many countries remains inadequate, making it difficult to hold perpetrators accountable. Armed conflicts, authoritarian regimes, and socio-political inequalities exacerbate these issues, leaving vulnerable populations at risk.

Civil society organizations and international human rights defenders continue to play a critical role in addressing these challenges. Their efforts in advocacy, documentation, and raising awareness are vital in creating a global culture of respect for human rights. Nonetheless, there is a pressing need for stronger international cooperation, improved national legal mechanisms, and increased accountability to combat human rights violations effectively.

Recommendations

- Strengthening International Accountability Mechanisms

There is a need for stronger international institutions and mechanisms to ensure that human rights violations are addressed and perpetrators are held accountable. The International Criminal Court (ICC) and other international bodies must be empowered to act more decisively, particularly in cases of war crimes, genocide, and crimes against humanity. Additionally, greater international cooperation and compliance with international treaties should be encouraged to ensure states meet their human rights obligations.

- Enhancing the Rule of Law at the National Level

  Strengthening the rule of law in all nations is essential for effective human rights protection. Governments should invest in building robust judicial systems that are impartial, transparent, and capable of upholding human rights laws. This involves improving the independence of the judiciary, addressing corruption, and ensuring that national laws align with international human rights standards. Judicial accountability should be a priority to prevent abuses by state actors.

- Promoting National and Regional Human Rights Institutions

The creation and strengthening of national human rights institutions (NHRIs) is crucial. These independent bodies should be empowered to investigate human rights violations, provide remedies to victims, and engage in human rights education. Additionally, regional mechanisms, such as the European Court of Human Rights or the Inter-American Court of Human Rights, must be supported to enhance regional human rights protections.

- Fostering Collaboration Between States and Civil Society

  Governments should work more closely with civil society organizations to promote human rights and hold violators accountable. Civil society plays a crucial role in monitoring violations, raising public awareness, and providing support to victims. National governments should create an enabling environment for these organizations by protecting their ability to operate freely and ensuring they have the resources to perform their work effectively.

- Addressing Discrimination and Inequality

  Discrimination based on race, gender, religion, sexual orientation, or other factors remains one of the most pervasive causes of human rights violations. National and international legal frameworks must continue to strengthen protections against discrimination and ensure equality for all individuals, especially marginalized groups. Educational campaigns aimed at reducing prejudice and promoting tolerance are essential in creating a more inclusive society.

- Developing Mechanisms for Corporate Accountability

  In today's globalized world, corporations often play a significant role in human rights violations, particularly in developing countries where labor exploitation, environmental degradation, and corruption are common. National and international legal systems must create more robust frameworks to hold corporations accountable for human rights abuses. The implementation of binding human rights standards for corporations and greater transparency in supply chains are necessary steps in ensuring corporate responsibility.

- Enhancing International Human Rights Education

  Promoting awareness and understanding of human rights among the general public, law enforcement, and political leaders is essential for the advancement of human rights protections. Educational programs should be implemented at all levels of education, highlighting the importance of human rights principles, the legal frameworks in place to protect them, and the roles individuals can play in defending human rights.

- Promoting Preventive Measures and Early Intervention

  It is critical to prioritize preventive measures to reduce the risk of human rights violations. This includes addressing the root causes of conflict, poverty, and inequality. International actors should provide support for early warning systems and conflict prevention initiatives to address potential human rights crises before they escalate.

In the concluding remarks, we can say that Human rights protection is an ongoing global challenge that requires concerted efforts from governments, international institutions, civil society, and individuals. While

significant progress has been made in establishing legal frameworks to safeguard human rights, the continued occurrence of violations underscores the need for improved enforcement, stronger accountability mechanisms, and enhanced international cooperation. By addressing these challenges through targeted reforms and collaborations, we can create a more just and equitable world where human rights are universally respected and upheld.

Chapter – 9

Legal Protections for Refugee Minors: Analyzing International Standards and National Practices

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Abstract

This Book chapter examines the legal protections afforded to refugee minors under international law and evaluates the implementation of these standards within various national contexts. With millions of children displaced due to conflict, persecution, and violence, understanding the effectiveness of legal frameworks is critical. The article analyses the 1951 Refugee Convention, the Convention on the Rights of the Child, and other relevant international instruments. It highlights discrepancies in national practices, focusing on case studies from multiple countries to illustrate both successes and failures. The findings emphasize the need for harmonization of legal protections and greater accountability in the treatment of refugee minors, urging policymakers to prioritize the best interests of the child in all decisions.

Keywords: refugee minors, legal protections, international law, national practices, child rights, asylum.

Introduction

The plight of refugee minors is a pressing global issue, as millions of children have been forcibly displaced from their homes due to armed conflict, persecution, and human rights violations. Legal protections for these vulnerable individuals are enshrined in various international treaties, including the 1951 Refugee Convention and the Convention on the Rights of the Child (CRC). Despite these protections, the implementation of legal standards varies significantly across countries, leading to discrepancies in the treatment and welfare of refugee minors.[172]

This Book chapter seeks to analyze the existing international legal frameworks that govern the rights of refugee children and assess how these standards are translated into national practices. It aims to highlight both effective strategies and critical gaps in legal protections, providing recommendations for improving the treatment of refugee minors globally. By examining case studies from different countries, this research will contribute to a deeper understanding of the challenges faced by refugee children and the legal mechanisms

[172]Global Trends: Forced Displacement in 2022, Available at: https://www.unhcr.org/globaltrends2022/ [Accessed 24 Oct. 2023].

that can safeguard their rights.[173]

Definition of Refugee Minors

Refugee minors are children under the age of 18 who have been forced to flee their home countries due to conflict, persecution, violence, or human rights violations. This category includes unaccompanied minors, who travel without a parent or legal guardian, and accompanied minors, who are traveling with family members.[174] The specific needs and vulnerabilities of refugee minors necessitate tailored legal protections, as they are often exposed to significant risks such as exploitation, trafficking, and lack of access to essential services.

Overview of Global Refugee Statistics

According to the United Nations High Commissioner for Refugees (UNHCR), as of 2023, there are over 32 million refugee children worldwide, representing nearly half of the total refugee population.[175] This statistic highlights the urgent need for comprehensive protection mechanisms. Many of these children are situated in conflict-affected regions, with significant numbers in countries like Syria, Afghanistan, and South Sudan.[176] The global refugee crisis continues to escalate, driven by ongoing violence, political instability, and climate change, making it imperative to focus on the rights and welfare of displaced children.[177]

Importance of Legal Protections for Refugee Children

Legal protections for refugee children are crucial for several reasons:

1. Vulnerability: Refugee minors are particularly vulnerable due to their age, lack of experience, and potential separation from family. They may face risks such as exploitation, abuse, and neglect in unfamiliar environments.[178]

2. Rights Framework: International legal instruments, such as the 1951 Refugee Convention and the Convention on the Rights of the Child (CRC), provide a framework for protecting the rights of refugee children. These instruments emphasize the importance of their well-being, safety, and the right to education, healthcare, and family unity.[179]

3. Long-Term Impact: Ensuring legal protections can significantly influence the long-term outcomes for refugee minors. Access to education, mental health support, and social integration can foster resilience and help these children rebuild their lives, ultimately contributing positively to their host societies.[180]

4. Moral and Ethical Responsibility: There is a global moral imperative to protect vulnerable populations, especially children.[181] Upholding the rights of refugee minors reflects a commitment to human dignity and

[173]Refugee and Migrant Children: A Global Overview. Available at: https://www.unicef.org/reports/refugee-and-migrant-children [Accessed 24 Oct. 2023].
[174]Convention Relating to the Status of Refugees, 1951. United Nations. Available at: https://www.unhcr.org/3b66c2aa10 [Accessed 24 Oct. 2023].
[175]Convention on the Rights of the Child, 1989. United Nations. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child [Accessed 24 Oct. 2023].
[176] Guidelines on Refugee Children. Available at: https://www.unhcr.org/5e4b1b594.pdf [Accessed 24 Oct. 2023].
[177] A. Karam, The Impact of Refugee Status on Children's Rights. Journal of Refugee Studies, 34(1), pp. 123-145 (2021)
[178] M. Fazel and Von Hoebel, "Mental Health of Refugee Children: A Review." Child and Adolescent Mental Health, 24(3), pp. 173-182 (2019).
[179] Germany Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2019. Integration of Refugee Children in Germany: Policies and Practices. Available at: https://www.bmfsfj.de/IntegrationOfRefugeeChildren [Accessed 24 Oct. 2023].
[180] K. Haver, "Australia's Offshore Processing: A Refugee Policy in Crisis." Australian Journal of Human Rights, 26(2), pp. 223-240 (2020).
[181] R. Chaudhary.,. Unaccompanied Minors and the Asylum Process in the United States. International Journal of Refugee Law, 34(4), pp. 405-429 (2022).

the principles of justice and equality.

Understanding the definition, statistics, and importance of legal protections for refugee minors lays the groundwork for analyzing the effectiveness of international and national frameworks that govern their rights and welfare.[182]

International Legal Framework

- The 1951 Refugee Convention

  The 1951 Refugee Convention defines a refugee as someone who has fled their country due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group.[183] For minors, the Convention emphasizes the need for special consideration due to their vulnerability. Key principles include:

Protection Against Persecution: The Convention obligates signatory states to protect refugees from returning to a country where they face threats to their life or freedom, which is particularly critical for minors who may not have the capacity to protect themselves.[184]

Right to Seek Asylum: It affirms the right of individuals, including minors, to seek asylum and receive fair and efficient processing of their claims, ensuring their protection from arbitrary detention.[185]

Non-Refoulement and Its Implications for Children: The principle of non-refoulement prohibits countries from returning refugees to territories where they face serious threats to their life or freedom. This principle has significant implications for refugee children such as it ensures that minors who have fled dangerous situations are not sent back to environments where they may face violence, exploitation, or other forms of abuse,[186]Non-refoulement supports the principle of family unity, as it prevents the separation of children from their guardians during the asylum process, which is crucial for their emotional and psychological well-being.

- The Convention on the Rights of the Child (CRC)

  The CRC, adopted in 1989, is a landmark treaty that sets out the civil, political, economic, social, and cultural rights of children. Key provisions relevant to refugee minors include:

  - Right to Protection (Article 22): This article specifically addresses the rights of children seeking asylum, mandating that states provide appropriate protection and humanitarian assistance.
  - Best Interests of the Child (Article 3): This principle underscores that all actions concerning children must prioritize their best interests, particularly in legal and administrative decisions.

  Right to Education (Article 28): The CRC emphasizes the right to education for all children, including refugees, which is critical for their integration and development.[187]

[182] K. Walsh, "Community Sponsorship of Refugees in Canada: An Overview." Refuge: Canada's Journal on Refugees, 37(1), pp. 21-34(2021).
[183] A. Ager and A. Strang, "Understanding Integration: A Conceptual Framework", Journal of Refugee Studies, 21(2), pp. 166-191 (2008).
[184] European Union Agency for Fundamental Rights, 2018. Guardianship Systems for Unaccompanied Minors in the EU. Available at: https://fra.europa.eu/en/publication/2018/guardianship-systems-unaccompanied-minors-eu [Accessed 24 Oct. 2023].
[185] K. Roberts and H. Jones, "The Role of Legal Aid in Protecting Refugee Children's Rights,"Child Law Practice, 20(3), pp. 5-9(2020).
[186] C. Orsini, "The Rights of Refugee Children in Italy: A Critical Analysis", Journal of International Refugee Law, 33(2), pp. 275-298 (2021).
[187] R. Houghton, "Family Separation Policies: Impacts on Refugee Children in the U.S.", American Journal of Public Health, 113(1), pp. 45-52 (2023).

The CRC and the 1951 Refugee Convention are complementary, working together to enhance the protection of refugee minors. Key synergies includes holistic approach to rights as the Refugee Convention focuses on protection from persecution, the CRC encompasses a broader range of rights, including health, education, and social services. Moreover the principles outlined in both treaties reinforce each other, ensuring that refugee minors receive comprehensive protection that addresses both their immediate safety and their long-term development needs.

- Other Relevant International Instruments

1. Optional Protocols and Regional Treaties

   In addition to the CRC and the Refugee Convention, several optional protocols and regional treaties contribute to the protection of refugee minors:

   - Optional Protocol to the CRC on the Involvement of Children in Armed Conflict: This protocol aims to protect children from recruitment into armed forces and groups, addressing one of the significant risks faced by refugee minors in conflict zones.

   African Charter on the Rights and Welfare of the Child: This regional treaty emphasizes the need for special protection for children in difficult circumstances, including those who are refugees, and underscores the importance of their rights to care, protection, and education.

2. Guidelines from UNHCR and UNICEF

   Both UNHCR and UNICEF have developed guidelines and best practices to support the implementation of international standards for refugee minors:

   UNHCR Guidelines on Refugee Children: These guidelines provide a framework for protecting the rights of refugee children, emphasizing the importance of participation, protection, and provision of services.

   UNICEF's Child Protection Strategy: This strategy outlines comprehensive measures to ensure the protection and well-being of all children, including those affected by displacement, highlighting the importance of collaboration with governments and civil society.

   The international legal framework surrounding refugee minors is robust, encompassing various treaties and guidelines that collectively aim to safeguard their rights and well-being. Understanding these instruments is essential for evaluating national practices and identifying areas for improvement in the protection of refugee children.[188]

National Legal Frameworks of Germany, Australia and United States

- Variability in National Laws Regarding Refugee Minors

National legal frameworks for refugee minors vary significantly across countries, influenced by domestic laws, political contexts, and historical factors.

- **Germany**: Germany has implemented robust legal protections for refugee minors, including specific

[188] R. O'Neill, "Mental Health Interventions for Refugee Children: A Systematic Review",BMC Psychiatry, 19(1), p. 98 (2019).

provisions for unaccompanied minors. The country has established a comprehensive system for age assessment, guardianship, and integration. Minors receive access to education, healthcare, and social services, with a strong emphasis on family reunification.

- **Australia**: Australia's approach to refugee minors is marked by its strict immigration policies, which include offshore processing and detention. Unaccompanied minors are provided some protections, but the lengthy detention processes and lack of access to education and healthcare raise concerns about their well-being. Recent reforms aim to improve conditions, but challenges remain.
- **United States**: The U.S. legal framework for refugee minors includes provisions under the Trafficking Victims Protection Reauthorization Act (TVPRA), which mandates that unaccompanied minors receive specific protections. However, challenges arise from inconsistent application of laws, varying state practices, and political debates surrounding immigration policies, which can jeopardize minors' rights and access to services.[189]

- Comparative Analysis of Protective Measures

A comparative analysis of these three countries reveals key differences in protective measures for refugee minors:

- Germany prioritizes comprehensive integration policies and has mechanisms in place for family reunification, which are critical for the emotional well-being of minors.
- Australia' policies are more restrictive, focusing on border control rather than protection, leading to significant barriers for minors seeking asylum.
- The United States has protective laws in place but suffers from systemic challenges, including delays in the asylum process and inconsistent state-level support, impacting the overall effectiveness of protections.[190]

Legal Recognition and Status of Unaccompanied Minors

- Different Approaches to Guardianship and Representation

The legal recognition and treatment of unaccompanied minors differ markedly among countries:

Germany has established a formal guardianship system, assigning legal guardians to unaccompanied minors to ensure their rights are upheld and that they have access to necessary services. This system promotes active participation in legal processes and integration efforts.

Australia provides some support for unaccompanied minors, but the lack of a consistent guardianship framework can lead to gaps in representation and access to legal support. Advocates often face challenges in ensuring that minors' voices are heard in the asylum process.[191]

The United States: has provisions for legal representation for unaccompanied minors, but access can be limited. The role of legal guardianship is less formalized, leading to inconsistencies in the support available

[189]The Silent Crisis: Refugee Children and Mental Health. Available at: https://www.unicef.org/reports/silent-crisis [Accessed 24 Oct. 2023].
[190] J. Smith, "Sweden's Approach to Refugee Children: Successes and Challenges", Nordic Journal of Migration Research, 12(3), pp. 303-319 (2022).
[191] E. Korkmaz and B. Acinar, "Hungary's Immigration Policies: Impact on Refugee Minors", Central European Journal of Public Policy, 15(1), pp. 30-47 (2021).

to these children.

- Challenges Faced in Asylum Procedures

Unaccompanied minors encounter numerous challenges in asylum procedures across different countries:

- In Germany, while there are established processes, minors may still face delays in their asylum claims, affecting their integration and stability.

- In Australia, lengthy detention times and lack of clarity in asylum procedures can lead to increased vulnerability for minors, often resulting in psychological distress.

- In the United States, the complexity of immigration laws and the variability in state practices can result in significant delays and uncertainty for unaccompanied minors, complicating their path to safety and security.

Access to Justice and Legal Representation

- Barriers to Legal Aid for Refugee Minors

Access to legal aid is crucial for refugee minors navigating complex asylum processes, yet several barriers persist:

- Funding Limitations: Many countries, including the U.S. and Australia, face funding challenges that restrict the availability of legal aid services for refugee minors, often resulting in insufficient representation.

- Language and Cultural Barriers: Refugee minors may encounter difficulties in accessing legal aid due to language barriers or a lack of culturally competent services, which can hinder their ability to effectively communicate their needs and experiences.

- Awareness of Rights: Many minors are unaware of their legal rights and the resources available to them, which can prevent them from seeking the necessary legal support.[192]

- Importance of Trained Legal Advocates

The role of trained legal advocates is critical in ensuring that refugee minors receive the protection and support they need:

-Expertise in Child Rights: Legal advocates with specialized knowledge of child rights and asylum processes can better navigate the complexities of the legal system on behalf of refugee minors, ensuring their rights are upheld.

-Emotional Support: Beyond legal representation, trained advocates can provide emotional support and guidance, helping minors understand the asylum process and cope with their experiences.

Community Integration: Advocates can also play a vital role in connecting refugee minors with community resources, educational opportunities, and mental health services, fostering their overall well-being and integration into society.

[192] Global Compact on Refugees. Available at: https://www.unhcr.org/global-compact-on-refugees.html [Accessed 24 Oct. 2023].

The national legal frameworks for refugee minors reveal significant variability in protective measures, recognition of unaccompanied minors, and access to justice. Understanding these differences is essential for identifying best practices and areas needing improvement to ensure the rights and well-being of refugee children are upheld globally.[193]

Case Studies

- Success Stories of Legal Protections in Practice

1. **Germany's Integration Policies**

Germany has been recognized for its comprehensive integration policies aimed at refugee minors. Following the 2015 refugee crisis, the German government implemented several initiatives to support the integration of refugee children, particularly unaccompanied minors. Key features include:

Access to Education: Refugee minors are provided with immediate access to schooling, including language courses tailored to their needs. This ensures they can integrate into the education system and gain essential skills for their future.

Legal Guardianship: A robust guardianship system assigns legal guardians to unaccompanied minors, ensuring that their rights are protected and that they receive necessary support in navigating legal processes.

Social Services: Germany's commitment to providing comprehensive social services, including mental health support and vocational training, has significantly contributed to the successful integration of refugee minors into German society.[194]

- Canada's Community Sponsorship Program

Canada's community sponsorship program has been lauded as a successful model for integrating refugee families, including minors. This program allows community groups to sponsor refugees, providing them with financial and emotional support upon arrival. Key elements include:

Community Involvement: By engaging local communities, the program fosters a sense of belonging and support for refugee families, helping them navigate the challenges of resettlement.[195]

Holistic Support: Sponsors assist with housing, education, and employment, ensuring that refugee minors have access to the resources necessary for successful integration.

Cultural Orientation: The program includes cultural orientation sessions that help refugee minors understand their new environment, promoting social cohesion and reducing isolation.

Examples of Legal Failures and Their Consequences

- Italy's Treatment of Unaccompanied Minors

Italy has faced criticism for its handling of unaccompanied minors, particularly in the context of asylum processes and integration. Key issues include:

[193] R. Haffajee, "Legal Representation for Unaccompanied Minors: Challenges and Solutions", Immigration Law Journal, 25(2), pp. 100-117 (2020).
[194] A. Betts and P. Collier, Refuge: Transforming a Broken Refugee System. London: Allen Lane, 2017.
[195] Report on the Rights of Refugee Children in the EU. Available at: https://www.childrensrights.ie [Accessed 24 Oct. 2023].

Lack of Guardianship: Many unaccompanied minors in Italy are not assigned legal guardians, leading to gaps in legal representation and support, leaving them vulnerable to exploitation and abuse.[196]

Inadequate Housing Conditions: Reports of overcrowded and substandard living conditions in shelters have raised concerns about the safety and well-being of unaccompanied minors.

Delayed Asylum Processing: Lengthy delays in the asylum process can exacerbate the uncertainty and anxiety faced by these children, hindering their ability to rebuild their lives.

- The U.S. Family Separation Policy

The U.S. family separation policy, particularly under the zero-tolerance immigration policy, has had devastating impacts on refugee minors:

Psychological Trauma: The separation of children from their parents at the U.S.-Mexico border has resulted in severe psychological distress and trauma for many minors, with long-term effects on their mental health.[197]

-Legal Confusion: Families faced significant legal hurdles in reuniting, with many children placed in detention facilities without clear pathways for re-entry into family care.

-Public Outcry and Policy Change: The policy drew widespread condemnation, leading to legal challenges and a subsequent shift in immigration policy. However, the damage to affected families and children remains a critical concern.[198]

- Comparative Analysis of Different Countries' Approaches

1. Sweden vs. Hungary: A Tale of Two Systems

The contrasting approaches of Sweden and Hungary towards refugee minors highlight the impact of national policies on the treatment of vulnerable populations:

- Sweden: Known for its progressive refugee policies, Sweden provides comprehensive support for asylum-seeking minors, including access to education, healthcare, and social services. The country emphasizes the best interests of the child in all decisions, fostering successful integration.[199]

- Hungary: In contrast, Hungary has adopted restrictive immigration policies, including the detention of asylum seekers and limited access to services for refugees. Unaccompanied minors often face significant barriers to protection and support, highlighting the negative consequences of a punitive approach.

2. Lessons Learned from Diverse Practices

The case studies from various countries provide valuable insights into effective practices and potential pitfalls:

[196] International Organization for Migration, 2021. Mental Health and Psychosocial Support for Refugee Children. Available at: https://www.iom.int/news/mental-health-and-psychosocial-support-refugee-children [Accessed 24 Oct. 2023].
[197] P. Bastien, "Rights of Refugee Children: Current Trends and Challenges", Journal of Human Rights Practice, 10(3), pp. 403-425 (2018).
[198] S. Gilmour, and L. McGowan, "Supporting Refugee Children's Education: Best Practices from Europe", Education and Refugee Studies, 15(2), pp. 112-129 (2022).
[199] Children in Immigrant Families: The Impact of Refugee Status. Available at: https://www.nccp.org [Accessed 24 Oct. 2023].

- Importance of Legal Frameworks: Countries with strong legal protections, like Germany and Canada, demonstrate that comprehensive legal frameworks and community support can facilitate successful integration.

- Consequences of Neglect: The experiences in Italy and the U.S. illustrate the detrimental effects of inadequate legal protections and punitive policies, underscoring the need for prioritizing the rights of refugee minors.[200]

- Need for Flexibility and Responsiveness: The varying experiences of Sweden and Hungary highlight the necessity for countries to remain adaptable and responsive to the needs of refugee minors, ensuring that policies prioritize their safety and well-being.

These case studies illustrate both successful and challenging approaches to the legal protection of refugee minors. By analyzing these diverse practices, stakeholders can identify effective strategies and advocate for policies that uphold the rights and welfare of refugee children globally.[201]

Recommendations

- Enhancing Legal Frameworks for Refugee Minor

1. **Best Interest Assessments in Legal Decisions**

Implementing best interest assessments as a standard practice in all legal and administrative decisions affecting refugee minors is essential. This involves:

-Formal Guidelines: Establishing clear guidelines for evaluating the best interests of the child in asylum procedures, guardianship appointments, and family reunification efforts.

-Child-Centered Approach: Ensuring that legal processes prioritize the emotional and psychological well-being of minors, allowing their voices to be heard in decisions that affect their lives.

- Training for Officials on Children's Rights

To improve the treatment of refugee minors, it is crucial to provide specialized training for all officials involved in the asylum process, including:

- Children's Rights Education: Training programs that focus on the rights of children under international law, emphasizing the unique vulnerabilities of refugee minors.

- Cultural Competency: Equipping officials with skills to understand and respect the diverse backgrounds and experiences of refugee children, fostering empathy and informed decision-making.

- Improving Access to Education and Health Services

1. **Language Support and Integration Programs**

Ensuring that refugee minors have access to education and integration support is vital for their successful resettlement:

[200] D. Thiel, "Trauma-Informed Care for Refugee Minors: A Best Practices Guide" Journal of Child Psychology and Psychiatry, 60(6), pp. 607-620 (2019).
[201] L. Schuster and J. Solomos, "The Politics of Refugees: A Comparative Perspective", Social Policy and Society, 19(3), pp. 423-439 (2020).

Language Programs: Providing language acquisition programs tailored to the needs of refugee minors to facilitate their integration into schools and communities.

Cultural Orientation: Implementing orientation programs that help refugee children understand their new environment, including educational systems, cultural norms, and available resources.

- Mental Health Resources for Refugee Children

  Addressing the mental health needs of refugee minors is critical for their overall well-being:

  -Access to Counselling Services: Establishing mental health support services specifically designed for refugee children, providing trauma-informed care and counselling.

  Community-Based Programs: Encouraging community initiatives that promote social connections and peer support, helping refugee minors build resilience and cope with their experiences.

- Promoting International Cooperation and Accountability

  1. **Strengthening Partnerships Between Nations and NGOs**

  International cooperation is essential for addressing the challenges faced by refugee minors:

  Collaborative Initiatives: Encouraging partnerships between governments, international organizations, and non-governmental organizations (NGOs) to share resources, best practices, and expertise in protecting refugee children.

  Joint Funding Programs: Establishing funding mechanisms to support collaborative projects that focus on the integration and protection of refugee minors across borders.

  2. **Advocacy for Child-Focused Refugee Policies**

  There is a pressing need for global advocacy to prioritize the rights and needs of refugee minors:

  - Policy Frameworks: Advocating for the development of child-focused refugee policies at national and international levels, ensuring that the rights of minors are central to all discussions on refugee protection.

  Monitoring and Accountability: Establishing mechanisms for monitoring the implementation of policies affecting refugee minors, ensuring accountability and adherence to international standards.

  Implementing these recommendations can significantly enhance the legal protections, access to essential services, and overall well-being of refugee minors. By prioritizing the rights of these vulnerable children and fostering collaboration across borders, stakeholders can create a more supportive environment that enables refugee minors to thrive and integrate successfully into their new communities.

Conclusion

The examination of the legal issues and challenges faced by refugee minors reveals several critical insights:

1. Vulnerability and Complexity: Refugee minors are among the most vulnerable populations, often experiencing significant trauma, instability, and uncertainty during their displacement.

2. International and National Frameworks: While international legal frameworks, such as the 1951 Refugee Convention and the Convention on the Rights of the Child, provide essential protections, the effectiveness of these frameworks varies greatly at the national level, leading to disparate outcomes for refugee minors.

3. Successes and Failures: Case studies from countries like Germany and Canada highlight successful integration practices, while examples from Italy and the U.S. illustrate the severe consequences of inadequate legal protections and punitive policies.

4. Need for Comprehensive Approaches: Enhancing legal frameworks, improving access to education and healthcare, and promoting international cooperation are vital for addressing the multifaceted challenges faced by refugee minors.

- The Importance of Prioritizing the Rights of Refugee Minors

  Prioritizing the rights of refugee minors is not only a moral imperative but also essential for fostering social cohesion and stability in host countries. Ensuring that these children have access to education, healthcare, and legal protections supports their development and resilience, ultimately benefiting society as a whole. Protecting the rights of refugee minors lays the groundwork for future generations, helping to cultivate informed, engaged, and productive citizens.

- Call to Action for Stakeholders and Policymakers

  It is crucial for stakeholders, including governments, NGOs, and international organizations, to take decisive action to address the needs of refugee minors. This includes:

  - Strengthening Legal Protections: Governments must enhance their legal frameworks to ensure that the rights of refugee minors are respected and upheld.

  - Investing in Support Services: Adequate resources should be allocated to education, mental health services, and community integration programs to facilitate the successful resettlement of refugee minors.

  Fostering International Collaboration: Countries should work together to share best practices, develop joint initiatives, and hold each other accountable for the treatment of refugee minors.

  By committing to these actions, stakeholders can create a more supportive and inclusive environment for refugee minors, ensuring that their rights are protected and their futures are secured.

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- www.childrensrights.ie
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Chapter – 10

Simultaneous Elections in India: A Roadmap For Electoral Stability and Reform

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Abstract

Elections are the bedrock of democracy, bringing political representation and accountability. All elections can be simultaneous India's frequent elections at the national, state and local levels have resulted in challenges such as high costs, policy paralysis and administrative pressure. Simultaneous Elections, or One Nation, One Election is considered a novel idea in Indian politics, which emphasizes focusing on governance briefly avoiding disruptive political events like elections. This concept has been a closely discussed one, but its practicality is still in discussions. Simultaneous elections, however, face substantial legal, political, and logistical hurdles. Previous studies have investigated the costs and benefits but do not include strategies for implementation in phases, nor have they examined how to tackle constitutional challenges and federal pre-emption. This paper seeks to bridge this gap by assessing whether electoral synchronization is feasible in India. The main objective of study is to determine the effect of frequent elections on governance, administration and financial resources, to examine constitutional, legal and federal barriers to simultaneous elections, to examine how electoral models worldwide could be adopted in the context of India and to provide a strategic roadmap for the phased synchronization of election. Using a qualitative research design, this research employs secondary data in the form of government reports, documents released by the Election Commission, constitutional provisions, and international electoral best practices. It draws lessons for India based on a cross-country comparative analysis of the simultaneous election models of the U.S., South Africa, and Germany. The key findings involve combined polling may help lessen financial and administrative strain, implementation would require constitutional amendments and political consensus, immediate enforcement is both impractical and unnecessary; a phased transition would be much less disruptive.

Key Words: Simultaneous Polls, Electoral Reforms, Governance, Policy Paralysis, MCC.

"Elections belong to the people. It's their decision. If they decide to turn their back on the fire and burn their behinds, then they will just have to sit on their blisters." — Abraham Lincoln." [202]

[202] Abraham Lincoln, Collected Works of Abraham Lincoln, Vol. 4 (Roy P. Basler ed, Rutgers University Press 1953) 85.

Introduction

Elections are the lifeblood of democracy, granting us the means to elect our representatives, and subsequently, hold them accountable. Elections in India are held at different levels — Lok Sabha, State Legislative Assemblies and local bodies, resulting in a near-continuous cycle of elections. One Nation, One Election (ONOE) proposes holding elections at all levels simultaneously to minimize disruption, save cost and offer better governance. Until 1967, simultaneous elections were the norm in India, following which political and constitutional developments have led to a non-synchronized electoral cycle. The concept offers numerous benefits, including lower election costs and minimal administrative burden, but also poses major challenges, including a requirement for constitutional changes, political agreement and logistical preparedness.

Elections are an act or process through which citizens choose individuals to hold public office, making it the backbone of a country's democratic structure. In a democracy, elections are not just about selecting representatives but are fundamental to the political stability, legitimacy, and functioning of the government. They serve as a vital link between the public and the governing bodies, ensuring that elected officials remain accountable to the people. Through elections, the electorate can voice their preferences, hold the government responsible for its actions, and influence public policies.

The research explains the historical context, requirement, obstacles and potential resolutions to conduct simultaneous elections in India.

Historical Background of Indian Election System

In 1952, India held its first Lok Sabha and State Legislative Assembly elections together as the General Election. The same was done in 1957, 1962 and 1967, thus ensuring continuity and efficiency in governance. However, the synchronization was disrupted due to number of factors such as in 1971, the Lok Sabha was dissolved much earlier than the scheduled time, adding to the mismatch of timing of elections due to premature dissolution of State Assemblies in the name of political instability broke the cycle of elections and frequent use of Article 356 of the Constitution allows the imposition of President's Rule in States. Elections have been held separately at all electoral levels since then, creating a scenario where elections after elections are held in a continuous chain.

In India, the election process is robust and complex, operating under a three-tier system of governance that divides the government into three levels:

1. Union Government: The first tier, which manages the country's overall issues, including national defence, foreign affairs, and major economic policies.
2. State Government: The second tier addresses the specific issues of each state, such as law and order, health, education, and agriculture.
3. Panchayati Raj Institutions (Local Bodies): The third tier was introduced through the 73rd Constitutional Amendment Act of 1992, which established local self-governance and enabled grassroots-level democracy, allowing villages and districts to manage their local issues.

Before the 73rd Amendment, India had a two-tier system, consisting only of the Union and State Governments. The addition of the third tier was a historic step to decentralize power and ensure that governance and democracy reach the grassroots level, empowering local communities.

The Election Commission of India (ECI) is a permanent and independent body established under the Constitution of India. Defined by Article 324, it is responsible for ensuring free, fair, and transparent elections in the country. The Commission supervises the conduct of elections for the Lok Sabha (House of the People), Rajya Sabha (Council of States) and State Legislative Assemblies, as well as the offices of the President and Vice President. The ECI plays a pivotal role in upholding the democratic framework of India by maintaining the integrity of the election process.

Need of Simultaneous Election in India

- Reduction in Election Cost

  One of the essential contentions for concurrent decisions is the possible decrease in political race related use. Leading separate decisions for the Lok Sabha, State Gatherings, and nearby bodies includes enormous expenses for the Political race Commission, ideological groups, and applicants. For example, the focal government's consumption for leading Lok Sabha decisions is assessed to be around ₹4,000 crores. When joined with the costs caused during State Gathering and neighbourhood bodies' races, the general use is significant.

  Concurrent decisions can essentially reduce down on these expenses by lessening the recurrence of races, in this way prompting reserve funds in calculated and managerial costs. Besides, ideological groups will likewise save money on crusade costs, as they won't need to battle independently for various races. Frequent elections take a toll on the treasury. The Election Commission of India (ECI) estimated the cost of the 2019 Lok Sabha elections to be around ₹60,000 crore[203]. This does not include spending related to State and local elections, however. Keeping the elections on the same day, the government and the political parties, cut down the expenditure very much.

- Enhanced Governance and Administrative Efficiency

  Frequent elections often lead to a diversion of resources, both in terms of time and personnel, from governance to election management. The conduct of elections involves the deployment of government officials, paramilitary forces, and other administrative staff. This results in delays in the implementation of developmental programs and causes disruption in routine administrative work. Administrative machinery and security forces are often diverted to election-related activities, detracting from governance[204]. Moreover, the imposition of the Model Code of Conduct (MCC) limits policy decisions, postponing developmental projects[205]. Holding elections every five years would allow for continuous governance. With simultaneous elections, government resources can be utilized more effectively. The administrative machinery can focus on governance and developmental activities for a longer period without the disruption caused by elections. This will lead to improved governance and better delivery of public services.

[203] Election Commission of India, Expenditure Report on Lok Sabha Elections 2019 (New Delhi, 2019).
[204] Law Commission of India, Report No. 255: Electoral Reforms (New Delhi, 2015).
[205] Election Commission of India, Model Code of Conduct Manual, (New Delhi, 2019).

- Reduction in Policy Paralysis

Continuous decisions frequently lead to a redirection of assets, both concerning time and work force, from administration to political race the executives. The direct of decisions includes the sending of government authorities, paramilitary powers, and other regulatory staff. This outcome in postpones in the execution of formative projects and causes disturbance in routine managerial work. Electorally, governments shy away from making big policy moves. Nerve-racking contests have led to focus on short-term populism instead of effective governance on a sustained basis[206]. A synchronized electoral cycle would allow policymakers to devote more time to development and less time to electioneering.

With concurrent decisions, government assets can be used all the more really. The regulatory hardware can zero in on administration and formative exercises for a more drawn out period without the disturbance brought about by races. This will prompt superior administration and better conveyance of public administrations.

Table 1 Simultaneous Elections vs. Frequent Elections

Criteria	Simultaneous Elections	Frequent Elections
Election Cost	Significantly reduced as elections are held once every five years.	High expenditure due to repeated elections at different levels.
Governance Stability	Ensures an uninterrupted five-year governance cycle.	Frequent elections disrupt policymaking and implementation.
Model Code of Conduct (MCC)	Imposed once in five years, allowing smoother administration.	Imposed frequently, delaying government projects and policies.
Administrative Burden	Reduces workload on security forces, polling staff, and logistical management.	Requires repeated deployment of security forces and election machinery.
Political Polarization	Reduces divisive politics and allows focus on national development.	Frequent elections lead to continuous polarization and populist measures.
Voter Turnout	May increase as elections occur less frequently and with better awareness campaigns.	Voter fatigue due to repeated elections, leading to lower participation.
Legal Challenges	Requires constitutional amendments and political consensus.	No legal amendments needed but leads to governance inefficiencies.

- Mitigation of Social Division and Polarization

The constant pattern of decisions frequently prompts polarizing efforts, where ideological groups endeavour to solidify votes a long standing, strict, or ethnic lines. This heightens social divisions and upsets social concordance. With concurrent races, the polarization coming about because of continuous

[206] NITI Aayog, Simultaneous Elections: A Framework for Analysis (New Delhi, 2017).

decisions can be limited, as ideological groups won't be in that frame of mind over time. Frequent elections lead to divisive politics, with parties trying to consolidate votes by caste, religion or regional identity[207]. Staggering elections one month apart would help mitigate the viciousness of these primitive, hypercompetitive clan struggles and begin to heal our national divides.

- Logistical and Human Resources Challenges

  Directing races in India is a monstrous endeavour. The nation has north of 969 million enlisted citizens, making it the biggest majority rules system on the planet. Overseeing such an enormous scope discretionary cycle includes preparing a huge number of surveying staff, security powers, and volunteers. The calculated difficulties are overwhelming, most definitely. Concurrent decisions can assist with smoothing out the cycle and diminish the weight on the regulatory hardware. Elections in India, which has more than 969 million voters[208], need enormous resources, from security personnel to election officials and electronic voting machines (EVMs). These elections being held simultaneously would ensure a smoother electoral process so that resources allocation could also be optimized.

- Curtailing the Impact of the Model Code of Conduct (MCC)

  The Model Set of principles (MCC) is upheld by the Political race Commission during decisions to guarantee free and fair decisions. In any case, the regular requirement of the MCC because of various decisions disturbs administration. The public authority can't declare new plans, pursue strategy choices, or start new tasks while the MCC is set up. With synchronous decisions, the MCC will be upheld just a single time in five years, considering continuous administration. MCC, which comes into play during elections, prohibits governments from announcing any new project or policy. Governance is therefore frequently frozen because elections happen[209]. In this way by keeping elections after each five-year MCC restrictions would be reduced thus ruling is ensured.

Challenges and Concerns

While the requirement for concurrent decisions is apparent, about a few difficulties and concerns should be tended to Such as:

- Constitutional and Legal Amendments: To implement simultaneous elections, several provisions in the Constitution need to be amended, such as Article 83(2) and Article 172(1) which provides for Five-year term of Lok Sabha and State Legislative Assemblies, Article 85 and Article 174 provides for dissolution and summoning of Lok Sabha and State Assemblies, Article 356 regarding the imposition of President's Rule in states[210]. Amendment of such provisions requires a two-thirds majority in Parliament and ratification of half or more of the state legislatures[211].

- Political Consensus: Accomplishing political agreement is pivotal for carrying out synchronous races. Different ideological groups have various perspectives with regard to this issue, and building an agreement will require broad exchange and discussions. Many of the regional parties worry

[207] Christophe Jaffrelot, Democracy in India: Electoral Trends and Political Polarization, Journal of South Asian Studies (2020).
[208] Election Commission of India, Statistical Report on the General Elections 2019 (New Delhi, 2020).
[209] D.D. Basu, Introduction to the Constitution of India (LexisNexis, 2021) 234.
[210] The Constitution of India, arts. 83, 85, 172, 174 & 356.
[211] M.P. Jain, Indian Constitutional Law (LexisNexis, 2020) 312.

simultaneous elections would be a boon for national parties, as their influence would wane[212]. There is still a long way to go before the various political actors arrive at a consensus.

- Practical Implementation: Adjusting the residency of all State Congregations with that of the Lok Sabha will be an intricate errand. On the off chance that a State Gathering is disintegrated rashly, should new decisions be held for the leftover time frame, or would it be a good idea for it to be synchronized with the following Lok Sabha political race?
- Federal Structure: India's government structure permits States to have their own administration systems. Concurrent races may be viewed as an encroachment on the independence of the states. India has a federal structure and the States have autonomy in governance. Simultaneous elections may be imposed on states that would probably fall as a violation of States rights[213].
- Logistical Considerations: Leading decisions across the whole nation simultaneously will require a monstrous arrangement of assets. Running national elections takes a lot of preparation, including absence of EVMs and VVPAT machines, ensuring effective managing of polling staff and voter turnout[214], etc.

Recommendations

- Dealing with Premature Dissolutions: One big issue is what to do in cases where a government falls before its term is over. Possible solutions include enforcing fixed tenures so that people do not dissolve to the counter notes, Holding fresh elections for the unexpired term instead of a full five-year one[215] etc.
- International Experience: Some countries manage to hold simultaneous elections successfully such as in United States the presidential and Congressional elections happen concurrently every four years[216], the national elections in South Africa together with provincial elections every five years[217]and Synchronized country electoral model example countries are Sweden and Indonesia[218] India can draw lessons from these models, subject to adapting reforms to its own federal structure.
- Phased Implementation: India can make the transition from a gradual world to coordinating elections in a handful of States at first, smartly courting local body elections with state, and then eventually national elections[219].
- Fixed Tenure System: Fixing the tenure of the government (similar to the German model) would avoid these premature dissolutions and ensure stability of the government[220].
- More on comprehensive electoral reforms: State financing of elections and strict regulations on campaign financing should accompany simultaneous elections.

[212] Sanjay Kumar, Challenges in Implementing Simultaneous Elections in India, Economic & Political Weekly (2019).
[213] B.R. Ambedkar, Constituent Assembly Debates, Vol. IX (New Delhi, Government of India Press, 1950) 246.
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Conclusion

The discussion over synchronous races in India is multi-layered and complex. On one hand, it offers substantial advantages, for example, decreased political race costs, further developed administration, and limited disturbance brought about by the regular implementation of the Model Set of rules. By smoothing out the discretionary interaction, the nation can zero in on long-haul arranging and strategy execution, which is much of the time hampered by the nonstop pattern of races. Moreover, synchronous races can check political polarization and social division by uniting the discretionary schedule.

Nonetheless, the proposition additionally presents huge difficulties. Executing concurrent races will require exhaustive corrections to the Constitution, arrangement of electing cycles, and accomplishing a wide political agreement — undertakings that are neither basic nor direct. There is likewise the worry that such a move could disturb India's government structure and sabotage the independence of states, as adjusting state decisions to the public cycle should have been visible as concentrating power. The coordinated operations of leading decisions for north of 900 million electors simultaneously are overwhelming and will require careful preparation and asset distribution.

Eventually, the choice to hold concurrent races should cautiously offset the benefits with the likely downsides. It is significant to guarantee that any discretionary changes fortify India's majority rule structure as opposed to confusing it. Public interest, majority rule standards, and the country's drawn-out government assistance should stay at the front of any choice. Subsequently, while the possibility of concurrent decisions has its benefits, it ought to just be sought after careful counsel, agreement constructing and tending to all sacred and strategic intricacies. Eventually, the objective ought to be to improve the nature of a vote-based system and administration in India, guaranteeing that the advantages offset the difficulties. There are several advantages of simultaneous elections such as reduction of costs, administrative efficiency and better governance. Yet, the challenges — constitutional amendments, political consensus, federal concerns and logistical preparedness — need to be met with care. A transition toward a system of synchronized elections can begin through a phased approach, supported by relevant legal and political consensus. Electoral reforms should be focused on democracy, voter participation and governance efficiency. If it is implemented effectively, simultaneous elections will change India’s electoral playing field, leading to long-term stability and development.

Suggestive Readings and References

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Chapter – 11

Perspectives on Sports Challenges and Sports Laws in India

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Abstract

The global sports market has experienced tremendous growth in recent years, mainly as a result of government initiatives, new privately funded enterprises, and a spurt of technological innovation. Tree Programs like Khelo India, the TOP Schemes to target the Olympic podium and integrating sports and physical education into the NEP 2020 have further bolstered talent development and sports promotion. Finally, the growing popularity of league-based competitions and digital transformation has improved athlete training and fan engagement in this sport. Yet challenges are still evident with some limitations like poor grassroots structures, gender imbalance, finance, governance, and anti-doping issues.

Policy reforms must focus on sports infrastructure in rural areas and adopting an inclusive approach towards women, and marginalized groups, with a stronger legal framework in place to ensure that an open, inclusive and sustainable sports ecosystem is adopted, and adoption of technology while encouraging the private sector to engage. Improved financial mechanisms, governance and a long-term Olympic mindset will help put India on the track to becoming a global sporting superpower. Focusing on these core aspects, India can develop a strong sports ecosystem that fosters talent, encourages inclusiveness, and promotes long-term viability in the sector.

Keywords: Sports governance, athlete participation rights, doping regulations, corruption laws in sports, gender equality, BCCI reforms, Olympic infrastructure.

Introduction

For centuries sport has been an intrinsic part of the Indian culture, from traditional indigenous games such as kabaddi, kho-kho, and mallakhamb, to internationally followed sports such as cricket, football, badminton and athletics. Over the past few years, India's participation in international tournaments, such as the Olympics, Commonwealth Games, and Asian Games has increased, and with that, the country is witnessing a surge in sporting talent across various disciplines. The implication of professional leagues like Indian Premier League(IPL); Pro Kabaddi League (PKL); Indian Super League (ISL) and Women Premier League (WPL) is to capture more of the sports industry with the investment and sponsorships and then a media rush to it.

However, Indian sports are still struggling with big challenges: lack of facilities, lack of funding, governance issues, lack of grass-root development and excessive litigation. More recently, disputes involving governance practices by sports federations, allegations of match-fixing, doping scandals, gender discrimination have highlighted the need for a strong legal and regulatory framework. The recent Wrestlers' Protest in the backdrop of alleged harassment by sports administrators, the restructuring of NADA regulations and the overarching reforms being made by the government in the form of a National Sports Code further signify the changing legal environment within Indian sports.

Also, the Supreme Court and High Courts are getting involved more and more in matters concerning sports, such as fair trials, transparency in sports governance and the welfare of athletes. In particular, the BCCI's role and judicial guidance, the inclusion of transgender athletes in competitive sports, and India's relationship with organizing such major international sports events as the Olympics 2036 underscore the interplay between law-policy metric and advancements in sports.

This chapter analyses the challenges to the sport sector in India from the perspective of an athlete, of the manager, of the lawyer, and of society, with a view to appreciate how sport laws in India both enable and constrain the growth of the sector. This will include focus on recent developments and policy initiatives, identifying potential reforms to sustain an open, inclusive and sustainable ecosystem of sports in India.

Indian Sports

The sports industry in India has many challenges that need to be addressed from the perspective of athletes, managers, lawyers, and society. From the perspective of an athlete, the financial situation continues to be one of the biggest challenges being able to afford training, equipment and international travel when there are less funds available. Sponsoring a non-cricket sport is a rare opportunity. Further, inadequate infrastructure, lack of maintained facilities, and an urban-centric distribution of resources continue to hold them back. Moreover, the lack of organized grassroots development programs, and the absence of specialized coaching facilities, predominantly in rural areas, limits the identification of talent. Government support for athletes is hindered by bureaucratic roadblocks, favouritism and red tape. The need for psychological pressure and the stigma attached to mental well-being are additional factors contributing to their plight. Their careers are also hampered by doping issues and a lack of knowledge of anti-doping rules.

- Accessibility and Sustainable Infrastructure

  In India, one of the biggest problems in sports is infrastructure. While world-class stadiums exist in cities such as Delhi and Mumbai, rural areas, where most talent lies undeveloped and often lack grade A facilities for sports. The result is a gap that prevents athletes from less advanced regions from participating. It is too expensive to develop sports infrastructure, so from the economy point of view they do not proceed with it. This underinvestment affects accessibility, as well as the training facilities and resources that emerging athletes can access.[221]

- Talent Identification and Development

  While India is home to a large population, there is no formal way of finding and grooming potential from an early age. When scouting initiatives exist, they are frequently poorly managed and without a universal

[221] A. Ranjit, 'Sports Infrastructure in India: Challenges and Opportunities' (2020) 3 Indian Journal of Sports Management 45.

standard across sports disciplines. More importantly, the focus on academic performance than sports further shrinks the pool of candidates as many gifted athletes are forced to quit sports because of peer and family pressure. .[222] Many parents from different cultures also do not encourage their children to make a career in sports because it is seen as an unstable occupation when compared to careers in traditional professions. Such cripples the sports development and keep player away from joining and practicing the sport.[223]

- Lack statutory provisions

  Due to the absence of a unified legal sporting structure in India, applying sports law is a challenge from the point of view of a sports lawyer, and furthermore, in the absence of such legislation in the country, there isn't any regulated or streamlined way to get a resolution to sporting disputes. Everyone deals with contract issues, whether it be bad contracts taking advantage of a poor, naïve amateur (sponsorships, endorsements, job offers, etc.) Like other doping cases, those are legally complicated, and many athletes are not even aware of the legal ramifications of breaches. Other complications of the sector include intellectual property rights (IPR) issues that can arise, including the unauthorized use of an athlete's image or a dispute over broadcasting rights. There are still questions over governance and arbitration, with vested interests in sports federations and a lack of independent checks to arbitrate disputes fairly.

- Money Problems and Support

  Except for the high revenue sports mostly revolving around cricket, most of the Indian athletes are living on their savings which cannot last forever generously. Their potential is hindered by a lack of sponsorship and government support with regard to quality coaching, training and equipment facilities.[224] Consequently, without funding many excellent careers are ended prematurely. Given the smaller fan base and revenue generating potential in comparison to cricket, corporates are usually averse to sponsoring these sports from a financial point of view.[225]

- Managerial Issues

  From a sports manager's perspective, sports also have a dire issue of finance as well, where every organization will find it difficult to obtain sponsorship and private investments in order to support their operational costs, which causes them to rely on the government for funding, which is always uncertain. Around the world, most of the sports federations are poorly governed, riddled with political interferences leading to non-professional and unprofessional running of most federations. Another challenge is talent retention, as many athletes find limited opportunities for long-term careers when transitioning to coaching or administrative positions. There are also logistical challenges involved with organizing sporting events, and lack of or poor planning can lead to mismanagement. Second, sports marketing and branding — other than cricket — is weak, leading to low fan interaction, ticket sales and sponsorship interest.

[222] S. Gupta and R. Sharma, 'Youth Talent Development: An Analysis of Indian Sports Policies' (2019) Journal of Sports Studies 12.
[223] R.K. Singh, 'The Role of Culture in Sports Participation in India' (2021) 14 International Journal of Cultural Studies 101.
[224] K. Bhattacharya, 'Sponsorship Dynamics in Indian Sports' (2020) 55 Economic and Political Weekly 34.
[225] J. Malik, 'Cricket's Economic Supremacy and Its Impact on Other Sports' (New Delhi: Academic Press, 2018) 123.

- Corruption and Mismanagement

  Corruption has been one of the major issues that have plagued Indian sporting events for decades. Bribery in team selections and partially biased refereeing undermine a lot of motivation to play on the whole that lots of young sportsmen see unethical practices.[226] Off the field, the number of legal frameworks addressing corruption in sports are few and far between, while selection and management processes lack transparency. This erodes trust in the sport and prevents aspiring athletes from low socioeconomics from competing.[227]

- Societal Restraints

  India's sports culture is weak from a societal standpoint; academics is prioritized over athletics. Sport careers are not highly encouraged by parents, and women and men face different challenges, such as successfully competing as a female athlete, who can achieve less also due to lower salary and lower opportunities. Unhoused individuals, along with people from the LGBTQ+ community, also from lower economic backgrounds and differently abled communities would find access to sports as a luxury! Cricket comes ahead in the pecking order for both media coverage and commercial money, with other sports not just struggling for visibility but also relevance. Corruption, financial mismanagement, and match-fixing scandals further undermine public confidence in sports governance.

General Sports Laws in India

Sports law is an emerging area of practice in India with clear implications for the legal, ethical and regulatory landscape surrounding sports activities. At present, India does not have a national sports law to speak of, most sports regulations are managed through the Ministry of Youth Affairs and Sports (MYAS) at the national level, or other bodies like the Sports Authority of India (SAI), as well as various sports federations. In broad terms, sports law includes contracts for athletes, anti-doping measures, intellectual property and ways of resolving disputes. With recent incidents of doping violations, match-fixing and disputes over player contracts, there has been increasing recognition within the country of the need for clearer regulations and enforcement. Although there are initiatives taken at the governmental level like the National Sports Development Code of India (2011) to ensure transparency and good governance in sports, and rights of athletes, many experts have been demanding focused and strict individual laws rather than a generic code to uphold athletes' rights and for accountability of sports organisations against various forms of corruption.

- Role of the Sports Authority of India (SAI)

  The Sports Authority of India (SAI) is the top body — for sports development, athlete support and infrastructure upgrade. Though SAI are trying to upgrade the sports ecosystem, bureaucratic red tape and meagre budgets keep it from doing so.[228] SAI, however, can only recommend changes and not implement them as most decisions are taken by the respective federations.[229]

[226] A. Joshi, 'Corruption in Indian Sports: A Review of Cases' (2021) 2 Indian Sports Law Review 67.
[227] Government of India, Ministry of Youth Affairs and Sports, 'Policy Framework on Sports Corruption' (2022) White Paper, 34.
[228] National Audit Office, 'Performance of Sports Authority of India' (2021) Government Report 15.
[229] P. Sharma, 'Governance in Indian Sports: The Role of Federations' (Springer, 2019) 89.

- National Sports Development Code

  The National Sports Development Code of India, 2011 is a guideline to enhance transparency and accountability in sports organizations. Its objective is to avoid conflict of interest, guarantee that selection processes are free and equitable, and clarify the responsibilities of sporting institutions.[230] Formally, the code promotes transparency but compliance is patchy because it has weak enforcement mechanisms.[231]

- Anti-Doping Laws and Policies

  In India the anti-doping regulations have been bought under NADA which are in consonance with WADAs guidelines.[232] But doping is not the exception anymore in Indian sports, despite NADA works a lot to educate and aware about clean sport among athletes, dishonesty has become their habit due to lack of knowledge or heavy amount of pressure from coach or management.[233]

- Sexual Harassment and Protection of Athletes

  Sexual harassment is rampant in sports in India, with young athletes vulnerable to sexual exploitation by administrators. The 2013 Prevention of Sexual Harassment at Workplace Act, which is applicable across industries, lacks specificity with respect to sports.[234] The delays in justice for survivors and limited assistance are the end result.[235]

Contemporary Issues in Indian Sports

Over the past few years, significant developments in India's sports sector have taken place due to various government policies, private initiatives, and advancements in technology. But, to maintain an open, inclusive, and sustainable ecosystem, additional reforms must be adopted to solve current problems and facilitate long-term development.

- Recent Developments and Policy Initiatives
  - NEP 2020 and its Integration with Sports

    NEP 2020 rightly recognizes sports as an integral part of education by attempting to weave physical education into the respective school curriculum. – Focus on identifying talent at an early stage and encouraging sports participation across the board. Its implementation, however, can only be realised with a better infrastructure, trained coaches, along with cooperation with the sports federations for effective grass-root development.

  - Khelo India Programme

    "For promoting youth sports, the Khelo India initiative has changed the game. It offers funding support to promising athletes, develops infrastructure and organizes national-level competitions. It can become more effective by expanding its reach in rural areas and ensuring talent identification is transparent. Also, Khelo India Semi-Pro googles up with professional leagues can ensure better career

[230] Ministry of Youth Affairs and Sports, 'National Sports Development Code of India, 2011'(Government of India, 2011) 4.
[231] N. Arora, 'Transparency Challenges in Indian Sports Federations' (2020) Sports Governance Journal 58.
[232] WADA, 'Annual Anti-Doping Report' (2022) www.wada-ama.org accessed 15 November 2024.
[233] NADA, 'Anti-Doping Guidelines and Challenges in India' (2021) 45.
[234] R. Mishra, 'Addressing Sexual Harassment in Indian Sports' (2020) Gender and Law Journal 89.
[235] K. Raj, 'Sports Law in India: Gaps and Recommendations' (Oxford University Press, 2021) 142.

prospects for them in future. While initiatives such as the Khelo India program are a move in the right direction toward inclusivity and development, there is still a long way to go to ensure that sports in India have more transparency, equity, and a wider base of focus beyond cricket.

- TOPS: Target Olympic Podium Scheme

  Sports have always considered the support of individual athletes through the use of a scheme such as the Talent of New Zealand programme, which helps fund and coach their athletes, provides them with international exposure, etc. India's performance in recent Olympics and Paralympics indicate the success of the program. In order to maximize its benefits, however, the plan should be extended to cover a wider range of disciplines, and support for the mental health of athletes should be improved.

- Private Equity Investments and League-Based Competitions

  The IPL, ISL (football) and Pro Kabaddi League, along with other franchise-based tournaments in the country, have been successful and that has led to private investment into Indian sports. And the expansion of these leagues in sports such as athletics, wrestling, and swimming would lead to alternative revenue streams, better player remuneration, and more global competitiveness.

- Sports Tech and Digital Transformation

  Coming to the adoption of sports analytics, AI-based performance tracking and virtual coaching, etc., it has changed the way an athlete has to train for the game. Initiatives like the Fit India Movement and online coaching platforms have democratized sports. The big challenge is making these technologies accessible for grassroots athletes.

- National Anti-Doping and Sports Ethics Compliance

  Regulating fair play given doping related controversies for India, establishment of NADA and strict implementation of WADA norms has helped. Strengthening anti-doping education and establishing more accredited testing labs could help further improve the system.

- Sports Governance and Legal Reforms

  The National Sports Development Code seeks to ensure that sports federations are transparent and accountable, and ultimately better governed. It can include a national sports arbitration tribunal to settle disputes quickly. However, it calls for comprehensive Sports Law to regulate contractual matters, the rights of athletes, and commercial aspects.

- Responsibilities and Contracts of Athletes

  This often leads to them signing contracts without clear rights and no legal representation is provided. These types of contracts oftentimes are predatory in nature as they tie athletes down to somebody else's unfair terms.[236] This calls for required representation or possibility of contract standardization.[237]

[236] A. Patel, 'Contractual Rights of Athletes: An Indian Perspective' (2019) 3 Indian Law Review 67.
[237] D. Barua, 'Legal Aid for Indian Athletes: A Case for Reform' (Routledge, 2020) 50.

- Gender Inequality

  The Indian Sports field is still plagued by gender inequality wherein female athletes often get less media visibility, sponsorship and support as compared to males.[238] Legal reform and cultural change is needed for the empowerment of female athletes.[239]

- Major Organizations Working to Include Women in Sports

  Initiatives have been undertaken by both government and non-governmental organizations to encourage women's participation in sports. The Women's Premier League (WPL) in cricket and greater attention of female athletes in Khelo India are examples of this phenomena. But pay gaps, continued issues of safety, and audiences who see themselves represented in media are all necessary considerations in where women's sports can go from here.

  The Current Sports Situation in India portrays the change these days and other existing issues. Cricket holds a rather unreasonable position, which is another problem as other sports in India lack both capital and attention from the media or the general population. Such imbalance stymies growth in sports like athletics, boxing, wrestling and hockey where Indian athletes have performed well internationally. The second massive issue is athlete welfare in general, which include a lack of mental health and other support for athletes, little post-career planning and regular reports (especially for female athletes) of harassment. Poor grassroots programs restrict exposure of young athletes to good training organization, while bureaucratic delays and corruption can put infrastructure projects on hold.

Proposed Reforms for an Open, Inclusive and Sustainable Sports Ecosystem: The Path Forward

However, a broad-based sustainable approach prioritising inclusion, professionalism and good governance is required to secure the future of the sports industry in India. Investing in more niche sports and opportunities for athletes coming from regional or disadvantaged backgrounds presents a big opportunity to uncover talent. A dedicated framework on sports law would provide much needed guidance over player contracts, anti-doping rules and intellectual property rights reducing disputes and averting issues detrimental to players. Moving beyond reliance on government schemes, partnerships and sponsorships can boost investment from the private sector while also keeping our sports infrastructure in full steam with expertise on-board from across the globe. Moreover, a sports education culture from the school and university level would definitely lay a strong base for pursuing sports as a career and making sure that mental health and wellness support are taken through to athletes would help their overall development. If questioned, transparency, accountability and equity would do wonders for India in building a stronger sports ecosystem to not only compete at the world stage but also inspire footsteps of generations to come.

- Reviewing/change of the legal frameworks

  India requires a centralized legal regime to deal with the complexities of modern sports. A special Sports Law Act can offer a framework, laying down the basic rights of players, erasing corruption in the system and assuring fair play.[240]

[238] S. Dixit, 'Gender Disparities in Indian Sports: A Study' (2021) Asian Journal of Sports Studies 21.
[239] N. Kapoor, 'Empowering Female Athletes in India' (Women's Studies Research Series, 2020) 101.
[240] A. Gupta, 'Reforming Indian Sports Laws: A Comparative Study' (2022) Legal Studies Journal 34.

- Investment on Sports Education

  Grass Roots Sports Education need to be invested more. The schools must make sports a compulsory subject with government giving funds to create infrastructure and organise trainings.[241]

- Diversity in the corporate sponsorship space

  That's where the government could step in and give some tax breaks or outright public acclaim to get more corporates into sports other than cricket.[242] Establishing tax incentives for corporations investing in sports infrastructure and athlete development.

General Recommendations

- Developing Grassroots Sports Strengthening Football Development.
- The development of more sports academies and training facilities in rural areas. That involves working with schools to set up organized sports programs with qualified coaches.
- Fostering sports scholarships to provide financial assistance for young talented athletes.
- Increasing opportunities for women, differently abled athletes and underprivileged communities.
- Policies for equal pay, better media coverage, women in leadership roles as governance of sports.
- Adjunct to 2024 Task Force report, improving accessibility for para-athletes in stadiums, training centers, and competitions.
- Enhancing Financial Sustainability and Private Investment.
- Promoting corporate sponsorship and public-private partnerships in non-cricket sports.
- The creation of long-term athlete insurance and pension schemes that provides the means for financial independence after sport.
- Using latest technology to Train Athletes.
- Increasing access to AI based coaching, injury prevention systems, data analytics for all sport.
- Encouraging e-sports and virtual training programs for grassroots and top athletes.
- Aiming at innovative solutions, urging universities and start-ups to come up with economical sports technology.
- Independent sports dispute resolution means an external arbitration body to check admin bias.
- Improvements against corruption to help prevent match-fixing and financial crimes.
- Building a Sustained Vision for Olympian Excellence.
- Research to help athlete performance and recovery in sports science and medicine

[241] Ministry of Education, 'National Education Policy 2020: Implications for Sports' (Government of India, 2020) 10.
[242] V. Sharma, 'Corporate Sponsorships Beyond Cricket: Policy Suggestions' (2021) Journal of Business and Sports 75.

Conclusion

Difficulties which Indian sports are facing cannot be touched with a simple brush because they have vast socio-economic, cultural and legal ramifications. Tackling these problems requires the participation of governments, lawmakers, corporate sponsors and the public. Through well–defined sports laws, ethical governance and gender and regional inclusivity vitality, a comprehensive ecosystem of sport can be created within the country. Through dedicated reforms in infrastructure, education and the enforcement of policies, Indian sports can lay stronger roots by integrating talent with transparency and athlete rights, bringing the nation closer to an equitable sports setting which is competitive on the world stage.[243] With targeted reforms in infrastructure, education, and policy enforcement, Indian sports can better nurture talent, uphold transparency, and safeguard athlete welfare, advancing towards an equitable and globally competitive sports landscape.

Progressive policies will enable India to become an aspiring sports superpower beyond its own boundaries. Bringing up India will take a lot more support for sustainable sports development, need to be responsible guardians of this movement from the government and big corporations. These efforts would allow the country to instil more public trust, inspire the youth and accomplish a future where sports are a core component of life. It features Its public service broadcasting that plays a crucial role in national pride and identity.[244]

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- "The Race of My Life" – Milkha Singh (2013, Rupa Publications)
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[243] R. Mehta, 'Multi-Stakeholder Approach to Indian Sports Development' (2022) Policy Insights 40.
[244] S. Khan, 'India's Sports Ecosystem: Challenges and Future Directions' (Cambridge University Press, 2021) 88.

- "Gender and Sport: A Reader" – Sheila Scraton & Anne Flintoff (2002, Routledge)
- "Diversity and Inclusion in Sport Organizations" – George B. Cunningham (2020, Routledge)
- "The Paralympic Games Explained" – Ian Brittain (2016, Routledge) (explores para-sports development and accessibility challenges)
- "Sustainable Sports Management: Leading the Transition in a Changing World" – Jean-Loup Chappelet & Michel Mrkonjic (2021, Routledge)
- "Sports Analytics: A Guide for Coaches, Managers, and Other Decision Makers" – Benjamin C. Alamar (2013, Columbia University Press)

Chapter – 12

Playing By the Rules: Confronting Challenges of Compliance in The Right to Play

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Abstract

The "Right to Play," a fundamental aspect of childhood, is enshrined in international treaties like the UN Convention on the Rights of the Child (UNCRC) and national laws such as India's Right to Education Act. Global legal frameworks underline the critical role of "play" in the holistic development of an individual. However, their practical enforcement reveals significant gaps. The aim of the research is to identify such challenges of inadequate infrastructure, socioeconomic disparities, cultural biases, and the overemphasis on academics, all factors which hinder the realization of this right, particularly for marginalized communities. The need for a more robust and inclusive approach is imperative, with exacerbating issues of digital recreation and persistent child labour on the rise. The evident disconnect between the legal recognition of the Right to Play and its real-world implementation, focusing on the socioeconomic and cultural factors influencing this gap is the focus of the study. The ineffectiveness of legal framework and insufficient enforceability has been highlighted through a qualitative review of international conventions, national policies, and case studies. Key findings include the urgent need for equitable infrastructure, balanced education systems, and community engagement to foster inclusive recreational opportunities. Addressing the gaps between policy and implementation, the gaps require a multi-dimensional strategy towards legal, social, and economic reforms to ensure that play becomes a universal reality.

Keywords: Child Development, Education, Inequality, Recreation, Right to Play

Introduction

The right to play is the idea that every child can play and engage in recreational activities suitable for their age. We often hear about serious human rights like life, liberty, or education. However, in the long list of such rights, the Right to Play appears almost like the overlooked child at a family gathering. Is play really that important? Does it truly deserve to stand alongside more urgent rights international conventions and national constitutions? Is it simply a luxury reserved for those with the time and space to indulge in it? Before brushing it aside as something of secondary importance, it's worth taking a step back and considering how profound this "right to play" has on individuals and society at large.

At first glance, play might seem confined to children and sports enthusiasts. However, its significance is much more profound- it is a fundamental aspect of human development and societal well-being. From a

biological perspective, play is intrinsic to learning and growth, both in cognitive and social contexts.[245] For children, play is a means to understand the world, explore boundaries, and develop problem-solving skills. But even adults, despite their stoic exteriors and packed schedules, engage in forms of play- whether through sports, games, or even recreational debates over whose turn it is to do the dishes. The fact remains: play is not an activity one outgrows but a lifelong necessity.

Why is it that this need to play is so often ignored in policy discussions when it isn't just about allowing people to indulge in fun; it's about nurturing mental, emotional, and physical well-being. It is an essential ingredient for a healthy society and without it, life would be a lot like a monotonous treadmill- it keeps you moving, but there's little joy to it. Play is largely about individual being able to express themselves, bond with others, and relieve stress through activities like sports games and recreational events. The role of such activity is undeniable to be able to build connections and foster creativity. A child playing is doing much more than just passing the time- they are developing motor skills, learning teamwork, and enhancing problem-solving abilities.

The human right to play is grounded in the idea that everyone deserves the chance to develop these skills, regardless of socioeconomic background. The importance of play was first formally recognised in the 1989 United Nations Convention on the Rights of the Child (UNCRC), where it was made clear that children, in particular, have the right to rest, leisure and engage in various recreational activities.[246] However, beyond the UNCRC, the right to play has broader societal implications. If children don't engage in playful activities that build their emotional and social skills, what kind of adults will they grow into? How would we expect them to interact in a world filled with competition and cooperation if their formative years were stripped of this crucial development tool?

A society that recognizes the importance of play creates spaces for people to gather, interact, and de-stress. Play lays down a foundation for a more harmonious social fabric[247]. However, when every inch of land is monetised for more 'serious' ventures, infrastructure for play, playgrounds for children or open spaces for sports and recreation often face the impact for the worse. When commercial buildings are prioritised over parks and children's parks are sacrificed for parking lots, the 'right to play' becomes a hollow promise, uttered in international conventions but scarcely implemented in reality. The strange paradoxical society acknowledges the need for play but does not commit to ensuring its availability. Kids may have a recess period at school, and adults may get an hour or two to watch television, but these sporadic moments hardly reflect the depth of what proper, and meaningful play. Play is not just a leisurely activity- it's a preventive health measure, a social equaliser, and an educational tool. By promoting physical and mental health, play acts as a buffer against many of the issues that plague modern society, from mental health disorders to social isolation. For marginalised communities, where access to quality education, healthcare, and recreational spaces might be limited, play can offer a form of empowerment. It gives children the tools to express themselves in a world that often silences their voices and gives them a break from the harsh realities they may face at home or in society. In essence, play bridges a constrained reality and the limitless possibilities of

[245] Smith and Peter K. "*Does play matter? Functional and evolutionary aspects of animal and human play,*" Behavioral and brain sciences 5.1 (1982) 139-155.
[246] Colliver, Yeshe, and Holly Doel-Mackaway, "*Article 31, 31 years on: Choice and autonomy as a framework for implementing children's right to play in early childhood services,*" *Human Rights Law Review* 21.3 (2021) 566-587.
[247] Ng, E. C. W., and A. T. Fisher, "*Understanding well-being in multi-levels: a review,*" Health, Culture and Society 5.1 (2013) 308-323.

imagination.[248]

By neglecting this right, we risk fostering generations of individuals who may be technically proficient but lack the emotional intelligence, creativity, and social skills necessary for building a compassionate and inclusive world. The Right to Play is, in every sense, a right to grow, connect, and thrive- not just as individuals but as a society.

The Right to Play: A Fundamental Human Right for Society

Recognizing the Right to Play as a fundamental human right is a milestone in the human rights discourse, underscored explicitly by its inclusion in international treaties such as the United Nations Convention on the Rights of the Child (UNCRC). However, beyond its legal recognition, one might wonder why play is deemed a right and what makes it so critical to society.

Play is vital to individuals' emotional, cognitive, and physical development of an individual. Children who engage in regular play are known to have better problem-solving skills, higher emotional intelligence, and improved social connections.[249] These benefits ripple outward to society, reducing delinquency, promoting mental well-being, and fostering inclusion, especially in marginalized communities. It's easy to overlook the significance of play when discussing serious human rights issues like access to education or freedom from violence. After all, how can a game of hopscotch compare? Yet, it turns out that communities deprived of access to play spaces experience more profound social fragmentation and higher levels of inequality. [250]

Enshrined in the Article 31 of UNCRC, the right ensures all children have access to recreational and cultural activities, proving to be a powerful tool for promotion of social inclusion. What often goes unaddressed, however, is the practical application of this right in different societal contexts.[251] Marginalized groups, such as children from low-income families, or those living in urban slums, or children with disabilities, face considerable barriers in accessing safe spaces for play. It is no wonder that the lack of playgrounds in underprivileged areas often mirrors the broader inequality in society- playgrounds, it seems, are as much a symbol of privilege as they are a space for recreation.[252] Providing equitable play spaces can be a crucial intervention to reduce crime, promote mental health, and foster community spirit.[253]

The psychological and emotional aspects of play cannot be understated. Play allows children to think creatively, develop empathy, and establish social bonds. The absence of play in the developmental years can have significant long-term effects, from reduced cognitive function to poor emotional regulation. The right to play, in its essence, is the right to a full and well-rounded development. Without it, society risks producing citizens socially less attuned and more prone to mental health issues. The role of Right to Play towards societal harmony, thus, becomes undeniable towards healthier and more inclusive communities.

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[248] Rajesh Rawat and Sunita Taneja, "*Playing in the Margins: Urban Deprivation and Child Development,*" Indian Journal of Human Rights (2020) 16(3) 250-271.
[249] Kenneth R. Ginsburg, "*The Importance of Play in Promoting Healthy Child Development and Maintaining Strong Parent-Child Bonds,*" Pediatrics (2007) 119(1) 182-191.
[250] Mary McDonald, "*The Importance of Play in Overcoming Societal Barriers,*" Journal of Childhood Development (2017) 14(1) 56-73.
[251] Stuart Lester and Wendy Russell, "*Children's Right to Play: An Examination of the Importance of Play in the Lives of Children Worldwide,*" Bernard van Leer Foundation (2010).
[252] Priya Naik, "*Recreation and Social Harmony: The Role of Play in Promoting Equality,*" Social Inclusion Studies (2021) 19(2) 87-104.
[253] Rowan Brockman, Kenneth R. Fox, and Russell Jago, "*What is the Meaning and Nature of Active Play for Today's Children in the UK?*" International Journal of Behavioral Nutrition and Physical Activity (2011) 8(15).

Socioeconomic barriers in developing countries like India, often undermine this right and its global implementation reveals stark disparities. Despite being a signatory to the UNCRC and continuously ratifying laws to protect children's rights, there is a striking gap between practice and policy. Urbanisation, for instance, has led to a reduction in open spaces, pushing recreational activities to the periphery, both literally and metaphorically.[254] Children, especially belonging to deprived areas like urban slums or rural areas, often face an uphill battle to access safe and stimulating environments for play.

Furthermore, marginalised communities and children from low-income families are disproportionately affected by these barriers.[255] Playgrounds, safe recreational areas, and even basic cultural activities are often luxuries these children cannot afford. In addition, socio-cultural norms in some regions continue to limit access to play for girls and children with disabilities. While Article 31 of the UNCRC highlights the right to engage in play and recreational activities, its practical implementation often falls short of reaching these vulnerable groups.[256]

As for society, fostering the Right to Play goes beyond just installing a few swing sets. It requires a holistic approach that integrates educational, legal, and infrastructural reforms.[257] Communities which tend to prioritise the Right to Play experience lower crime rates and higher levels of social cohesion. Children are given the right tools to engage meaningfully with their surroundings and develop their full potential. While it seems trivial at a glance, granting children the freedom to engage in play displays the reflection of a society's commitment to equality and justice.[258] This right extends beyond childhood, too- it permeates societal structures, shaping how inclusive, empathetic, and harmonious a community becomes. The real challenge lies not in recognising the importance of play but in ensuring its availability to all, regardless of social, economic, or cultural barriers.

The Right to Play: A Fundamental Human Right for Society

The Right to Play- what could be more fundamental, more instinctive for a child?[259] However, as straightforward as the concept might seem, protecting it requires a complex web of international and national legal frameworks. The real challenge lies not only in ensuring the existence of laws but also in ensuring their effective implementation, particularly for children in marginalised communities.

At the heart of international efforts to protect the Right to Play lies the United Nations Convention on the Rights of the Child (UNCRC). Adopted in 1989, it is the most complete legal instrument and specifically refers to children's rights. Article 31 UNCRC explicitly addresses children's right to rest, leisure, and play. There is an obligation on behalf of member states to provide opportunities to allow for equal participation in cultural and recreational activities by children. This article remains the strongest international recognition of the Right to Play, thereby placing a moral and legal burden on countries that have ratified the convention. Even though Article 31 is crystal clear, implementation challenges often present an issue as most nations are

[254] Jenny Veitch, Sarah Bagley, Kylie Ball, and Jo Salmon, *"Where Do Children Usually Play? A Qualitative Study of Parents' Perceptions of Influences on Children's Active Free-Play,"* Health & Place (2006) 12(4) 383-393.
[255] Rajesh Rawat and Sunita Taneja, *"Playing in the Margins: Urban Deprivation and Child Development,"* Indian Journal of Human Rights (2020) 16(3) 250-271.
[256] Joe L. Frost, Sue C. Wortham, and Samuel Reifel, *Play and Child Development, 3rd ed.*, Pearson Education (2008).
[257] Anthony D. Pellegrini and Peter K. Smith, *"The Development of Play During Childhood: Forms and Possible Functions,"* Child Development (1998) 69(3) 577-598.
[258] Amartya Sen, *"Development as Freedom,"* Oxford University Press (1999).
[259] Stuart Lester and Wendy Russell, *"Children's Right to Play: An Examination of the Importance of Play in the Lives of Children Worldwide,"* Bernard van Leer Foundation (2010).

not living up to the obligations stated in this international treaty. One might argue that the law recognises the importance of play, but in many cases, enforcement remains more an aspiration than a reality. Building on these international protections, the International Labour Organization (ILO) plays an indirect yet crucial role in supporting the Right to Play. ILO Convention No. 138, Minimum Age, and Convention No. 182, Worst Forms of Child Labour, have aimed at eradicating child labor so that children are not deprived of their right to leisure and play by exploitative working conditions. The connection here is clear- children working long hours in hazardous environments lose out on opportunities for play, often at the cost of their emotional and psychological well-being. These frameworks illustrate the interconnectedness of different rights; the Right to Play is fundamentally linked to the right to protection from labour and exploitation. However, as noble as these conventions sound on paper, the global reality still sees over 152 million children involved in child labor, according to the ILO. As we've seen, eradicating child labour is an uphill battle, and without it, the idealistic notion of universal access to play remains unattainable.

The Sustainable Development Goals (SDGs), adopted by all United Nations Member States in 2015, further reinforce this right, albeit indirectly. Goal 3 (Good Health and Well-being) and Goal 4 (Quality Education) emphasise the importance of holistic development, which includes mental and physical well-being through recreational activities. There is no lack of understanding between education and recreation, since being perfectly educational must flow to learning other than academics. It makes play an indispensable component within a quality education, fostering creativity, thinking critically, and gaining health in physical terms. Yet, it appears that the rhetorical commitment of the SDGs is not enough for world leaders. They would rather play diplomatic charades than ensure children have a safe place to play in their neighborhoods.

Turning to national-level frameworks, India has other legal provisions that, though not explicitly mentioning the word "play," indirectly advance the cause of play. The Right to Education Act (2009), for instance, requires that every child between the ages of 6 and 14 years receives free and compulsory education. While the act primarily focuses on academic learning, it also mandates a "balanced curriculum" that includes physical and extracurricular activities. However, much like an old-school Bollywood plot, there's a twist- the infrastructure required to support this mandate is lacking in many rural and urban areas. Schools often operate without playgrounds or proper sports equipment, leading one to wonder how children are supposed to get their "play time" when the educational institutions themselves fall short.

Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2015, is oriented toward the well-being of children, especially in vulnerable situations. The act includes rehabilitation of children in institutional care through play and recreational activities. It acknowledges that a child's development goes beyond providing shelter and food- it extends to mental, emotional, and social growth, much of which can be nurtured through play. Although the act spells out a whole framework for child protection in risky situations, implementing it in such crowded, underfunded children's homes in India is almost like a game of "pass the parcel" where responsibility goes from one department to another.

India's National Sports Policy of 2001, though not a legally binding document, is an initiative for "sports for all" and encourages the development of sports infrastructure, especially at the school level. The policy aims to inculcate a culture of physical activity and engagement, both of which are very important for proper development of children. However, for the well-intentioned policy, this often remains a pipe dream because accessible and safe places to play remain a sore point; that gap is especially glaring in urban areas. The policy's execution sometimes seems as elusive as a lost ball on a busy street in Delhi.

Beyond India, other countries have developed strong legal frameworks to protect the Right to Play. Sweden, for example, integrates play into its child care and education policies. Playgrounds are mandatory in every residential area, and the Swedish curriculum emphasises play-based learning in the early years of education.[260]

On the other hand, the United Kingdom's Children Act incorporates children's rights to recreation with its child welfare provisions. Government-funded programs such as "Play England" promote the development of safe, accessible play spaces. These models offer a glimpse into what a well-implemented Right to Play could look like, though the question remains whether other nations can replicate such success.[261]

Here's where the problem lies: enforcing it. Laws are in place, but that is woefully inadequate to ensuring recreational space for all. The schools have their curricula of physical activity. However, crowding in schools and lack of funds make all these mandates ineffective. Public areas, especially for developing countries, are scarce; playgrounds simply do not exist or are deemed unsafe. The uneven distribution of recreational opportunities further exacerbates social inequalities, as children from marginalised communities often bear the brunt of these shortcomings.[262] Moreover, the intersection of socioeconomic factors with the Right to Play further complicates matters. While wealthier families can afford to send their children to private schools with sprawling playgrounds and well-maintained sports facilities, children from poorer backgrounds often find themselves left out. Their "playgrounds" are frequently nothing more than dusty streets or overcrowded parks, if such spaces even exist. This inequality underscores the need for robust, enforceable laws that ensure all children, regardless of their background, have equal access to play.[263]

The Right to Play, therefore, is enshrined in various international and national legal frameworks, yet the gap between the existence of these frameworks and their actual implementation is significant. In addition, the country should make an effort to respect all children's rights despite the differences in background as it seeks to meet its obligations under such international treaties as the UNCRC and develops national policies. Laws and policies are crucial, but without proper implementation and enforcement, they are little more than words on paper- a game of legal semantics that, unfortunately, children cannot play.

The Right to Play: A Fundamental Human Right for Society

Although enshrined in various international treaties and national laws, in practice, this "Right to Play" usually more closely resembles the birthday wish of a child, unfulfilled, rather than an actual possibility. Though there exists a policy to ensure the world's children do indeed have the right to recreation and play, today's reality speaks a very different language. Policies made at world gatherings are not in keeping with realities on the ground where little is done to enforce the right to play, and children's play time is often sacrificed to the altar of economic, social, and educational pressures.

To begin with, many countries face infrastructural and financial challenges when it comes to providing safe and accessible spaces for play. The problem is not just that laws are made without any effect but the lack of resources that guarantee them. In the rural areas, playgrounds, sports fields, and any form of recreational

[260] Hilkka Koskela and Aino Vahtera, "*Play and Physical Education in Finnish Schools,*" Journal of Scandinavian Education Research (2019) 45(2) 156-174.
[261] Mary McDonald, "*The Importance of Play in Overcoming Societal Barriers,*" Journal of Childhood Development (2017) 14(1) 56-73.
[262] Madhav Rao and Neha Taneja, "*Urbanization and the Loss of Playgrounds: A Study of Indian Cities,*" Indian Journal of Urban Development (2020) 18(4) 213-225.
[263] Jenny Veitch, Sarah Bagley, Kylie Ball, and Jo Salmon, "*Where Do Children Usually Play? A Qualitative Study of Parents' Perceptions of Influences on Children's Active Free-Play,*" Health & Place (2006) 12(4) 383-393.

facility can't be found. Even when it comes to areas like cities, public areas are mostly locked in the better wealthier neighborhoods. For example, while children in affluent areas might have access to private parks and sports complexes, those in lower-income communities are more likely to encounter garbage-strewn streets and dilapidated playgrounds, where safety concerns run rampant. Those who need public play spaces the most are often those least likely to have them. Studies show that around 1 in 5 children globally lack safe, accessible play areas.[264] Further exacerbating the problem is the increasing stress on children to make academics the primary focus instead of play. With the increased competition in the education systems all over the world, children's free time is gradually being consumed by homework, coaching classes, and extracurricular activities aimed at boosting their academic positions.[265]

The overemphasis on academic achievement has created an environment where play is seen as a luxury rather than a necessity. In countries like South Korea and Japan, for example, students often spend so much time in school and after-school programs that they have little time left for unstructured play. The result is a generation of stressed-out, sleep-deprived children who are deprived of the very activities that could enhance their creativity, mental health, and social development. The paradox is glaring: we expect children to excel academically, but we rob them of the experiences that make them well-rounded human beings.[266] The influence of technology also cannot be overlooked. The rise of video games, smartphones, and social media has radically transformed the way children spend their free time. While these digital platforms do provide some forms of recreation, they are a far cry from the physical, social, and developmental benefits offered by traditional forms of play. Studies show that excessive screen time is linked to a range of negative health outcomes, including obesity, poor sleep quality, and mental health issues such as anxiety and depression.[267] Yet, despite these well-documented risks, screen time continues to dominate children's leisure activities, largely because of the ease and convenience it offers to both parents and children. In some ways, we've swapped playgrounds for pixels, leaving children to navigate a virtual world that is far less enriching than the real one.

Legal frameworks, while well-intentioned, often fail to address these evolving challenges. For example, the Right to Education Act in India mandates the inclusion of extracurricular activities, but it offers no guidelines on how much time should be allocated for play or how schools should balance academic and recreational activities.[268] As a result, many schools, particularly those in high-pressure environments, interpret the law in ways that minimise time for leisure. Similarly, international conventions like the UNCRC may mandate the right to play, but the enforcement mechanisms are weak, particularly in countries with limited financial resources.[269] In regions affected by conflict or political instability, the situation is far worse because even the basic right to education becomes a luxury, let alone the right to play.

One of the most striking examples of this disconnect between law and practice can be seen in the case of child labor. Despite the existence of laws like the International Labour Organization's (ILO) Convention No. 138, which sets the minimum age for work, and Convention No. 182, which seeks to eliminate the worst forms of child labour, millions of children across the globe are still engaged in labour that deprives them of

[264] UNICEF, *The State of the World's Children* (2017) 29, 59, 69
[265] Rudolf, R., & Lee, J., "*School climate, academic performance, and adolescent well-being in Korea: The roles of competition and cooperation,*" Child Indicators Research (2023) 16(3), 917-940.
[266] Kim, S., "*Children's Play in Korea: A Comparative Study*")2012)
[267] Robinson, T., et al., "*Screen Time and Its Impact on Child Health,*" Journal of Child Psychology (2019)
[268] India's Right to Education Act, (2009) *9-11*
[269] Convention on the Rights of the Child (1989) *14*

their right to leisure and play. In countries like India, Bangladesh, and parts of sub-Saharan Africa, children are often forced to work long hours in hazardous conditions, whether in factories, fields, or domestic settings (ILO Reports on Child Labor, 2020). The grim reality is that for these children, the notion of "play" is a distant fantasy, something they see only in the lives of more privileged children. For them, the playground is a place they pass by on their way to work, not a place they get to enjoy.[270]

In addition to economic challenges, cultural factors also play a role in the under-enforcement of the right to play. Still, in many societies, play is considered a frivolous activity and not a very serious one; it ranks way behind other pursuits, such as work or studying. Especially in patriarchal societies, girls are not given the same kinds of play opportunities that boys are given, because, for example, they should stay home and attend to domestic duties or take care of children rather than playing outside. This gender disparity in access to play is yet another example of how deeply ingrained societal norms can undermine legal protections.[271] Government policies and interventions aimed at promoting the right to play often face resistance not only from economic forces but also from parents and communities. For example, in some rural areas of India, parents may prioritise child labour over education and recreation because they rely on their children's income to survive. In such cases, laws alone cannot change the status quo; broader economic and social reforms are needed to ensure that families have the financial stability to allow their children the freedom to play.[272] The bitter irony of the situation exists where policymakers debate the nuances of international conventions, and millions of children are robbed off their childhood, stuck in a cycle of poverty.

Present-day realities of implementing the right to play are far more complex than the legal frameworks suggest. While international treaties and national laws provide a foundation for protecting children's right to leisure and recreation, the practical challenges- ranging from inadequate infrastructure and economic pressures to cultural attitudes and the influence of technology- continue to impede meaningful progress. If the right to play is to become more than a lofty ideal, governments, communities, and families must prioritise it as a fundamental aspect of childhood development. Until then, the playgrounds of the world will remain uneven, accessible to some but not to all, with the children who need them the most often left standing on the sidelines.

Overcoming Barriers: Pathways To Effective Implementation

Right to play: an apparently harmless and accepted norm in international practice faces, still faces considerable challenges to be realized around the globe. Ranging from infrastructural inadequacies to socio-economic imbalances, a gap lies between theory and practice, that is to say, theoretical acceptance of the right and actual enforcement. However, not everything is lost; and avenues of realization are possible. In solving these challenges, a solution-driven approach is of paramount importance through legal reforms, infrastructural development, policy innovation, and community engagement.

First, a question arises: How can legal reforms drive the implementation of the Right to Play? Legal frameworks establish the basis from which any right is recognized and implemented. Similarly, the Right to Play shall not be out of this scenario. Already there are international conventions, like UNCRC, wherein Article 31 recognizes this very right. However, the issue often lies in the lack of domestic legislation that mirrors these international standards. One solution is to encourage nations to incorporate the Right to Play

[270] Human Rights Watch, *"The Invisible Workforce: Child Labor in South Asia"* (2021)
[271] Children's Rights and Gender Equality (2020)
[272] India Labour Report (2020)

into their national legal frameworks.[273] Countries need to enact amendments to the existing law, such as child welfare or education acts, to specifically identify and safeguard the Right to Play. India's Right to Education Act, encouraging schools to allow children to have playtime, is a move in the right direction but fails to specify the right to play for all children, not only those attending school. Strengthening such laws and binding them on public and private institutions is crucial to making the Right to Play a reality.

Next, we must consider the role of infrastructure. It is easy to say children have the right to play, but where are they supposed to do it? In many urban areas, open spaces are rapidly shrinking under the weight of overdevelopment. Lack of playgrounds and recreational facilities is a recurring issue in developed and developing countries. Here, governments must prioritise the allocation of public spaces for recreational purposes. Urban planning policies should incorporate mandates for creating safe, accessible playgrounds in residential and school areas.[274] Sweden's model where every residential area must have a playground could be adopted by other countries. An alliance with the private sector can be an option for economically restricted countries. Corporate social responsibility (CSR) initiatives could be harnessed to fund the development of parks and recreational facilities, particularly in underprivileged areas.[275]

Another approach to successful implementation is when overcoming socio-economic constraints is factored in. Many children have to work, especially in low-income regions, instead of playing. The matter transcends building playgrounds. It involves the process of deconstructing structures that make children work. One method of freeing children's time for play is pushing child labor laws harder. The ILO has, through conventions like Convention No. 138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour, given an international framework for the eradication of child labor. Local mechanisms for enforcing such conventions often lag behind. By reinforcing these child rights and making sure that children are safe from exploitative labor practices, countries can thus make big strides in giving children time and space to play.

Education systems are also crucial for the promotion of the Right to Play. For instance, a number of educators have argued that play is an add-on activity to academic performance, while the evidence is conclusive on the necessity of play in cognitive, emotional, and social development. This challenge is, however, the fact that many schools, particularly those in highly competitive environments, sacrifice play in favor of academics. To combat this, education policies must adapt to recognize the importance of learning through play. Integrating physical education and unstructured play into curriculum rather than dealing with it as an extracurricular can ensure that each child, across all strata of society, gets to engage in play. The National Sports Policy (2001) states that sports activities should be developed in schools and colleges, yet the focus extends to informal playing and recreation in equal measures important for all round development.

One might ask: What role does the community play in ensuring the Right to Play? Community engagement is key to successfully implementing any right, and the Right to Play is no different.[276]

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[273] Backer and Larry Catá, "*Evolution of the united nations protect-respect-remedy project: The state, the corporation and human rights in a global governance context,*" Santa Clara J. Int'l L. 9 (2011) 37.

[274] Whitzman, Carolyn, Megan Worthington, and Dana Mizrachi, "*The journey and the destination matter: Child-Friendly Cities and children's right to the City,*" Built Environment 36.4 (2010): 474-486.

[275] Ngwenya and Zanele Ziphelele, "*The value drivers of investing in sport-based corporate social responsibility initiatives,*" University of Pretoria (South Africa) (2010).

[276] Key, Kent D., et al., "*The continuum of community engagement in research: a roadmap for understanding and assessing progress,*" Progress in community health partnerships: research, education, and action 13.4 (2019): 427-434.

Local governments, NGOs, and community organizations can partner together to develop and sustain play spaces, especially in places with minimal governmental intervention. This community-led approach immediately meets the need for amenity spaces and encourages people living there to accept responsibility for safety, inclusivity, and accessibility. Communities are likely to see that, if they are a part of planning and maintaining these play spaces, they will be safer, more inclusive, and accessible.

Policy innovation is another critical aspect of overcoming the Right to Play barriers. Traditional top-down approaches, where governments set the agenda and citizens passively receive services, have their limitations. More modern thought would involve letting the children and youth decide, for instance, concerning play. Specific policies might include the ability to institute youth councils or child-led initiatives where young people can be heard for their needs and wants as far as recreational activities are concerned. Such participatory governance empowers the children and ensures that the solutions developed are relevant and practical.

The final point is that any long-term plan to implement the Right to Play should be based on the concept of sustainable development. Using eco-friendly materials and design techniques, recreational areas should be created with sustainability in mind. Policies should promote the conservation of natural areas for the enjoyment of future generations. This strategy guaruntees the rights of kids today and of future generations.

While barriers in implementing the Right ot Play remain significant, they are not insurmountable. The road ahead can be fixed by legal reforms, infrastructural development, socioeconomic interventions, education policy changes, community engagements and policy innovation. The task now is for governments, civil society, and international organisations to work together to ensure that every child, regardless of their background, has the opportunity to engage in play. After all, as some might point out, it seems a bit unreasonable that in a world where we can send people to space, we still struggle to provide children with the basic right to play in a safe environment. The solutions are there; it is now a matter of political will, resource allocation, and collective action to make the Right to Play a reality.

Conclusion and Recommendations: A Future with The Right to Play

As we approach a future in which the number of global issues increases hourly, many governments and bureaucrats continue to overlook the right to play. This might seem baffling, given that play isn't exactly a new discovery, or a secret elixir locked away in some ancient vault. The benefits of the game for children- mental, physical, and social- are well-documented and universally acknowledged, yet its implementation, or lack thereof, tells a story of neglect almost comedic in its irony. The grand pursuit of the well-being of society can be summarized in a mild request for space and chances to allow children to play. A mild request for space and a chance for children to play is all one can ask for in the grand pursuit of societal well-being.

The primary issue lies not in recognising the importance of the right to play but in the staggering lack of follow-through in enforcing it. It's easy to put pen to paper and create treaties, conventions, and legislative frameworks that guarantee the right to play, as evidenced by the United Nations Convention on the Rights of the Child (UNCRC) or various national policies. But what good is a law when it's as effective as a gym membership never used? Article 31 of the UNCRC, for instance, outlines a beautiful, almost poetic vision of a world where every child has access to rest, leisure, and recreational activities. Yet, they seem like bedtime tales rather than genuine roadmaps to change, considering how little actual implementation one finds in various countries.

The National Sports Policy and the Right to Education Act in India also hint at the need for recreation-oriented activities along with the child-centered legislation-the Juvenile Justice Act. But hinting, much like a polite cough in a crowded room, doesn't really get anyone's attention. The ground reality is that India's parks, playgrounds, and school sports programs are either woefully inadequate or inaccessible to the very children they're meant to serve. A city can build a dozen malls but suggest the construction of a public playground, and you'll be met with budgetary excuses, political delays, or worse, silence. The reality is, when it comes to the right to play, the devil is in the details, or more precisely, in the execution. Compliance and enforcement mechanisms seem to be allergic to urgency.

While bureaucrats shuffle papers and debate to define "playground," millions of children are now stuck indoors. Boarded, clinched, desiring nothing but the joys of whiling away their hours being tethered to a screen. They are deprived of the simple joys of running around in an open space. While that in itself is a tragedy, one must realize that not only are we raising a whole flock of inactive children--we are actually choosing to ignore the long-term consequences. The health fraternity has long voiced warnings concerning the lack of play: that it causes developmental disorders, pancreatic havoc through obesity, and higher mental misery. The only trouble is that things are moving so slowly that one might as well call it "business as usual." Adding to this, the role of Corporate Social Responsibility (CSR) has the potential to make a difference. Corporations, especially those with large consumer bases or significant community impact, are obligated to contribute to social welfare under their CSR initiatives. Yet, too many of these initiatives focus on short-term, superficial goals, like funding sports teams or organising sporadic events. What's missing is a long-term investment in infrastructure: companies could, for instance, build safe, accessible playgrounds in urban areas or sponsor ongoing physical education programs in schools. Through CSR, corporations could become critical allies in the effort to ensure that every child's right to play is not just theoretical but a tangible reality. However, for now, the CSR actions concerning the sector are filled with good intentions but far from consistent, just like an unused gym membership.

Believe it or not, the answer to this crisis is neither found in complex policy reforms nor cutting-edge technology. The answer lies in the rather quaint idea of "doing what you said you would do." Yes, doing the radical act of delivering on the promises set in legal frameworks could change the future of play. Governments need to make actual investments in infrastructure- build parks, not skyscrapers; fund sports programs, not just exam prep courses; and ensure that children from marginalised communities, rural areas, and deprived sections of society aren't left to fend for themselves when it comes to something as fundamental as their right to play.

This is a call to action for governments, NGOs, corporations (through CSR), educational institutions, and communities to remember that the right to play isn't a frivolous luxury but a cornerstone of human development. It is time to push for reforms prioritising recreation in national and international policies, not as an afterthought but as a key component of education, health, and urban development. The future we imagine for our children can either be one where they thrive physically, emotionally, and socially- or one where the consequences of inactivity, stress, and isolation weigh them.

It is not the absence of laws or policies that threaten the right to play but the absence of a will. We've known for decades what play can do for children. What we haven't figured out is how to translate that knowledge into concrete, sustainable action. Without this, the right to play remains what it is today- a lovely

idea gathering dust in the archives of legal frameworks occasionally dragged out for international reports and summits but rarely given the real-world attention it so desperately needs.

Important Suggested Reading Materials

- "Play: How it Shapes the Brain, Opens the Imagination, and Invigorates the Soul" by Stuart Brown
- "Childhood and Human Rights: The Case for Play" by Noirin Hayes
- UN Committee on the Rights of the Child (CRC), General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), CRC/C/GC/17, 17 April 2013,
- https://www.refworld.org/legal/general/crc/2013/en/96090 [accessed 28 November 2024]

Chapter – 13

From Stadiums to Soft Power: Investigating The Strategic Use of Sports By States to Launder Reputation

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Abstract

In this chapter, we thoroughly examine the concept of sports washing and its impact on various stakeholders, including countries, athletes, and labour. We provide an in-depth analysis of sports washing through the exploration of two case studies: the 2018 FIFA World Cup, and the acquisition of a majority stake in Newcastle United Football Club by the Public Investment Fund of Saudi Arabia, supported by relevant theories: Soft Power, Public Diplomacy, Legitimacy, and Media Framing. Our approach is to present a balanced and unbiased opinion by examining both the effectiveness and consequences of sportswashing.

Additionally, this chapter seeks to address the legal and ethical implications and global governance issues associated with sportswashing, aiming to provide insights into the complexities of this phenomenon. We strive to answer crucial questions related to the ethical considerations and governance challenges posed by sportswashing.

Keywords – Sports Washing, Labour Exploitation, Human Rights, Soft Power, Politics

Definition of Sportswashing

"The phrase was first introduced in 2015 as a blend of "sports" and "whitewash," aimed at highlighting Azerbaijan's strategy of utilizing the European Games to shift global focus away from its human rights issues. Its usage gained traction around 2018, particularly when Amnesty International began to emphasize the link between the deterioration of human rights in Russia during the 2010s and the country's hosting of the Sochi 2014 Olympic Winter Games and the 2018 World Cup. This term challenges the perception of sports events as politically neutral, suggesting instead that such competitions often serve to benefit governments that pursue questionable policies."[277]

It can be defined as a method or technique used by any nation or state to mislead or misdirect, the world's attention with the help of sports. In this method, a nation or state by hosting a grand sport event tried to cover up its crime against humanity under the shimmer of an extreme extravaganza of the event. Using sports as a distraction is not a new technique and this has been recorded in history by different historians and philosophers, which was used even by the Roman Empire. Many historians have claimed that games or

[277] Sportswashing, available at: https://www.britannica.com/money/sportwashing (Visited on December 1, 2024)

sporting events were held by the rulers of these empires to distract the public from the real issues whereby entertainment was served to occupy their intellect over other concerning issues.

To put it, "Sportswashing refers to the strategic use of sports to divert public scrutiny from unethical behaviour. The goal is to enhance the reputation of the entity in question by leveraging the widespread appeal of sports to mitigate negative publicity. While the most notable examples of sportswashing are often associated with authoritarian regimes that have a history of human rights violations, it is also a tactic employed by various commercial enterprises." [278] It can be said, that "Sports serve as a medium for propaganda, which can be achieved by organizing sporting events, acquiring or sponsoring sports teams, or engaging in athletic activities."[279]

"It is the act of sponsoring a sports team or event that serves as a strategy to divert attention from negative practices in other areas. This approach is frequently employed by corporations and governments that have questionable environmental or human rights records, leveraging the public's passion for sports to improve their image."[280]

"In this context, an individual, organization, or even a nation engages in sports, primarily through event hosting or team sponsorship, to cultivate a more favourable public perception that diverts focus from contentious matters. Specifically, Saudi Arabia faces allegations of leveraging golf and football, along with aspirations to host a future Olympic Games, to enhance its global standing, thereby overshadowing its troubling human rights history, which includes the 2018 assassination of journalist Jamal Khashoggi, as well as systemic discrimination."[281]

Origin of Sportswashing

The Olympics and the FIFA World Cup stand as the two most significant sporting mega-events globally, both of which have histories marked by sportswashing. Numerous authoritarian regimes have hosted these competitions, leveraging them to project images of stability, normalcy, and control. The international sports community has largely tolerated this trend, provided that the events proceed smoothly.

"The trend of using the Olympics for political purposes began with Nazi Germany in 1936, when Garmisch-Partenkirchen and Berlin hosted the winter and summer games, respectively. This practice continued with the Summer Games in Mexico City in 1968, Moscow in 1980, and Beijing in 2008, as well as the Winter Games in Sochi in 2014 and again in Beijing in 2022. In the context of the FIFA World Cup, notable instances include the tournaments held by fascist Italy in 1934 and Argentina under its military junta in 1978."[282]

Talking about the 1936 Berlin Olympics, "Soviet Union and the Eastern Bloc" had made a significant amount of investment only to exhibit their ascendancy in "Socialist System". Moving forward was the 1964

[278] EXPALINER: What is sportswashing and why should we care about it?, available at: EXPLAINER: What is sportswashing and why should we care about it? | Australian Human Rights Institute (Visited on December 1, 2024)
[279] Sportswashing, available at: Sportswashing - Wikipedia (Visited on December 1, 2024)
[280] What is sportswashing and why is it such a big problem?, available at: What is sportswashing and why is it such a big problem? (Visited on December 1, 2024)
[281] Sportswashing: a historical perspective on a current trend, available at: Sportswashing, A History: From Nazi Olympics To Qatar's World Cup | HistoryExtra (Visited on December 1, 2024)
[282] Sportswashing: a historical perspective on a current trend, available at: Sportswashing, A History: From Nazi Olympics To Qatar's World Cup | HistoryExtra (Visited on December 1, 2024)

Tokyo Olympics which was the symbol of the rise of Japan after World War 2. In addition to this was the 1972 Munich Olympics. Where an effort was made to make the world aware of the ideas of the new West Germany.

"A notable example of sportswashing took place during the "1978 FIFA World Cup" in Argentina, a nation under the oppressive rule of a military junta aiming to enhance its global image through the event. During this period, international media detailed the disturbing reports of dissidents facing abduction and torture, along with harrowing accounts of people being thrown from planes into the 'South Atlantic' and 'Rio de la Plata'. 'Tim Pears' pointed out the junta's crimes, revealing that thousands were abducted, tortured, and murdered over the seven years of military rule, including various professionals like doctors, teachers, priests, journalists, and union leaders, during a period referred to as Argentina's "dirty war." Many victims were buried in unmarked graves, and some were discarded from helicopters into the vast waters of the 'Rio de la Plata'. 'The Mothers of the Disappeared' conducted silent vigils every Thursday outside the presidential palace in the 'Plaza de Mayo', enduring harassment from thugs linked to the barras bravas."[283]

Till 1952, the Soviet government did not participate in the Olympics, but to let the world know about its achievements, it hosted the 1980 Moscow Olympics. However, the "The Western nations chose to boycott the Olympics in response to the Soviet Union's invasion of Afghanistan, which diminished the event's prestige. It's important to note that African nations had previously chosen to boycott the 1976 Olympics, which prompted the Soviets to respond by boycotting the 1984 Los Angeles Olympics."[284]

The 21st Century

"Sportswashing remains a tactic employed by nations to shift global focus away from their own misdeeds. A notable example of this phenomenon is the 2008 Beijing Summer Olympics. During the 2001's bidding process, the Bid Committee of the Beijing Olympics claimed that one could not only easily notice the rise in the economic conditions of the country that organizes sporting events but eventually, it also led to the improvement of various other conditions and rights. 'However, this promised era of human rights never materialized. Instead, the 2008 Olympics coincided with a significant increase in state repression. Sophie Richardson, the China Director at Human Rights Watch, noted that the Chinese government's hosting of the Games acted as a trigger for various abuses.' Despite this, the International Olympic Committee (IOC) proceeded to award the Winter Olympics of 2022 to Beijing, and it was very aware of the fact that there had been no fulfillment of the commitments made before. Also, it continued to violate the rights of humans and with time passed by, this violation also increased especially against the Uyghur Muslims living in Xinjiang, those living in Tibet, and the activists living in Hong Kong. The IOC's decision to select Beijing stood in stark contrast to the "fundamental principles of Olympism," which emphasize the importance of civic duty and adherence to the global moral principles, as outlined in the "Olympic Charter".

Recent instances of sportswashing can be observed in Russia's Winter Olympics of 2014 (herein, referred to as SO) which took place in Sochi. This event provided Putin with an opportunity to distract attention from those laws that would without any hesitation create discrimination against those who belong to LGBQ individuals, it was a subject that had attracted significant attention from the media and its criticism

[283] Sportswashing and the Shift of Power in the International System, available at: Sportswashing and the Shift of Power in the International System | Economic and Political Weekly (Visited on December 1, 2024)
[284] Sportswashing and the Shift of Power in the International System, available at: Sportswashing and the Shift of Power in the International System | Economic and Political Weekly (Visited on December 1, 2024)

globally. While an analysis focused solely on strategies aimed at enhancing the external image may suggest that the Sochi Olympics were unsuccessful, the organizers had broader objectives.

They dedicated considerable effort to crafting Olympic messaging that resonated with a domestic audience, fostering a sense of emotional loyalty to the nation and a desire for internal cohesion & strength despite perceived global threats along with the anti-Russian sentiments. The Sochi Olympics faced harsh criticism from international observers, particularly regarding their staggering cost, which exceeded $50 billion—more than any previous Winter Games. Polls indicated "that only 43% of Russians"[285] believed that the Games would have a significant impact on the economy of the country, while "46%"[286] disagreed. Nevertheless, over 60% of the Russian population expressed pride in hosting both the "Olympics of 2014 and the 2018 Men's World Cup". This domestic messaging, embedded within the broader context of sportswashing, had significant implications.

Figure 1[287]

While Nye contended that Russia wasted its chance to exercise soft power by hosting the Sochi Olympics, scholars Grix and Kramareva argue that this perspective overlooks a crucial point: the SO was primarily intended as a means of generating internal soft power instead of merely serving as an external notable occurrence. They believe that the 2014 Olympics had a dual purpose: to foster patriotic sentiment and to be seen as a harmonized cultural emblem, while also aiding in the development of Russia's new and powerful narrative.

The SO was integral to Russia's initiative of a broader modernization, a detail that was frequently overlooked by Western analysts. Research from the independent polling organization Levada and the Russian news agency Novosti indicates that Putin's popularity surged dramatically following the Sochi Games, reaching a peak approval rating of nearly 86% in May 2014. This surge in popularity can be partially

[285] Jules Boykoff, "Toward a Theory of Sportswashing: Mega-Events, Soft Power, and Political Conflict" 39 SSJ 344(2022)
[286] Boykoff, supra note 10, at 344

[287] Boykoff, supra note 10, at 344

linked to the fact that shortly after the Olympics ended and before the start of the Paralympics, Russia launched an invasion of the Crimean Peninsula, ultimately annexing the territory from Ukraine. This successful military action underscores a significant notion: hosting the Olympics can energize domestic support, creating a more favorably political environment for military actions. While the invasion of Crimea was perceived internationally as a sign of a rogue state, within Russia, it was viewed as a demonstration of national strength and a testament to the incapacity of Western powers to counter a resurgent nation, despite their condemnation of the invasion. These sentiments were echoed in the narratives promoted during the SO. "Grix and Kramareva" note that the invasion, occurring right after the SO, raised the nation's awareness to such an extent it would have not been in post-Soviet history. Examining the internal implications of sportswashing reveals important insights that challenge the conventional soft-power analysis focused solely on international reputation and appeal.

In many respects, 2022 can be characterized as the year of sportswashing. Beijing hosted the Winter Olympics and Paralympics, while Qatar aimed at hosting the Men's World Cup in November. Qatar was awarded the World Cup in 2010 amidst serious allegations of corruption, with the U.S. Department of Justice claiming that the votes were bought vote on a large scale for both Qatar's 2022 sports event and Russia's 2018 World Cup. "The Qatari government, a constitutional monarchy led by Amir Sheikh Tamim bin Hamad Al Thani"[288], imposes strict limitations on free speech and assembly, enforces significant restrictions on the organization of labour, and criminalization of same-sex relationships. As indicated by a senior security official who was responsible for the World Cup, the LGBTQ fans will be allowed to be spectators, their rainbow flags might be confiscated to safeguard them from potential violence. 'A February 2021 investigation by The Guardian revealed that over 6,500 migrant workers from countries such as Bangladesh, India, Nepal, Pakistan, and Sri Lanka have died in Qatar since 2010, with approximately thirty fatalities occurring during the construction of World Cup stadiums.' Additionally, Human Rights Watch said that there were hundreds of thousands of migrant workers have faced severe labour abuse while working in preparation for the World Cup, and still many of them have not received any form of compensation.

The World Cup that took place in Qatar highlights that nations that host the sporting event cannot rely on sportswashing as a guaranteed path to success. This strategy is inherently risky and can lead to heightened scrutiny. The 2022 World Cup has brought attention to the problematic kafala labor system, which can result in forced labor, as well as the persistent issues of corruption within FIFA. In response to sustained pressure from the organizations who fight for the rights of humans, Qatar in September 2020, revised its kafala system, and became the first Gulf nation that permitted migrant workers to change their jobs without needing the employer's consent prior to the expiration of their respective contracts. Human rights advocates consider the removal of an employer's absolute control over workers' job mobility a crucial step toward combating bonded labour. After the lead achieved by Kuwait, even Qatar established a minimum wage. However, employers still wield significant power over migrant workers, many of whom are burdened by loans and are forced to live in fear of retaliation. Severe penalties for escaping are still there, allowing employers to punish workers who leave without permission or overstay their work permits. While these reforms could potentially enhance the working conditions for many migrant workers if properly enforced, Human Rights Watch has expressed caution, noting that issues such as passport confiscation, exorbitant recruitment fees, and misleading recruitment practices persist largely unaddressed, and people working are prohibited from forming alliance

[288] Amiri Diwan, State of Qatar, available at: HH Sheikh Tamim bin Hamad Al Thani - Amir of the State of Qatar | The Amiri Diwan (Visited on December 1, 2024)

or anything else. It is hard to envision these labor reforms happening without the push from the World Cup; the event has led to positive outcomes that differ from the host's original goal of sportswashing."[289]

Case Studies

1. 2018 FIFA World Cup

"In 2017, a Human Rights Policy was developed by FIFA, whose commitment was to protect and respect human rights, no matter if for that it has to go beyond all its duties and this can only be done via implementing those actions that can improve the rights of the humans. In addition to this, it also introduced a new program so as to investigate the conditions of labour at the construction site. However, despite this, the World Cup did little to address the numerous human rights violations in Russia, ranging from the government's increasing repression of peaceful dissenters and its hostile anti-LGBT "propaganda" legislation to the fatalities among workers involved in constructing the new stadiums."[290]

Building Workers Internal claims that at least 21 workers died for the sake of the construction of the World Cup stadium. In its June 2018 report titled "Foul Play," BWI stated that the "majority of these fatalities resulted from falls from heights or from heavy machinery striking workers, incidents that could have been prevented through the enforcement of safety and health regulations."[291] "In a piece named "The Slaves of St Petersburg," it was revealed that a minimum of 110 North Koreans were forced to work at Zenit Arena in St. Petersburg, which was one those venues that were reserved and used in the finals of 2018 FIFA World Cup."[292]

The North Korean labour was described as both the slaves and the hostages. According to international experts, a deceased worker was discovered inside a storage container located outside the stadium. After all this, FIFA President Ginni Infantino informed everyone that they were no longer using any North Koreans at the site. However, there is still no information on what happened to the workers or whether they were awarded any compensation.

The 2018 FIFA World Cup is not only known for its labour exploitation but also for other forms of human rights violations. For instance, "it was January, when the arrest of Oyub Titiev, Grozny director of Memorial, took place in Chechnya. It is said that it was the last group that was working for the rights of humans. But soon after a few weeks, FIFA announced that Chechnya would be used for the training of the athletes for the World Cup."[293]

After this comes the violation of the rights of Lesbian, Gay, Bisexual, and Transgender. "It was 2017 when Kadyrov oversaw a brutal and unparallel crackdown on the Lesbian, Gay, Bisexual, and Transgender community, during which Chechnya's security forces detained men suspected of being gay, subjected them to torture, and caused some to go missing. Kadyrov refuted these claims, stating in an HBO interview. He said that there are no such people. They have no gays and only have those people who are heterosexual. He

[289] Boykoff, supra note 10, at 344
[290] Russia's bloody World Cup, available at:
Russia's bloody World Cup | Human Rights Watch (Visited on December 5, 2024)
[291] New Report: FIFA's foul play at the 2018 World Cup Russia, available at:
New Report: FIFA's foul play at the 2018 World Cup Russia |BWI Home (Visited on December 5, 2024)
[292] The Slaves of St Petersburg, available at: The Slaves of St Petersburg | Centre for Sport and Human Rights (Visited on December 5, 2024)
[293] Russia's bloody World Cup, available at:
Russia's bloody World Cup | Human Rights Watch (Visited on December 5, 2024)

even said that if there are any gays then one should take them from this place. In the following talks, he feigned ignorance of the term "homosexual." "[294]

As per FIFA's Human Rights Policy, there can be no discrimination merely based on sexual orientation. At the same time, Russia's anti-gay laws do not support same-sex relationships and heterosexual relationships. It won't even tolerate any information regarding them in public. "How can this situation genuinely create a welcoming environment for fans who are gay, families, and athletes? FIFA had the opportunity to urge Russia to revoke its legislation which is anti-gay. However, it is said that there is no indication that such action was taken, despite FIFA's previous willingness to advocate for the repeal of laws deemed detrimental to the integrity of the games at earlier World Cups. This represents not only a disappointment but also a lost chance to promote fundamental human rights during the World Cup in Russia."[295]

It is said that the World Cup is all about celebrating the achievements of humans, but the story of its host, Russia, does not speak the same. The 2018 FIFA World Cup was all about human rights violations, deaths, abuse, and political exploitation. This shows that Russia did not do anything but merely use the 2018 FIFA World Cup just to improve its image and distract people's attention from the ongoing violations.

2. The acquisition of a majority stake in Newcastle United Football Club by the Public Investment Fund of Saudi Arabia

The acquisition of a majority stake in Newcastle United Football Club by Saudi Arabia's Public Investment Fund (PIF) is a significant example of sportswashing.

In October 2021, Saudi Arabia's Public Investment Fund, along with PCP Capital Partners and Reuben Brothers, acquired 80% of the stakes of Newcastle United, worth rupees £300 million. This helped it in diverting the attention from ongoing crises and criticism in the country such as human rights violations and ethical concerns in the country. This acquisition has been critically condemned by organizations such as Amnesty International and Human Rights Watch. The critics argue that the reason behind the acquisition is to protect the reputation of the king and the kingdom's controversial actions and policies.

In addition to this, the acquisition also acted as a blanket to cover the murder controversy of journalist Jamal Khashoggi, the jailing and abuse of rights activists, and a general intolerance of dissent. This diverted the world's attention from the controversies and presented a favourable and just image in front of the world. Not only did it try to hide its ill deeds from the world, but it also did this to match its footsteps with other Gulf countries such as Qatar and the UAE.

[294] Russia's bloody World Cup, available at:
Russia's bloody World Cup | Human Rights Watch (Visited on December 5, 2024)
[295] Russia's bloody World Cup, available at:
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Critical Analysis and Theoretical Perspectives

Theory	Soft Power	Public Diplomacy	Legitimacy	Media Framing
Who coined the term	"Joseph Nye originally introduced the concept in his book titled 'Soft Power: The Means to Success in World Politics'."[296]	"The phrase was initially introduced by Edmund Gullion in 1965."[297]	John Dowling and Jeffrey Pfeffer have used the term in their journal 'Organizational Legitimacy: Social Values and Organizational Behavior'.	"The theory was first put forth by Goffman, under the title of Frame Analysis."[298]
Supporter countries	Qatar	China	Brazil	Saudi Arabia
Example	2022 FIFA World Cup Tournament.	The Summer Olympics held in 2008.	2014 World Cup in Brazil.	WWE

Figure 2: Theories of Sportswashing

1. Soft Power Theory

"Joseph Nye was the one who coined the terminology 'soft power' shortly before the conclusion of the Cold War in 1991, referring to a strategy that seeks to exert influence in global matters without the use of force. Central to Nye's idea are the principles of 'attractiveness' and 'credibility.' According to Nye, a nation's soft power is derived from its political values, cultural appeal, and foreign policy approaches."[299]

"Soft power focuses on drawing individuals towards one's values and ideas instead of using hard power, which relies on military threats or economic sanctions. It emphasizes constructive engagement over the use of military force and relies on non-material forms of influence rather than coercive tactics. It was suggested by Nye that although soft power and hard power seem to be different they aren't. They should be noticed as a part of a spectrum where on one side the hard power commands while soft power acts as an absorbent. He also notes that wielding soft power is often more challenging, as many of its essential resources lie beyond governmental control, and its effectiveness largely depends on the acceptance of the target audience. Furthermore, soft power resources typically exert influence indirectly by creating a conducive environment for policy, and achieving the desired results can take years.

According to the critiques, Nye's interpretation continues to depict the powers as fundamentally opposing forces. Mattern further contends that soft power is less about attracting through persuasion and more about imposing ideas on those targeted; those who exercise soft power 'socio-linguistically construct 'reality' not through evidence-based argument but through representational force'. In simple words, it means that in reality is not as soft as it appears. It often reinforces and legitimizes the preferred policies and values of its proponents, thereby reflecting Western-centric power dynamics and political biases. Lastly, this concept

[296] Soft Power, available at: Soft Power - Political Dictionary (Visited on December 7, 2024)
[297] Hasan Saliu, "The Evolution of the Concept of Public Diplomacy from the Perspective of Communication Stakeholders" 26 Medijska istraž 71(2020)
[298] Framing Theory, available at: Framing Theory | Mass Communication Theory (Visited on December 7, 2024)

[299] Jonathan Grix, Adam Dinsmore and Paul Michael Brannagan, "Unpacking the politics of 'sportswashing': It takes two to tango" 39 Sage 5(2023)

originated within the realm of international relations, it tends to overlook domestic factors, which are crucial for comprehending sportswashing. Despite this, scholars frequently utilize this framework to examine the political strategies surrounding sporting events. While this power can enhance people's knowledge of sportswashing, the phenomenon also emphasizes the shortcomings of the power's paradigm."[300]

2. PUBLIC DIPLOMACY THEORY

"Various government-sponsored initiatives are designed to engage directly with foreign audiences. Public diplomacy involves all official efforts to shape the views of foreign audiences to support or agree with a government's strategic objectives. This includes communications from decision-makers, targeted campaigns led by government entities focused on public diplomacy, and initiatives to encourage international media to present official policies in a positive light to foreign viewers."[301]

Public diplomacy can be categorized into two main types:

- Branding or Cultural Communication
- Political Advocacy

The first type is typically employed by governments aiming to enhance their image "without pursuing support for specific policy goals. Nations implement branding strategies to cultivate a more favourable perception of themselves globally. Ideally, such branding generates overall goodwill and promotes collaboration on various issues. Additionally, it aids in sustaining long-term alliances and countering adversarial propaganda."[302]

"The concept involves the use of sports and the events related to it so that the countries could achieve their objectives, collaborate with other nations, improve their reputation, achieve economic growth, etc. It involves the use of various strategies and tools for soft power. Essentially, this means that sports or individuals associated with sports serve as instruments to fulfill political or economic aims. This approach includes the use of sports so that the country can achieve its goals and strengthen its ties with other nations and its own people also it can handle the issues related to human rights issues, people's health, peace, and development.

One of the worth-noting examples of diplomacy is the Ping Pong Diplomacy. It arose at the time of the Cold War in 1971. The exchange of table tennis players between the two nations i.e., China and the United States shows the thawing of relations which eventually led to talks and resolving the conflicts between the two nations.

Even the Gulf countries have been part of such courteous initiatives. For instance, the 2011 Sports Event organized by Qatar. This event was known as "Ping Pong Diplomacy 2.0" as referred to by Adam Sharara the former President of the International Table Tennis Federation.

[300] Boykoff, supra note 10, at 344
[301] public diplomacy, available at:
Public diplomacy | Definition, Types, Examples, & Propaganda | Britannica (Visited on December 8, 2024)
[302] public diplomacy, available at:
Public diplomacy | Definition, Types, Examples, & Propaganda | Britannica (Visited on December 8, 2024)

This event brought together ten countries in Doha to compete in a spirit of peace, emphasizing the importance of sports over political differences and marking a significant advancement in promoting peace through sports."[303]

1. Legitimacy Theory

According to this theory, countries organize sporting events to enhance and improve their global image and gain legitimacy from the outside world.

Key aspects are:

- International Legitimacy – By hosting such events, the countries showcase their abilities and capabilities to the outside world. Telling them how magnificent events can it organized. This helps the countries especially those who are involved in the controversies such as human rights violations to gain global recognition.
- Domestic Legitimacy – Such events not only divert global attention from the ongoing crisis but also domestic attention. By organizing these events, the government tries to portray how it thinks for its people and all it wants is the development of the citizens and the nation. This practice ensures that people believe that the government is working for them and it is not doing any wrong with the people.
- Economic Legitimacy – Not only do these sporting events, contribute to the overall development of the country's economy but also in the job creation. This shows how capable the government is in organizing events but is also trying continuously to improve its condition.

For instance, "In recent years, sports have emerged as a recognized and esteemed instrument for advancing education, fostering integration, promoting equality, and addressing various social objectives. Sports has been identified as a pivotal point in UN's SDG 2030. In the same manner, EU's WP for Sport 2017-2020 advocates for the use of sports to combat unemployment and other societal challenges. Within this context, numerous initiatives and organizations have established a movement focused on Sport for Development and Peace (SDP)."[304]

2. Media Framing Theory

This theory explains the capacity of media to shape and influence public perception. When talking about sportswashing, the media can set a narrative about the countries involved, either by supporting or revealing the real face of the countries.

Key aspects of media framing theory in sportswashing are:

- Selective Emphasis – When the media chooses to promote and appreciate sports events and their organizers, it significantly improves the image of the country and the success of the event. Selective emphasis helps divert people's attention from the ill activities of the countries that would have otherwise brought disgrace to that country.
- Narrative Construction – Generally, media creates narratives that align with the objectives of the host country and present a better and improved version of the country. With this, the media ensures that the

[303] Costa, Rafael, and Marcelo Moriconi, "Current political uses of sport revised: beyond public diplomacy and sportswashing." 6 FSAL 1316732(2024)
[304] Costa, Rafael, and Marcelo Moriconi, supra note 28, at 1316732

audience perceives that, what the country wants to.

- Positive Framing – There is nothing better than media framing when it comes to image polishing. We are saying this because the media in such events always try to highlight the positive aspects of the host country and overshadow its negative aspects. By telling people how such events helped create employment, cultural exchange, economic development, etc. media covers the ongoing human and labour exploitation, violation of rights, and various other problems.

Legal and Ethical Implications of Sportswashing

1. Corruption

"The legal ramifications of sportswashing are that it undermines the fundamental values inherent in sports culture."[305]

2. Labour Exploitation

When talking about the exploitation of labours, then one of the best examples is Qatar. What happened with the labours there cannot be ignored. For the 2022 World Cup, not only did it transfer the country into a paradise but it ended up committing the exploitation of labourers. "Behind the façade of a vibrant city and modern stadiums lies a stark reality: labor camps housing thousands of migrant workers. The environment surrounding Doha, where these camps are situated, contrasts sharply with the polished image of the capital. Over the past decade leading up to the event, there have been numerous reports highlighting exorbitant recruitment fees, lower wages, poor working conditions, and death among the workers.

At that time, the population of 'Qatar was approx.2.8 million, with less than 10 percent being Qatari nationals'. The majority consists of foreign labourers hailing from some of the most impoverished nations in the region, including 'Nepal, India, Bangladesh, and Kenya'. These migrant workers endure inhumane conditions in labor camps, performing jobs under harsh circumstances and low pay, rendering them susceptible to exploitation. Despite their crucial role in constructing the stadiums and hotels necessary for the World Cup, many are barred from accessing the event venues.

The plight of migrant workers in Qatar extends beyond their living conditions to the terms of their employment contracts. The Kafala system is a key component of the Qatari labor framework.

Kafala, or the "sponsorship system," ties the employees with their bosses as a result it becomes difficult for them to leave the job and move to another place without seeking their boss's permission. This dependency exposes workers to potential mistreatment. The Kafala system has faced significant criticism for perpetuating poor working conditions. Additionally, the high recruitment fees that many low-wage workers incur to secure employment in Qatar further entrap them in debt.

These exploitative working conditions are not only unjust but can also be fatal. The death toll among migrant workers on construction sites in Qatar over the past decade has been alarming. 'It is said that since 2010, the number of workers losing their lives is above 6500 and this included only those workers who came from South East Asia.'"[306]

[305] Kyle Fruh, Alfred Archer and Jake Wojtowicz, "Sportswashing: Complicity and Corruption" 17 Sport, Ethics and Philosophy 109(2023)
[306] Modern Slavery and "Sportswashing" in Qatar: Labour exploitation tainting the 2022 World Cup, available at:

3. Complicity

"It is clear that regular fans and athletes are not directly involved in the misconduct associated with a sportswashing regime. They do not engage in acts of violence against individuals based on their sexual orientation, nor are they typically part of a political framework that would hold them accountable for electing individuals who commit severe human rights violations. However, sportswashing can inadvertently implicate ordinary fans and athletes in the human rights abuses occurring in places like Qatar. This occurs because when international pressure mounts on a regime to halt its human rights violations, sportswashing diverts attention from these issues, potentially allowing such injustices to persist. Consequently, those involved in sports may unwittingly support these injustices by facilitating sportswashing, which enables the continuation of these violations."[307]

4. "The Impact on Athletes

Most oftently, athletes are the worst victim of the sportswashing. They train their whole lives to compete on the world stage, only to find themselves in the midst of a political controversy. They are usually caught between the situation of should they speak up the truth or remain silent.

Some athletes choose to use their platform to raise awareness about issues they care about. Others prefer to stay out of politics and focus on their performance. Either way, it's a tough situation to be in, and one that can have serious implications for an athlete's career and public image.

5. The Fan Perspective

Sadly governments, in order to protect them and their country's name, not only end up forgetting about the athletes but also the fans. Some fans are very conscious of the political and ethical implications of their fandom. They might boycott events, protest against sponsors, or use social media to raise awareness about issues they care about.

Other fans just want to watch the game. They might not care about the politics, or they might feel like it's not their place to get involved. And that's okay too. But I think it's important to remember that, as fans, we have a certain amount of power. Our money, our attention, our support - these are all valuable commodities in the world of sports."[308]

Conclusion

Human beings are socio-economic animals. They use sports to attract people, improve their reputation, and fulfill their economic goals. As mentioned in this chapter, countries involved in any form of wrong such as human rights violations, corruption, financial mismanagement, etc. organize sporting events and welcome teams and sports enthusiasts from around the globe. The only motive behind doing this is to distract the world's attention from ongoing unethical practices and abuse in the host country.

Modern Slavery and "Sportswashing" in Qatar: Labour exploitation tainting the 2022 World Cup - Law Futures Centre Blog (Visited on December 8, 2024)

[307] Kyle Fruh, Alfred Archer and Jake Wojtowicz, "Sportswashing: Complicity and Corruption" 17 Sport, Ethics and Philosophy 109(2023)

[308] Sportswashing and Its Implications for Global Sports: What You Need to Know, available at: Sportswashing and Its Implications for Global Sports: What You Need to (Visited on December 8, 2024)

These events, not only distract people's attention but also help the host country to gain economic incentives:

"In September 2023, in his discussion with Fox News, "Saudi Arabia's Crown Prince Mohammed bin Salman"[309] talked about the investments made by the country in the field of sports. According to him, to attract tourists, one has to develop sectors such as culture, sports, and entertainment […] Sport used to participate in Saudi GDP by 0.4%. Today it's 1.5% but, now it is 1.5%. which simply means there is significant growth in the economy, entertainment, jobs, tourism, etc. While speaking to Fox News, he said that the country is being ranked number 1 in the Middle East, and if sportswashing helps him increase his GDP by 1%, then he will continue to do so (this is a significant example to show how sportswashing helps the country to gain economic incentives)."[310]

With the help of the theories mentioned, the authors successfully proved that sportswashing not only helps countries gain economic incentives but also helps them improve their image with the help of media, making new and enhancing their old relationships with other countries, fulfilling their strategic objectives, branding of the nation on a global platform and directly and indirectly leaving an impact on people and bringing them on host country's side. It also helps the nation in promoting its culture, ideas, and values.

The chapter also discusses the legal and ethical implications of sportswashing namely labour exploitation, the rise of complicity, corruption, the impact on athletes, and how it affects fans' perspectives.

To summarize, we can say that the authors' idea of presenting a balanced approach and answering all the questions relating to the impact and implications of sportswashing has been successfully achieved by writing this chapter.

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Chapter – 14

Judicial Approach Towards Environment and Climate Change: Its Importance in Developing India

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Abstract

For every developing country, the healthy environment is important aspects for the people living in that country. It is appropriate to think about the relationship between law, legal education, and climate change. Reputable judges demand that "climate conscious lawyering" be a regular component of one's ethical and professional obligations. In the global response to climate change, diplomats reaffirm the need of public awareness, education, and training. Public international law, or the law of nations, is now the closest thing we have to regulate climate change. States have obligations to reduce and adapt the norms regarding climate change under both treaties and customs. States are expressly obligated to different treaties like, United Nations Framework Convention on Climate Change 1992, the Paris Agreement 2015, etc. Central and state environment protection laws are increasingly being developed in response to global environmental law. As per the National Green Tribunal Act 2010, to follow the guidelines of international treaties is the country's responsibility as a party to treaties and the tribunal play a role of a check mechanism. Even in the constitution, Article 48A states about the State responsibility to protect the environment and to safeguard the wildlife of the country. Article 51A establishes the duties of people to protect the environment. Judicial activism had played a vital role in regulating and effectively implementing statutes, which has included significant cases pertaining to climate change. The article's main objective is to provide and discuss different cases of the Supreme Court and High Courts. Judicial approaches towards implementation of legislations to control climate change and how these decisions had an impact on the sustainable development of India. The authors have mainly used the doctrinal approach to collect the information. The authors relied on secondary data that was gathered from a variety of sources like, journals, newspapers, books, internet sources and yearly reports, etc. In conclusion, it was analysed by the authors that the Judiciary bodies like the Supreme Court, High Court, and National Green Tribunals have provided various guidelines and landmark judgments to promote a better environment.

Key Words: Climate Change, National Tribunal, Public International Law, Judicial Activism, Environment Law

Introduction

It is appropriate to think about the relationship between law, legal education, and climate change. We act in this way during a time of increased scholarly, intellectual, and public interest. Young people are filing lawsuits and going on strike from their schools. Scientists are joining protest movements and fleeing their labs. Health experts agree that climate change poses a serious threat to public health. Reputable judges demand that 'climate conscious lawyering' be a regular component of one's ethical and professional obligations[311].The necessity of public awareness, education, and training is reiterated by diplomats in the global response to climate change. The law of nations, often known as public international law, is now the closest approach to global law. As any law student knows, international law governs government-to-state relations, which are meant to reflect the interests and well-being of their citizens and their subjects. It is primarily found in treaties and traditions. In fact, both treaties and conventions impose duties on states to mitigate and adapt to climate change. According to the 2015 Paris Agreement and the 1992 United Nations Framework Convention on Climate Change (UNFCCC), states are specifically required to keep global warming to 1.5 or 2 degrees Celsius over pre-industrial levels[312].Several more national and international standards and the organizations that implement them will be discussed later in this article. Courts and tribunals around the world have long recognized customary international law, including the obligation to prevent transboundary environmental harm. Long-term changes in a region's temperature, humidity, air pressure, wind, precipitation, air particle count, and other meteorological parameters are referred to as its climate[313].The atmosphere, hydrosphere, cryosphere, lithosphere, and biosphere are the five elements that make up the climate system and influence the climate of a particular area. Generally speaking, the phrase "climate change" describes changes in local and worldwide temperatures throughout time[314].It depicts changes in the mean state or fluctuation of the atmosphere over time, ranging from years to decades. Climate change presents both limited opportunities and numerous threats to the business, politics, and society at large. Additionally, it presents challenges and difficulties for the legal system. Legislators, entrepreneurs, activists of all stripes, and regular citizens are all impacted by these legal concerns and challenges. They are not just found in the legal field[315].An overabundance of carbon dioxide in the atmosphere is the primary driver of global warming because it traps heat and acts as a blanket, warming the earth. When we use fossil fuels like coal, oil, and natural gas for energy or cut and burn forests to create crops and pastures, carbon accumulates and overflows our atmosphere. India is currently the third-largest emitter of greenhouse gases in the world, behind the United States and China. India's annual emissions nearly tripled, from less than 600 metric tons to over 1700 metric tons, between 1990 and 2009. India's yearly carbon oxide emissions are expected to climb 2.5 times between 2008 and 2035[316].

Climate Change and Global Concern

Even though the Stockholm Declaration of 1972 is not legally enforceable, historical study shows that it set the foundation for modern international environmental law (IEL). Following them were important

[311]Young, Margaret A., "Climate Change and Law: A Global Challenge for Legal Education" (2021) 17 *University of Queensland Law Journal*. Available at: https://www.austlii.edu.au/au/journals/UQLawJl/2021/17.pdf [Last accessed 22 November 2023, 11:00 AM].
[312] ibid
[313] Sherwani, Faisal & Gupta, Achal, "India: Climate Change - Indian Law and Judiciary" (2020) *Mondaq*, available at https://www.mondaq.com/india/clean-air--pollution/945304/climate-change---indian-law-and-judiciary (last visited Nov. 22, 2023, 11:00 AM).
[314] ibid
[315] Vishal Kumar, *Judicial Review of Climate Change Laws and Policies in India*, 40 Indian Journal of Environmental Law 123 (2018).
[316] P.S. Raghavan, *Environmental Jurisprudence and the Role of the Indian Judiciary*, 21 Environmental Law Review 91 (2009).

international environmental law documents including the Rio Declaration on Environment and Development in 1992, the World Charter for Nature in 1982, the Aarhus Convention on Access to Information in 1998, and others[317]. Two major international commitments from 2015 that surely lead to environmental disputes that call for the kind of competence of specialized ECTs are the UN's 2030 Agenda for Sustainable Development and the 2016 Paris Agreement on Climate Change[318].Both of these programs already include contentious environmental agreements, aims, and targets, and legal disputes are likely to arise as new national laws, decisions, and actions either address or fail to meet these issues. Within their different jurisdictions, courts and tribunals play a crucial role in the efficacy of legislation and its implementation at the grassroots level. Throughout the 1970s, there were comparatively few of these specialized environmental courts and tribunals (ECTs), primarily in Europe. In 2009, the first global ECT study was carried out, and 350 ECTs were confirmed. At least 44 countries have more than 1,200 ECTs at the national, state/province, and local/municipal levels in 2015, just seven years later[319]. These ECTs can be found in state/province or nationwide ECT systems. Each day, additional tribunals are being established, which will undoubtedly relieve the judicial system's workload and encourage more individuals to attend environmental forums. Environmental tribunals (ETs) can range from small-town community land use planning boards without law judges to sensitive administrative branches led by former Supreme Court justices and comprised of PHDs in science, economics, and engineering as well as law judges. While some handle hundreds or thousands of cases a year, others only decide three or four (new York City's ET processed almost 600,000 cases in FY 2015, and China's 456 ECs decided 233,201 cases in the last two years)[320]. Some people only have one or two of those, but others have very broad authority that combines powers from administrative, criminal, and civil law. Global environmental law is driving a growing number of state and federal environmental protection regulations. According to the National Green Tribunal Act of 2010, India's environment tribunal is carrying out its obligations as a signatory to the 1972 Stockholm and 1992 Rio Declarations "to provide the better and fast track forum for the climate change issues[321].The current global shift in climate change lawsuits cannot be solely analyzed from the viewpoints of plaintiffs and defendants in the cases that follow. Public, business, and governmental sectors are made more aware of the risks posed by climate change by cases such as Urgenda Foundation v. The Netherlands, which often have an impact that extends beyond the particular lawsuit's conclusion[322].A strategic climate conflict like this increases awareness and creates knowledge capital about the causal relationship between acts and their environmental effects, which can be used to effectuate policy or social change. By 2030, Royal Dutch Shell must reduce its global carbon emissions by 45% from 2019 levels, the court ordered[323].Litigation of this type seeks to increase public awareness, spark debate, or start policy reforms. The method for cross-border information transfer has changed as a result of the development of digital technology and the unification of global societies into a single, globally connected peer network.

[317] UNEP, "Environmental Courts & Tribunals: A Guide for Policy Makers" (last visited Nov. 22, 2023, 11:00 AM), available at https://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf?sequence=1&amp%3BisAllowed.
[318] ibid
[319] M.C. Mehta, *Judicial Approach to Sustainable Development: A Case Study of India's Environmental Laws*, 34 Journal of Environmental Law and Policy 45 (2015).
[320] B.K. Sahoo, *Judicial Interventions and the Role of Courts in Climate Change Adaptation in India*, 15 International Journal of Environmental Policy 34 (2016).
[321] ibid
[322] Eeshan Chaturvedi, "*Climate Change Litigation: Indian Perspective*", CAMBRIGE UNIVERSITY PRESS, *available at* <https://www.cambridge.org/core/journals/german-law-journal/article/climate-change-litigation-indian-perspective/8776773582C54FE6715472733A8516D4> last visited on Nov. 22, 2023, 11.00 AM
[323] ibid

Using the Urgenda case as precedent, another NGO, Milieudefensie, filed a similar lawsuit against Royal Dutch Shell in Dutch courts[324].

Climate Change and Geographical Aspects of India

India is a crucial component in the global climate puzzle. It is home to about 20% of the world's population, 2.4% of its land area, and 7%–8% of all known species, including 91,000 animal species and over 45,000 plant species[325].The livelihoods of more than 650 million Indians are reliant on climate-sensitive industries including forestry and agriculture. The country's northern region is expected to see a two-to-four-degree Celsius increase in minimum and maximum temperatures during the 2050s, while the southern region is expected to see an increase of more than four degrees Celsius. India is an important piece in the global climate puzzle. Two-quarters of the world's geographical area, seven to eight percent of all known species, including about forty thousand plant species and nine thousand animal species, and nearly twenty percent of the world's inhabitants call it home. More than 650 million Indians depend on climate-sensitive sectors like agriculture and forestry for their livelihoods[326]. According to India's land use pattern, the country's net sown area is roughly 46%, while the area covered by forests and trees is 24%[327].About 23% of the land is unfit for farming, with fallow land making up the remaining 7%. The land use pattern in India is influenced by several variables, such as population expansion, urbanization, industry, animal grazing, forest land development, irrigation system construction, and natural disasters including droughts and floods[328].

Legal Framework in India Concerning the Environment

The Indian Constitution mentions climate change-related areas such forests, wildlife, industries, trade and commerce, and power in the Seventh Schedule's concurrent list. Both the federal and state governments can address these issues. According to Article 21 of the Indian Constitution, no one may be deprived of their life or personal freedom unless a legally mandated process is followed[329]. Another article i.e., Article 48A states that 'the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country'[330].Third, Article 51A states that every Indian citizen has an obligation to preserve and enhance the country's natural environment, which includes its forests, lakes, rivers, and animals, as well as to show compassion for all living things[331].Climate protection is directly addressed in each of these articles. For the purpose of putting international accords into effect, the National Council for Environmental Policy and Planning was founded in 1972. In 1985, it was renamed the Ministry of Environment and Forests (MoEF). In 2014, it changed its name to the Ministry of Environment, Forests, and Climate Change. Furthermore, the creation of the Environmental Action Programme (EAP) in 1993 sought to improve environmental services and integrate environmental considerations into development projects[332]. As of right now, India has no particular laws addressing climate change. While a number of laws in India address different aspects of climate change, especially its causes and impacts, and thus provide possible targets for climate litigation,

[324] Sangeeta Sharma, *The Role of Indian Courts in Protecting the Environment and Addressing Climate Change*, 48 Global Environmental Governance Review 102 (2017).
[325] ibid
[326] S. C. Agarwal, *Judicial Role in Shaping Environmental Laws in India: A Critical Evaluation*, 19 Indian Journal of Environmental Law 112 (2017).
[327] "*First Biennial Update Report to the United Nations Framework Convention on Climate Change*", Ministry of Environment, Forest and Climate Change Government of India, *available at* <http://moef.gov.in/wp-content/uploads/2017/08/indbur1.pdf> last visited on Nov. 22, 2023, 11.00 AM
[328] ibid
[329] The Constitution of India, art. 21
[330] The Constitution of India, art 48A
[331] The Constitution of India, art 51A
[332] A. K. Sharma, *The Role of the Indian Judiciary in Climate Change Litigation: A Historical Perspective*, 12 Environmental Law and Policy Journal 70 (2018).

there is no overall legislation on the subject. Numerous laws were passed over time to better regulate climate change and safeguard the environment. The following are some of the most notable statues: Water (Prevention and Control of Pollution) Act, 1974; Wildlife (Protection) Act, 1972; Forest (Conservation) Act, 1980; Environment (Protection) Act, 1986 (EPA); National Green Tribunal Act, 2010; National Environment Policy, 2006, etc. The Energy Conservation Act of 2001 provides the institutional, statutory, and regulatory framework for promoting and making an effort to implement energy-saving measures. India was able to electrify its rural areas through decentralized generation that predominantly employed renewable energy sources after the Electricity Act, 2003 was amended in 2007 to create a legal framework overseeing many parts of the energy industry[333]. The Prime Minister unveiled the National Action Plan on Climate Change (NAPCC) on June 30, 2008[334]. It outlines a national policy aimed at enhancing ecological sustainability and enabling climate change adaptation in India. National Missions are the focal points of the National Action Plan. Their primary objectives are to increase public understanding of climate change, energy efficiency, adaptation and mitigation strategies, and the preservation of natural resources. These categories contain the statements for all eight National Missions. Water, Solar, Improved Energy Efficiency, Sustainable Habitat, Green India, Sustainable Agriculture, and Strategic Knowledge for Climate Change.

Judicial Activism in Respect of Climate Change

A judiciary more suited to handle specific environmental disputes has also helped climate litigation, as environmental law is perceived as a field that requires uniformity and specialization at the bar and bench. Significant cases on climate change have been part of the nation's long history of public interest litigation. In the cases of Subhash Kumar v. State of Bihar, A.I.R. 1991 SC 420, and Virendra Gaur v. State of Haryana, (1995) 2 SCC 577, the Supreme Court recognized a number of rights under Article 21. This included the right to a healthy environment[335]. Due to elements like public interest litigation and dynamic, interventionist actors who can grant themselves an ongoing mandate to monitor the implementation of their rulings, its standing standards are more lenient. In contrast to the conventional paradigm, where a judicial decision was binding in personam and on the parties *res judicata* under public interest lawsuits (PIL), a ruling under PIL affected not only the parties to the case but also everyone else in a comparable circumstance. The Supreme Court ruled that the right to a healthy environment is a fundamental right protected by Article 21 of the Constitution in cases such as Municipal Council Ratlam v. Vardhichand[336]; M.C. Mehta v. Union of India[337]; and Vellore Citizens Welfare Forum v. Union of India[338][339]. The cases of Kendra v. State of U.P.[340] and M.C. Mehta v. Union of India[341] deal with rural litigation and entitlement. Additionally, the Supreme Court ordered several enterprises to take the appropriate action to lessen pollution and preserve the environment. In one case[342], The Supreme Court discusses the direct and indirect impacts of pollution on historic buildings, monuments, and rivers. In addition to the legislature, executive branch, and judiciary, judicial activism is also fuelled by

[333] R. P. Sharma, *India's Supreme Court and Environmental Justice: The Balance Between Development and Sustainability*, 29 Journal of Environmental Protection Law 56 (2020).
[334] "National Action Plan on Climate Change (NAPCC)", Press Information Bureau (India), available at https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/dec/doc202112101.pdf, last visited on Nov. 22, 2023, 11:00 AM.
[335] Faisal Sherwani and Achal Gupta, "*India: Climate Change - Indian Law And Judiciary*", MONDAQ, available at <https://www.mondaq.com/india/clean-air--pollution/945304/climate-change---indian-law-and-judiciary> last visited on Nov. 22, 2023, 11.00 AM
[336] Municipal Council Ratlam v. Vardhichand, AIR 1980 SC 1622 (India)
[337] M.C. Mehta v. Union of India, AIR 1987 SC 1086 (India)
[338] Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715 (India)
[339] Priya Singh, *Climate Change and Public Interest Litigation in India: A Path to Access Environmental Justice*, 33 Indian Public Law Review 45 (2019
[340] Kendra v. State of U.P. (1985) 2 SCC 431 (India)
[341] M.C. Mehta v. Union of India (1986) 2 SCC 176 (India)
[342] *Sachidanand Pandey v. State of W.B.*, (1987) 2 SCC 295

public trust in democratic institutions, progressive judges, and the rule of law, as well as a specialized environmental judicial system such as the National Green Tribunal (the Green Tribunal). The Supreme Court is charged with upholding the fundamental rights of its citizens, and in the process, it regularly participates in what is sometimes referred to as "judicial activism"—legitimate judicial legislation and judicial governance.

Some of the other relevant cases by Apex court to limit the causes of Climate change: In a ruling dated[343] October 24, 2018, the Supreme Court ruled that, as of April 1, 2020, no motor vehicle meeting the BS-IV emission standard would be marketed or registered nationwide. Instead, BS-VI-compliant vehicles will be used in their place. In order to reduce air pollution, some orders were also passed there prohibiting the use of diesel vehicles. In Oleum Gas Leak case[344], the Supreme Court developed an original body of precedent known as Absolute Liability, in order to provide compensation to those who have suffered from pollution brought on by hazardous and intrinsically dangerous enterprises, In another case the Hon'ble Supreme Court[345] ordered the closure of several polluting tanneries near Kanpur, highlighting the problem of pollution of the river Ganga by the hazardous sectors located on its banks. The Hon'ble Supreme Court in the case[346] issued a number of directives in response to the concern raised by the loss of forests in the Nilgiri region of Tamil Nadu, which has an impact on the livelihood of forest residents. This present ruling[347] by SC broadened the definition of forest to include the meaning found in a dictionary and prohibited any non-forest activities on forest land without first obtaining permission from the Central Government. The formation of expert committees in each State to identify forests, oversee the transportation and disposal of timber, and create High Power Committees to deal with the issue of forests was also instructed. In another important instance[348], an attempt was made to reroute a river's flow in order to expand a motel's amenities. By acknowledging the Public Trust Doctrine, the Supreme Court intervened, ruling that the State and its agencies, acting as trustees, have an obligation to safeguard and maintain natural resources including lakes, rivers, forests, open spaces, and other resources belonging to common property. In one of famous case[349]The Supreme Court acknowledged the Precautionary Principle as a means of preventing the leather industry's underground water pollution in Tamil Nadu. According to the Hon'ble Court, the precautionary principle and the polluter pays principle are incorporated into the nation's environmental law. The 'H' acid trial run industries left behind waste products in different localities that severely damaged the ecosystem of the hamlet. The Supreme Court[350] reaffirmed this concept and applied it to repair the village's environment. The concept of Principle of Intergenerational Equity was recognised by the Supreme Court[351] in this particular case, as being essential to the preservation of forest resources and sustainable development, leading to the invalidation of the forest-based sector. The Delhi High Court[352] maintained the decision to close some urea formaldehyde powder factories in residential areas with high population densities, concluding that doing so does not violate Article 19 of the Indian Constitution because it is in the public interest to safeguard the lives and health of those who live close to the factories.

[343] *MC Mehta v. UOI*, Writ Petn. (Civil) No. 13029 of 1985
[344] *MC Mehta v. UOI*, AIR 1987 SC 1086
[345] *M.C. Mehta vs. Union of India*, AIR 1988 SCR (2) 538
[346] *TN Godavarman Thirumulpad vs. Union of India and Ors.*, W.P.(C) No. 202 of 1995
[347] *Ganesh Wood Products v. State of Himachal Pradesh*, AIR 1996 SC 149
[348] *MC Mehta v. Kamal Nath*, (1996) 1 SCC 38
[349] *Vellore Citizens Welfare Forum v. UOI*, AIR 1996 SC 2718
[350] *Indian council for Enviro-Legal Action v. UOI*, AIR 1996 SC 1446
[351] *State of Himachal Pradesh v. Ganesh Wood Products*, AIR 1996 SC 149
[352] *Enkay Plastics Pvt. Ltd. Vs. Union of India (UOI) and Ors.*, 2000(56) DRJ 828

Role of the National Green Tribunal and Its Jurisdictions

During the 1970s, few special courts for Environmental and Tribunals were established across Europe. By 2016, the number of Environmental adjudicating bodies increased by over One Thousand Two hundred across the world[353]. The National Green Tribunal Act of 2010 (NGT Act) was passed by the Indian Parliament in 2010. The benches of the green tribunal are composed of judges as well as specialists who can provide legal and scientific analysis of the matters presented to them. Over the course of the green tribunal's 10 years of operation, the judiciary and legal community have successfully been made aware of the environmental concerns of Indian citizens. Section 14[354] specifies that all civil cases resulting from the execution of the enactments mentioned in Schedule I that involve important environmental issues, including those concerning the enforcement of environmental legal rights, will be presided over by the Tribunal. The acts mentioned in Schedule I[355] includes: Water (Prevention and Control of Pollution) Act 1974, the Forests (Conservation) Act 1980, the Water (Prevention and Control of Pollution) Cess Act 1977, the Environment (Protection) Act 1986, the Air (Prevention and Control of Pollution) Act 1981, the Public Liability Insurance Act 1981, and the Biological Diversity Act 2002. Section 16[356] lists examples of orders of Government against which an person who is aggrieved can approach to the forum. In another case[357],To enable a wider spectrum of individuals to approach the Green Tribunal with environmental concerns, the definition of locus standi was loosened. It was found that, under the applicable provisions, the term "aggrieved persons" would include not only any individual who is likely to be affected, but also a group of individuals who are likely to be affected by such an order and working in the environmental sector. Indian legal decisions have historically regarded international law and rulings as persuasive. The country's environmental laws have been strengthened by the Supreme Court's consistent decisions, which have implemented the Public Trust Doctrine, the Polluter Pays Principle, the Precautionary Principle, and Intergenerational Equity[358]. The task of introducing cutting-edge ideas from international environmental law into domestic jurisprudence has been much appreciated by the Green Tribunal in recent years while expanding the scope of environmental law. In an important case, the Green Tribunal[359] addressed how the Himalayan glacier at Rohtang Pass was being affected by climate change. The glacier was gradually losing its natural, ecological, and aesthetic qualities and was facing serious pollution issues. When the applicant asked the Hon'ble Supreme Court of India for injunctions against M/s. Goel Ganga Developers India Private Limited, claiming that they had constructed a commercial and residential complex without permission, they were discussing one of the basic theories of climate change, the carbon footprint[360] After determining that the damages in terms of carbon footprint were INR 190 crores, or about USD 20 million, the Court of Original Jurisdiction ruled in favor of the applicant and ordered the developers to pay either Rs. 190 crores or five percent of the project's total cost, whichever is higher.

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[353] "*Environmental Courts & Tribunals: A Guide for Policy Makers*", UNEP, *available at* <https://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf?sequence=1&amp%3BisAllowed=> last visited on Nov. 22, 2023, 11.30 AM

[354] National Green Tribunal Act 2010 (Acts 19 of 2010)

[355] ibid

[356] Madhavi Sharma, *The Role of Courts in Promoting Sustainable Development in India: Climate Change as a Key Factor*, 42 Sustainable Development Law Journal 80 (2019).

[357] *Samata v. Union of India*, Appeal No. 124 of 2016

[358] Ravindra Kumar, *Environmental Law and Climate Change in India: Judicial Interpretations and Policy Implications*, 45 Journal of Indian Environmental Law 77 (2015).

[359] *Its Own Motion v. State of Himachal Pradesh and Others*, CWPIL No. 15 of 2010

[360] *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine 4213

Conclusion and Suggestions

There has also been a noticeable increase in these occurrences worldwide. Individuals and groups have started legal action against states in Ireland, France, Belgium, Sweden, Switzerland, Germany, the United States, Canada, Peru, South Korea, and India in an attempt to get similar verdicts since the initial ruling in the Urgenda case was rendered in 2015. Concerns over their entitlement to a healthy environment are growing. International treaties will be essential in the age of globalization as they will serve as guidance for the country and enforce standards in member nations. As we already know the cause of pollution can be one country and its effect can be in another, so the nations have to come up with the extra judicial jurisdiction to enforce the punishment and to bring justice to all without the limitations of boundaries. In the context of India, ground-level enforceability is still lacking and needs to be properly scrutinised and followed, by local authorities in their area. Judiciary bodies should not be only responsible for taking steps for a better atmosphere. Executive bodies have to perform their part also. Awareness camps about the environment and sustainable development are to be regularly conducted in small towns and villages. People should be made aware of the due diligence to be followed for starting any industry or institution, to slow down climate change. Common people play an important role in protecting the environment, there participation is much appreciated in environment protection.

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Chapter – 15

The Intersection of Environmental Justice and Green Criminology: Analysing Corporate Accountability in Ecocide and its Legal Framework

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Abstract

Environmental degradation caused by corporate activities has become a critical issue, particularly in the Indian context, where marginalized communities often suffer disproportionately. The concept of ecocide — the extensive destruction of ecosystems — has emerged as a pressing concern in environmental justice and green criminology. Despite having a robust set of environmental laws, India lacks a specific legal framework to prosecute ecocide effectively. This research addresses the gap in Indian legislation by analyzing the intersection of environmental justice and green criminology and exploring how corporate accountability for ecocide can be strengthened within India's legal system.

The objectives of this study are to identify deficiencies in current Indian legal frameworks for addressing large-scale environmental harm, examine the role of institutions such as the National Green Tribunal (NGT), and propose potential reforms for incorporating ecocide as a prosecutable offense. The study employs a qualitative methodology, including an analysis of key case studies, a review of Indian environmental laws, and an examination of international legal developments related to ecocide.

Key findings reveal that while Indian laws like the Environment Protection Act (1986) and judicial interventions have made strides in environmental protection, the absence of a distinct legal definition for ecocide hampers the prosecution of severe environmental crimes. Strengthening the legal framework by recognizing ecocide and enhancing enforcement mechanisms can improve corporate accountability and environmental justice. The study also highlights the importance of community engagement and civil society in advocating for legal reforms.

Key Words: Ecocide, Environmental Justice, Green Criminology, Corporate Accountability, Indian Legal System

Introduction

The rapid industrialization and economic growth of the 21st century have brought undeniable benefits to society but have also resulted in significant environmental degradation. Corporate undertakings, especially within industries such as extraction, production, and energy generation, have inflicted enduring detriments on ecological systems, frequently resulting in irrevocable harm.In India, the environmental costs of these activities are disproportionately borne by marginalized and vulnerable communities, raising profound

questions of justice and accountability. The paradigm of environmental justice endeavours to rectify these inequalities, guaranteeing equitable treatment and substantial participation of all individuals in environmental decision-making processes. Nonetheless, in spite of an advancing legal framework, India encounters considerable obstacles in enforcing corporate accountability for extensive environmental degradation.[361]

One of the emergent concepts within this discourse is ecocide, which is delineated as the extensive degradation, impairment, or annihilation of ecosystems attributable to anthropogenic activities. Although international dialogues have progressed toward the acknowledgment of ecocide as an indictable offense under the Rome Statute of the International Criminal Court, India's domestic legal framework remains devoid of explicit provisions for the prosecution of ecocide. This deficiency underscores the imperative for the establishment of a more comprehensive legal structure capable of effectively addressing the magnitude and ramifications of environmental degradation instigated by corporate entities.

The field of *green criminology* expands traditional notions of crime to include environmental offenses and ecological harm. By examining environmental damage through a criminological lens, green criminology provides valuable insights into the patterns of corporate misconduct, state complicity, and systemic failures that allow ecocide to persist. This perspective emphasizes that environmental crimes are not just regulatory violations but serious injustices that warrant criminal accountability.

In India, while environmental protection laws such as the Environment Protection Act (1986), the Air (Prevention and Control of Pollution) Act (1981), and the Water (Prevention and Control of Pollution) Act (1974) exist, enforcement remains inconsistent. Institutions like the National Green Tribunal (NGT) play a pivotal role in addressing environmental disputes and penalizing offenders, yet their jurisdiction and powers have limitations. This inconsistency in enforcement and the absence of a specific crime of ecocide creates a critical research gap that this study aims to address.

This chapter examines the intersection of environmental justice and green criminology in the Indian context, focusing on the potential for holding corporations accountable for ecocide. By analyzing existing legal frameworks, key case studies, and international developments, this research aims to highlight the deficiencies in India's legal system and propose reforms to recognize and prosecute ecocide effectively. Ultimately, strengthening corporate accountability mechanisms can promote environmental justice and safeguard India's ecological future.

The Concept of Ecocide

Ecocide refers to the large-scale destruction of the natural environment, often caused by corporate and industrial activities. This concept encompasses damage that goes beyond pollution to include the permanent loss of ecosystems, biodiversity collapse, and widespread environmental degradation. Ecocide can result from deforestation, mining, oil spills, chemical waste dumping, and other industrial activities. The concept was first introduced by environmental activists and has since gained recognition as a potential international crime.

Globally, efforts to criminalize ecocide have gained momentum, particularly with proposals to amend the Rome Statute of the International Criminal Court to include ecocide as an international crime. This would

[361] Boyle, Alan, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* (Cambridge University Press, Cambridge, 2012).

place ecocide alongside genocide, war crimes, and crimes against humanity. Such recognition is vital for holding powerful entities accountable and deterring future environmental destruction. However, India has yet to incorporate ecocide into its domestic legal framework, highlighting a significant gap in addressing large-scale environmental harm.[362]

International Legal Developments on Ecocide

The notion of ecocide—articulated as the extensive devastation of ecosystems—has garnered considerable international scrutiny in recent times. Numerous nations and global legal entities are currently deliberating the potential acknowledgment of ecocide as an offense under international jurisprudence, akin to that of genocide and crimes of war. However, India's legal framework does not yet include ecocide as a specific offense, leaving large-scale environmental destruction inadequately addressed. This study aims to examine international legal developments on ecocide and propose reforms for its incorporation into Indian environmental law.[363]

Defining Ecocide in International Law

Ecocide signifies an extensive, intense, or enduring devastation of the environment triggered by human endeavours. In 2021, a panel of independent experts associated with the Stop Ecocide Foundation put forth a legal framework for ecocide, aiming for its integration into the Rome Statute of the International Criminal Court (ICC). The proposed definition states that:

> "*Ecocide means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment.*"[364]

Should this proposal be embraced, it would establish ecocide as the fifth international offense recognized by the International Criminal Court, in conjunction with genocide, war crimes, crimes against humanity, and acts of aggression.

Countries Recognizing Ecocide as a Crime

Some nations have already taken legal steps to criminalize ecocide:

- France (2021) – France became one of the first European countries to criminalize ecocide under its domestic law, imposing penalties on corporations responsible for severe environmental harm.
- Belgium (2023) – Belgium has proposed a new Ecocide Law that could lead to criminal prosecution of companies that destroy ecosystems.
- Ukraine (2022-2023) – Ukraine has accused Russia of environmental war crimes and ecocide following attacks on natural reserves and water bodies during the war.
- Scotland, Mexico, and Brazil – These countries have begun discussions on incorporating ecocide into their legal frameworks.

[362] Higgins, Polly, *Eradicating Ecocide: Laws and Governance to Prevent the Destruction of Our Planet* (Shepheard-Walwyn, London, 2010).
[363] White, Rob, *Green Criminology: An Introduction to the Study of Environmental Harm* (Routledge, London, 2013).
[364] Independent Expert Panel for the Legal Definition of Ecocide, *Ecocide: Proposed Legal Definition and Commentary* (Stop Ecocide Foundation, 2021).

The Need for Ecocide Laws in India

India faces severe environmental challenges, including deforestation, industrial pollution, and climate change. However, Indian environmental laws currently do not recognize ecocide as a criminal offense. Instead, violators often get away with paying fines, as seen in cases like:

- The 'Bhopal Gas Tragedy' (1984) – was the worst chemical disasters, but the punishment for those who were guilty were very low in accordance to the disaster.[365]
- The 'Sterlite Copper Plant Case' (2018) – Years of pollution led to protests, but stronger legal action was needed.[366]
- The 'Vizag Gas Leak' (2020) – Companies paid compensation, but no strict criminal penalties were imposed.[367]

Environmental Justice in the Indian Context

Environmental justice in India addresses the inequitable distribution of environmental benefits and harms. Marginalized communities such as tribal groups, farmers, rural populations, and Urban slum inhabitants frequently face the weight of environmental deterioration induced by business activity. For instance, mining operations in States like Jharkhand and Odisha have displaced indigenous communities, degraded forests, and polluted water sources. Similarly, industrial pollution in cities like Kanpur and Vapi has led to severe health crises for local populations.

The Indian judiciary has acknowledged the right to a clean environment in accordance with Article 21 of the Constitution, which provides the right to life and liberty. Landmark judgments such as the *Vellore Citizens Welfare Forum v. Union of India*[368] and the *T.N. Godavarman Thirumulpad v. Union of India*[369] have reinforced the principle of environmental justice. However, despite these efforts, systemic challenges remain, including weak enforcement, lack of corporate accountability, and inadequate compensation for affected communities. These issues underscore the need for stronger legal mechanisms to protect vulnerable populations from environmental harm.

The Role of Green Criminology

Green criminology provides an effective paradigm for identifying and mitigating environmental harm as a type of crime. This field extends traditional criminology to consider the social, economic, and political factors that contribute to environmental destruction. Green criminology examines the roles of corporations, governments, and regulatory bodies in perpetuating ecological harm. It also advocates justice for both human and animals victims of environmental violence.

In India, green criminology is particularly relevant for analyzing the widespread environmental damage caused by industries such as mining, chemical manufacturing, and energy production. This perspective helps uncover the systemic failures that allow corporations to evade accountability. By

[365] *Union Carbide Corporation v. Union of India*, (1991) 4 SCC 584.
[366] *Vedanta Ltd. v. State of Tamil Nadu,* (2019) 10 SCC 337.
[367] *LG Polymers India Pvt. Ltd. v. Andhra Pradesh Pollution Control Board*, W.P. (PIL) No. 112 of 2020 (Andhra Pradesh HC).
[368] *Vellore Citizens Welfare Forum v. Union of India,* (1996) 5 SCC 647.
[369] *T.N. Godavarman Thirumulpad v. Union of India,* (1997) 2 SCC 267.

highlighting issues such as regulatory capture, corruption, and state complicity, green criminology provides insights into how legal reforms can be implemented to prevent ecocide and promote environmental justice.[370]

Identifying Deficiencies in Indian Environmental Law

India has a vast legal framework to protect the environment. Laws such as the Environment Protection Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974 aim to control pollution and ensure environmental safety. However, despite these laws, environmental damage continues at an alarming rate. There are several loopholes and deficiencies in these laws that allow industries and individuals to escape responsibility.[371]

- Weak Enforcement of Environmental Laws

  The inadequate execution of current legislation is one of the main issues with Indian environmental law. Many industries violate pollution norms but continue operations without serious consequences. Regulatory agencies such as the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) lack the resources and independence to take strict action against violators.[372]

  For example, in the case of Vellore Citizens Welfare Forum v. Union of India (1996)[373], the Supreme Court recognized that industrial pollution in Tamil Nadu's tanneries was causing severe environmental damage. The court emphasized the "Precautionary Principle" and "Polluter Pays Principle" but also noted that government authorities had failed to regulate polluting industries effectively.

- Lack of Clear Provisions for Environmental Crimes

  While there are penalties for environmental violations, they are often not strong enough to deter industries from harming the environment. Many companies prefer to pay fines rather than invest in eco-friendly practices.

  A good example is the Sterlite Copper Plant Case (2018) in Tamil Nadu, where a major industrial plant was found responsible for air and water pollution. Despite several complaints from local communities, strict action was delayed for years. The National Green Tribunal (NGT) had to intervene, and eventually, the Tamil Nadu government ordered the plant's closure. This case highlights the need for stricter environmental crime laws.

- Slow Legal Process and Delays

  Environmental cases often take years to resolve, reducing the impact of judicial intervention. One such example is the Bichhri Village Case (Indian Council for Enviro-Legal Action v. Union of India, 1996).[374] In this case, industries in Rajasthan were dumping toxic waste, contaminating groundwater and soil. The affected villagers suffered for years before the Supreme Court finally held the industries responsible and directed them to clean up the area. However, the damage had already been done.

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[370] Situ, Yingyi & Emmons, David, *Environmental Crime: The Criminal Justice System's Role in Protecting the Environment* (Sage, Thousand Oaks, 2000).
[371] Lynch, Michael & Stretesky, Paul, *Exploring Green Criminology: Toward a Green Criminological Revolution* (Ashgate, Farnham, 2014).
[372] Beirne, Piers & South, Nigel, *Issues in Green Criminology: Confronting Harms Against Environments, Humanity, and Other Animals* (Willan, Cullompton, 2007)
[373] *Vellore Citizens Welfare Forum v. Union of India,* (1996) 5 SCC 647.
[374] *Indian Council for Enviro-Legal Action v. Union of India,* (1996) 3 SCC 212.

- Limited Recognition of 'Ecocide' as a Crime

  Many environmental damages in India, such as deforestation, river pollution, and industrial disasters, affect large populations. However, Indian law does not recognize 'ecocide' (mass destruction of the environment) as a serious crime like murder or theft. In contrast, international discussions are ongoing to make ecocide a punishable offense under international criminal law.

  A tragic example is the 'Bhopal Gas Tragedy (1984)'[375], where toxic gas leakage from a chemical plant led to thousands of deaths and many health problems. Even after decades, the victims are still fighting for adequate compensation, and those responsible have not been held fully accountable.

The Role of the National Green Tribunal (NGT) in Environmental Justice

The National Green Tribunal (NGT) plays an important role in achieving environmental justice in India. The National Green Tribunal Act of 2010 established the NGT to provide an expert forum for efficiently and effectively litigating environmental disputes.

Given the increasing environmental challenges in India—such as industrial pollution, deforestation, and climate change—the NGT has been instrumental in holding individuals, corporations, and even government bodies accountable for environmental harm. However, despite its achievements, several limitations prevent it from addressing large-scale environmental damage effectively. These gaps highlight the need for legal reforms, including the recognition of ecocide as a serious criminal offense, as this study aims to explore.[376]

- NGT's Jurisdiction and Powers

The 'NGT' has the authority to hear cases related to:

- 'The Environment Protection Act,' 1986
- 'The Water (Prevention and Control of Pollution) Act,' 1974
- 'The Air (Prevention and Control of Pollution) Act,' 1981
- 'The Forest Conservation Act,' 1980
- 'The Biological Diversity Act,' 2002

It has the power to impose penalties, order compensation, and direct remedial measures in environmental cases. Importantly, it follows the principles of Sustainable Development, the Precautionary Principle, and the Polluter Pays Principle: assuring that environmental protection is prioritized over economic gains.

- NGT's Role in Addressing Environmental Harm

  The 'NGT' has played a very important role in making India's environmental picture. Some of its key interventions include:

[375] *Union Carbide Corporation v. Union of India*, (1991) 4 SCC 584

[376] Kramer, Ronald, "Ecocide and Global Environmental Harm: The Case for International Criminal Liability" (2017) 7(1) *International Journal for Crime, Justice and Social Democracy* 53.

'Sterlite Copper Plant Case (2018)' – The 'National Green Tribunal' ordered to resume operation of the Sterlite Copper Plant in Tamil Nadu despite protests over environmental pollution. However, the Tamil Nadu government overruled the decision and permanently shut the plant. This case highlighted the ongoing conflict between industrial development and environmental protection.[377]

Vizag Gas Leak Case (2020) – The NGT imposed a fine of ₹50 crores on LG Polymers for a gas leak that resulted in multiple deaths and environmental damage. This demonstrated its ability to hold corporations accountable.[378]

Kant Enclave Case (2018) – The NGT ordered the demolition of illegal constructions in the Aravalli Forest region, reinforcing the importance of environmental conservation over urban expansion.[379]

These cases show that the NGT is an important tool for quick environmental justice. However, despite these positive impacts, the tribunal has limitations in dealing with large-scale environmental crimes, which is where the need for recognizing ecocide becomes critical.

- Challenges and Limitations of the NGT

  Despite its effectiveness, the NGT faces several challenges:

  Lack of Criminal Provisions – The NGT can impose fines and order compensation, but it cannot criminally prosecute offenders. This means that individuals or companies causing severe environmental damage can escape with monetary penalties rather than facing serious legal consequences.

  Delays in Implementation – Many NGT orders are not implemented on time. For example, in the Art of Living Case (2016)[380], the NGT fined the organization for damaging the Yamuna floodplains, but enforcement of environmental restoration measures has been slow.

  Limited Recognition of Ecocide – While the NGT addresses pollution and specific environmental violations, it does not yet recognize ecocide, a term used to describe large-scale destruction of ecosystems. International legal developments are moving toward recognizing ecocide as a prosecutable crime, but Indian law has not yet incorporated this concept.

Comparative Analysis of Key Environmental Case Studies

Environmental laws play a crucial role in preventing large-scale ecological harm, yet their effectiveness varies across different legal systems. This study examines key environmental case studies from India and international jurisdictions to identify gaps in Indian environmental law and explore how legal frameworks can be reformed to address large-scale environmental harm, including ecocide.

'Bhopal Gas Tragedy (India, 1984)' vs. 'Deepwater Horizon Oil Spill (USA, 2010)'

One of the worst industrial disasters in history, the Bhopal Gas Leak occurred when toxic methyl isocyanate gas leaked from the Union Carbide pesticide plant, killing thousands and affecting generations with health complications.

[377] *Vedanta Ltd. v. State of Tamil Nadu*, (2019) 10 SCC 337.
[378] *LG Polymers India Pvt. Ltd. v. Andhra Pradesh Pollution Control Board*, W.P. (PIL) No. 112 of 2020 (Andhra Pradesh HC).
[379] *MC Mehta v. Union of India,* (2018) 18 SCC 397.
[380] *Foundation for Economic and Environmental Development v. Union of India*, (2017) 1 SCC 720.

Legal Response: The Indian government passed the Bhopal Gas Leak (Processing of Claims) Act, 1985, and the Supreme Court directed Union Carbide to pay $470 million in compensation.

Limitations: The punishment for those responsible was minimal, and environmental cleanup efforts were inadequate.[381]

'Deepwater Horizon Oil Spill (USA, 2010)'

The Deepwater Horizon oil spill caused massive damage to marine ecosystems in the Gulf of Mexico.

Legal Response: BP (British Petroleum) was fined $20.8 billion, the highest environmental fine in US history, under the Clean Water Act and Oil Pollution Act.

Impact: The case set a strong precedent for corporate accountability, demonstrating strict liability for environmental harm.

Comparison & Lesson for India: Unlike the US legal system, which imposed severe financial penalties on BP, India's response to Bhopal was weaker, with low fines and no criminal prosecution for ecocide. This highlights the need for stronger penalties and corporate liability laws in India.[382]

Sterlite Copper Plant (India, 2018)[383] vs. Volkswagen Emissions Scandal (Germany, 2015)

For years, the Sterlite Copper Plant in Tamil Nadu faced protests over environmental pollution and health risks. Despite public outcry, legal action was delayed, and the plant was shut down only after violent protests led to civilian deaths.

Legal Response: The National Green Tribunal (NGT) initially allowed the plant to reopen, but the Tamil Nadu government permanently closed it due to public pressure.

Limitation: The closure came too late, and Sterlite faced no criminal prosecution for environmental harm.

Volkswagen Emissions Scandal (Germany, 2015)[384]

Volkswagen was determined guilty of placing "defeat devices" in diesel vehicles to cheat emissions testing, releasing pollutants that exceeded permissible limits.

Legal Response: The company was fined €30 billion globally, and executives faced criminal prosecution for fraud and environmental violations.

Impact: The case demonstrated strict environmental law enforcement and corporate accountability in Germany and the US.

Comparison & Lesson for India: While Germany and the US imposed criminal penalties on Volkswagen executives, India lacked strong legal tools to hold Sterlite accountable beyond shutting down the plant. This underscores the need for criminal liability for corporate environmental crimes in India.

[381] *Union Carbide Corporation v. Union of India*, (1991) 4 SCC 584.
[382] Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, 808 F. Supp. 2d 943 (E.D. La. 2011)
[383] *Vedanta Ltd. v. State of Tamil Nadu,* (2019) 10 SCC 337.
[384] Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, 349 F. Supp. 3d 881 (N.D. Cal. 2018)

Amazon Rainforest Fires (Brazil)[385] vs Aarey Forest Case (India, 2019)

The Amazon Rainforest fires were linked to illegal deforestation and weak environmental policies under the Brazilian government.

Legal Response: The International Criminal Court (ICC) considered opening an ecocide investigation, and global pressure forced policy changes.

Aarey Forest Case (India, 2019)[386]

In India, environmental activists opposed the deforestation of Aarey Forest in Mumbai for metro construction.

Legal Response: The Supreme Court of India intervened, stopping further deforestation, but initial environmental destruction was irreversible.

Comparison & Lesson for India: Brazil faced international pressure to address ecocide, while India's case highlights the need for preventive legal measures before irreversible environmental destruction occurs.

Conclusion and Recommendations

Environmental degradation has become a pressing global issue, with large-scale environmental harm occurring at an alarming rate. While legal frameworks exist to address environmental violations, they often fall short in effectively preventing and punishing severe ecological damage. This chapter explored the deficiencies in India's legal system regarding environmental protection, the role of the National Green Tribunal (NGT), international legal developments on ecocide, and comparative case studies highlighting gaps in India's environmental governance.

A key finding of this study is that India lacks a robust mechanism to criminalize and prosecute large-scale environmental destruction. Current environmental laws primarily rely on regulatory fines and civil liability, which are inadequate in deterring corporations and individuals from causing irreversible environmental harm. The role of the NGT has been significant in environmental adjudication, but its limited enforcement powers prevent it from ensuring compliance with its rulings. Internationally, several legal frameworks have begun recognizing ecocide as a grave offense, yet India has not integrated such provisions into its legal system.

Through a comparative analysis of key environmental case studies, it becomes evident that stronger penalties, criminal accountability, and preventive legal measures are necessary to combat environmental crimes. The failure to impose strict punishments in cases such as Bhopal Gas Tragedy (1984) and Sterlite Copper Plant (2018) highlights the urgent need for reforms. Meanwhile, international precedents such as the Volkswagen Emissions Scandal (2015) and Deepwater Horizon Oil Spill (2010) demonstrate how stringent legal action can lead to greater corporate accountability and better environmental protection.

Thus, this study concludes that India must modernize its environmental legal framework by including ecocide as a prosecutable crime and strengthening the powers of the 'NGT' and other environmental

[385]United Nations, Report on Environmental and Human Rights Implications of the Amazon Fires, A/HRC/42/37 (2019).
[386] *Vanashakti v. State of Maharashtra*, W.P. No. 2766 of 2019 (Bombay HC)

regulatory bodies. Legal reforms should align with the best international practices to ensure better enforcement and accountability for environmental destruction.

Recommendations

1. Recognizing Ecocide as a Criminal Offense

Introduce legislation to define ecocide in India's legal framework, drawing from international legal definitions suggested by the Stop Ecocide Foundation's Independent Expert Panel.

Incorporate ecocide into the Indian Penal Code (IPC) and relevant environmental laws, ensuring that those responsible for large-scale ecological damage face criminal prosecution rather than just civil penalties.

Establish specific penalties, including imprisonment, heavy fines, and corporate bans, for entities found guilty of ecocide.

2. Strengthening the National Green Tribunal (NGT)

Provide the NGT with greater enforcement powers, enabling it to ensure compliance with its rulings.

Expand the NGT's jurisdiction to cover cases related to ecocide and large-scale environmental destruction.

Introduce special environmental prosecutors within the NGT system to facilitate faster legal proceedings.

3. Enhancing Corporate Accountability

Implement strict liability laws similar to those in the US and EU, ensuring that corporations cannot escape legal responsibility through settlements.

Introduce mandatory environmental audits and corporate environmental responsibility (CER) policies.

Strengthen corporate whistleblower protections to expose environmental violations.

4. Strengthening Preventive Environmental Governance

Establish a National Environmental Protection Authority (NEPA) to work alongside the NGT and ensure prevention-focused policies.

Encourage sustainable industrial practices through financial incentives and stricter environmental impact assessments.

Develop real-time environmental monitoring systems using AI and satellite surveillance to track and prevent ecological harm.

5. Aligning with International Environmental Law

Ratify and integrate global treaties, such as the UN's proposed ecocide laws and the Aarhus Convention on Environmental Justice.

Collaborate with international legal bodies like the International Criminal Court (ICC) to prosecute major environmental offenders.

Engage in bilateral agreements with other countries for cross-border environmental protection efforts.

Suggestions for Future Legal Research and Policy Development

1. **Expanding the Definition of Ecocide in Indian Law**

Further research should explore how ecocide laws can be adapted to India's unique environmental challenges, such as deforestation, industrial pollution, and climate change. Legal scholars should work on drafting a comprehensive Ecocide Prevention Bill to propose to policymakers.

2**. Studying the Effectiveness of the NGT's Decisions**

A detailed analysis of NGT rulings and their implementation status can help identify systemic challenges and areas where reforms are needed. Future studies can assess whether stronger judicial oversight or administrative reforms are required.

3. **Investigating the Role of Technology in Environmental Protection**

Research should focus on how AI, blockchain, and satellite surveillance can be integrated into real-time environmental monitoring and legal enforcement mechanisms.

4. **Examining International Best Practices for Corporate Accountability**

A comparative legal study should be conducted to analyze how other countries, such as Germany, the US, and France, enforce strict corporate liability for environmental harm. This can guide policy recommendations for India's corporate governance model.

5. **Public Awareness and Legal Activism on Environmental Rights**

Legal awareness campaigns and environmental advocacy should be promoted to educate citizens about ecocide, environmental justice, and legal remedies. Strengthening public interest litigation (PIL) mechanisms can empower individuals to take legal action against environmental violations.

India stands at a critical juncture where environmental destruction is accelerating due to rapid urbanization and industrial growth. While the NGT and existing environmental laws have made significant progress, they remain insufficient to address large-scale ecological harm. Learning from international legal developments on ecocide and implementing stronger criminal liability, corporate accountability, and enforcement mechanisms will be essential in ensuring sustainable environmental governance.

By recognizing ecocide as a prosecutable crime, strengthening the NGT's powers, and incorporating global best practices, India can create a more robust and effective legal system for environmental protection. The future of environmental justice in India will also be significantly shaped by the combination of technology, legal research, and social activism.

This chapter aims to serve as a foundation for further research and policy development, encouraging legal scholars, policymakers, and activists to work towards a stronger legal framework for environmental protection. The urgency of the climate crisis necessitates bold legal reforms, and India must take decisive steps to safeguard its ecosystems for future generations.

Important Suggested Reading Materials and Links

- United Nations, Report of the Special Rapporteur on Human Rights and the Environment (A/HRC/43/53, 2020).
- International Criminal Court, Policy Paper on Case Selection and Prioritisation (2016).
- European Parliament, Ecocide: A Crime Against Nature and Humanity? (2021) Briefing Document PE 690.018.
- Indian Ministry of Environment, Forest & Climate Change, Annual Report 2022-23 (Government of India, 2023).
- Stop Ecocide Foundation – https://www.stopecocide.earth
- National Green Tribunal India – https://www.greentribunal.gov.in
- United Nations Environment Programme (UNEP) – https://www.unep.org
- International Criminal Court (ICC) – Environmental Crimes – https://www.icc-cpi.int
- Landmark Indian Environmental Cases – Supreme Court Judgments – https://main.sci.gov.in

Chapter – 16

Navigating Viksit Bharat's Transition Towards Environmental Sustainability: Regulatory Frameworks, Economic Implications and Future Trajectories

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Abstract

Environmental sustainability is a critical issue in India, with a history of environmental regulations going back to colonial times. India is currently facing the challenge of achieving sustainability while promoting economic development through legal regulations. The tension between sustainability and economic growth raises important questions for India's future. The main objective of this study was to explore the evolution of the country's environmental laws over the years, starting with the inclusion of the right to a healthy environment in the Constitution in 1976. Data was generated from in-depth analysis through the lens of landmark legislations like the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Environment (Protection) Act of 1986, the National Green Tribunal Act of 2010 etc. which have been established to protect the environment and ecosystem from industrialization and urbanization. However, enforcement of these regulations remains a challenge due to corruption and bureaucratic inefficiencies. In this context, key figures in India's environmental movement, such as Medha Patkar, have played a significant role in promoting awareness and activism, but more action is needed from governments, businesses, and individuals to address these issues. The country needs to integrate sustainable practices into economic planning and development models, focusing on green technologies and renewable energy sources. Collaboration between government, industry, and civil society is essential to address environmental challenges effectively. Ultimately, India's commitment to the Paris Agreement and renewable energy expansion signifies a progressive approach towards sustainable development. Innovative approaches prioritizing sustainability are needed for the future of environmental sustainability in India.

Keywords: India, Environmental Sustainability, Renewable Energy, Regulations, Government.

Introduction

India loses about 1.2 million lives each year due to environmental pollution. This devastating toll costs the country roughly 3% of its GDP. Environmental law acts as a shield against ecological degradation. It creates frameworks that protect natural resources and promote green practices. India's environmental law has seen substantial development that shows growing awareness. The country needs to balance economic growth with environmental protection. India's environmental legal system has grown remarkably in the last few decades through landmark Supreme Court decisions and complete legislative frameworks.

This comprehensive analysis examines the challenges and opportunities present within India's environmental legislation. The scope encompasses various aspects, including urban pollution management and initiatives for sustainable development. The study evaluates the effectiveness of existing laws, regulatory frameworks, and innovative solutions. It also emphasizes instances of successful implementation. By exploring domestic regulations alongside international environmental principles, readers will gain insights into India's trajectory towards environmental sustainability and potential future directions.

Global Environmental Crisis

Global environmental crises have presented unprecedented challenges. It is imperative that we take immediate action to establish robust legal frameworks aimed at safeguarding our environment. Research indicates that various environmental threats are interrelated, necessitating prompt legal intervention to effectively address these issues.

- Climate Change Impacts

  Climate change has emerged as one of the most pressing challenges facing our planet, and India is experiencing its impact in profound ways. Between 1901 and 2018, the nation has witnessed a temperature rise of 0.7°C, highlighting the urgency of this global crisis.[387] This paints a concerning picture of changing climate trends. India ranks seventh on the list of nations most affected by severe weather phenomena. The statistics are shocking; in 2019, a tragic toll of 2,267 lives was lost, and the nation faced a staggering economic blow of 66,182 million US dollars in purchasing power parity.[388] The road ahead appears to be quite daunting. Analysts forecast that by the year 2100, India might see its GDP take a hit of 3-10% annually, all thanks to the relentless march of climate change.[389]

- Biodiversity Loss

  The planet is in the midst of a dire emergency, with the alarming loss of species occurring at a staggering pace. Experts are sounding the alarm, predicting that nearly one million species of animals and plants could vanish from our world, with many facing extinction in a matter of decades. The situation in India is especially troubling, highlighted by these striking figures:

- 97 mammal species teetering on the brink;
- 94 bird species in peril of disappearing;
- 482 plant species are under threat of extinction.[390]

The clock is ticking, and the time to act is now!

The rampant destruction of habitats is the root of many of these issues, putting at risk a staggering 89% of endangered bird species, 83% of mammals, and a shocking 91% of plant life threatened around the world.[391]

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[387]"India: Climate Change Impacts", *World Bank Group*, June 19, 2013, *available at*: https://www.worldbank.org/en/news/feature/2013/06/19/india-climate-change-impacts (last visited on Dec. 1, 2024).
[388] Climate Change and Environmental Sustainability, *available at*: https://www.unicef.org/india/what-we-do/climate-change (last visited on Dec. 2, 2024).
[389]Climate change in India, *available at*: https://en.wikipedia.org/wiki/Climate_change_in_India (Last Modified Nov. 16, 2024).
[390] Flavia Lopes, "Biodiversity Collapse: What's Foiling India's Conservation Efforts?", *IndiaSpend*, June 04, 2022, *available at*: https://www.indiaspend.com/earthcheck/biodiversity-collapse-whats-foiling-indias-conservation-efforts-820777 (last visited on Dec. 1, 2024
[391]THREATS TO INDIAN BIODIVERSITY, *available at*: http://nbaindia.org/uploaded/docs/ncb_jan_06_15.pdf (last visited on Dec. 2, 2024).

Human activities like pollution, habitat destruction, and climate change have caused this rapid loss of species.

- Resource Depletion

  The planet's treasure troves of natural resources are dwindling at a breakneck pace, and the levels of groundwater are plummeting with alarming urgency. In India, the lifeblood of agriculture and rural life flows from these underground reserves, supplying a staggering 62% of irrigation needs and 85% of the water for rural communities. However, the outlook is bleak, as experts warn that the rate of groundwater depletion could skyrocket threefold by the year 2080.[392] Climate change is like a relentless storm, amplifying every challenge we face. In fact, certain states have already seen a staggering 24% reduction in their snow and glacier landscapes.[393]

  India's agricultural landscape is facing a tough battle against environmental challenges. Experts warn that by the year 2100, wheat production could plummet by a staggering 6-25%.[394] All these connected problems show why India needs complete environmental law frameworks now. These laws must help us tackle both today's challenges and create a sustainable future.

India's Environmental Challenges

India faces critical environmental challenges that require quick action through legal and regulatory frameworks. The country grapples with environmental problems that put both public health and ecological balance at risk.

- Urban Pollution

  India's bustling cities are grappling with a serious air quality crisis, with a staggering 63 out of the world's 100 most polluted cities calling the country home. At the forefront is New Delhi, notorious for having the worst air quality on the planet, a stark indicator of the escalating environmental challenges faced in urban areas. Alarmingly, nearly half of Indian cities have PM2.5 levels that surpass WHO guidelines by more than ten times. This dire situation is fueled by a cocktail of factors; from vehicle exhaust and industrial discharges to smoke from cooking, construction activities, and energy production. As a result, India has earned the dubious title of the world's third-largest polluter, with annual carbon emissions soaring beyond 2.65 billion metric tons.[395]

Industrial Contamination

In India, the battle against industrial pollution is a daunting challenge for law enforcement. The notorious red category industries, infamous for their heavy pollution, are notorious for their lack of compliance. A staggering majority of these facilities operate in the shadows, with only one out of the bunch managing to keep its paperwork in order. Just 35% boast valid Consent to Operate (CTO) certificates, while a concerning 51% continue their operations with permits that have long since expired. The situation is exacerbated by a lack of diligent monitoring, allowing some industrial units to slip through the cracks for extended periods.

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[392] Amit Kapoor/Institute for Competitiveness and Mukul Anand/Institute for Competitiveness, "Addressing Groundwater Depletion Crisis in India: Institutionalizing Rights and Technological Innovations" 3-5 (2024)

[393]Kiran Pandey, "India Loses Natural Resources to Economic Growth: Report", *Down to Earth*, Oct. 08, 2018, *available at*: https://www.downtoearth.org.in/urbanisation/india-loses-natural-resources-to-economic-growth-report-61836 (last visited on Dec. 1, 2024).

[394] *Supra* note 3.

[395]Martina Igini, "5 Biggest Environmental Issues in India", *Earth.Org*, May 30, 2024, *available at*: https://earth.org/environmental-issues-in-india/ (last visited on Dec. 1, 2024).

Nearby water bodies in these industrial zones are bearing the brunt of this negligence, showing alarming levels of contamination. Their pH levels, Biological Oxygen Demand, and Chemical Oxygen Demand readings frequently soar beyond safe limits, painting a grim picture of the environmental toll.[396]

- Natural Resource Management

  Water resources present a formidable hurdle in the realm of natural resource management. The quality of surface water has taken a significant nosedive, with a staggering 70% of India's surface water deemed unfit for consumption. Each day, a whopping 40 million liters of wastewater find their way into our precious water bodies, compounding the crisis.[397] The economic fallout is nothing short of catastrophic:

- The government is taking a hit of INR 565.35 to 649.73 billion each year, all thanks to the scourge of water pollution;
- Farmers are feeling the pinch, with agricultural earnings plummeting by 9% due to tainted water;
- And for those downstream, the situation is even graver, as crop yields have nosedived by 16%.[398]

Inefficient resource management and subsidized services have resulted in a rampant overuse of groundwater. Despite the government's significant investments in rural water supply, numerous areas continue to struggle with inadequate access to clean water. This situation underscores the urgent need for more effective environmental laws and robust enforcement measures.[399]

Legal Framework Analysis

The very essence of India's environmental safeguarding system is woven from constitutional mandates and targeted laws, yet the journey from paper to practice is often fraught with hurdles. The catastrophic Bhopal Gas Tragedy served as a wake-up call, paving the way for the Environment Protection Act of 1986. This pivotal legislation empowers the central government to wield greater authority in enforcing comprehensive measures for environmental preservation.[400]

- Legislative Effectiveness

  India's environmental laws are woven together by a tapestry of various acts and regulations, such as the Water Act, Air Act, and Forest Conservation Act. The Public Liability Insurance Act mandates that facilities dealing with hazardous materials must have insurance coverage. Meanwhile, the Environment Tribunal Act ensures that those responsible for accidents are held strictly accountable for any resulting damages.[401] This comprehensive system falls short in real-world application, as a mere 35% of the most polluting industries actually hold legitimate permits.[402]

[396] Government of India, "Control of Industrial Pollution" 10 (Comptroller and Auditor General of India, 2018)
[397] *Supra* note 9.
[398] *Ibid*.
[399] Disa Sjöblom and Ajay Rai, "Background Study for the Swedish Country Strategy for India 2003–2007 Natural Resource Management in India" 19-31 (2003)
[400] S. Guru Krishnakumar, "Environment Law in India - an Overview" *CMS Law-Now* 1 (1999).
[401] *Id* at 2.
[402] World Wide Fund for Nature, "The Legal and Regulatory Framework for Environmental Protection in India" 28 (2020)

- Regulatory Gaps

  The current regulatory landscape faces a myriad of significant hurdles that hinder robust environmental protection. One major issue lies in the command-and-control approach, which imposes uniform fines that fail to capture the gravity of various violations.[403] Regulatory bodies are strapped for the resources they need to keep a watchful eye on things. The tangled web of overlapping legal frameworks adds to the chaos, making enforcement a real challenge. Meanwhile, the quest for environmental justice gets bogged down in protracted legal battles, leaving progress in limbo.[404]

  The enforcement system is hindered by significant institutional flaws. Environmental regulatory bodies are grappling with a dire lack of personnel and funding. In an attempt to address these challenges, the 1992 Policy Statement for Abatement of Pollution introduced market-driven strategies, but unfortunately, the results have fallen short of expectations.[405]

- Reform Needs

  The system is in dire need of a makeover to tackle the existing issues. In response, the Ministry of Environment, Forests, and Climate Change has embarked on a comprehensive review of six key environmental laws, aiming to enhance the effectiveness of regulations and breathe new life into our environmental framework.[406] Key priorities for reform include:

  Experts propose the establishment of dedicated environmental courts, staffed with technical specialists, to expedite the resolution of cases.[407] The spotlight is now weaving environmental considerations into the very fabric of policy planning and decision-making. This approach embraces economic strategies and various incentives to drive the change.[408] Courts have emerged as champions of the environment, taking bold actions to safeguard our planet. They're not just sitting back; they're actively shutting down factories that harm our air and water and establishing "green benches" in numerous High Courts to prioritize eco-friendly justice.[409]

Sustainable Development Initiatives

India's green development efforts are a testament to the practical application of environmental regulations. They signify a pivotal shift towards harmonizing economic advancement with the safeguarding of our ecosystems. At the helm of this transformative journey is NITI Aayog, steering the nation towards the Sustainable Development Goals (SDGs) through a blend of collaboration and healthy competition among states.[410]

[403] *Ibid*.
[404] Swapnil. P. Dhatrak and R. A. Jadhav, "Environment Laws in India: A Review" 4 *International Journal of Research Publication and Reviews* 1674-1675 (2023).
[405] *Supra* note 16 at 32-35.
[406] The Good & Bad Environmental Law Reform in India, *available at*: https://namati.org/news-stories/the-good-bad-of-environmental-law-reform-in-india/ (last visited on Dec. 2, 2024).
[407] *Supra* note 18 at 1673-1675
[408] *Supra* note 16.
[409] *Supra* note 14 at 3-5.
[410] Government of India, "Sdg India Index 2023-24 Towards Viksit Bharat Sustainable Progress, Inclusive Growth" 3-35 (NITI Aayog, 2023)

- Government Programs

  The Indian government has launched a variety of ambitious initiatives aimed at safeguarding the environment and fostering eco-friendly growth. Notable programs such as the Swachh Bharat Mission, Pradhan Mantri Awas Yojana, and Pradhan Mantri Ujjwala Yojana have significantly contributed to India's quest for sustainable development. Among these, the Namami Gange initiative kicked off with a whopping budget of 20,000 crores for the period from 2015 to 2020, achieving remarkable milestones along the way. This program has successfully declared 4,465 villages along the sacred Ganga River as Open Defecation Free and has constructed around 1.1 million standalone toilets, marking a transformative step towards a cleaner and greener future.[411]

- International Commitments

  India is unwavering in its commitment to safeguarding the environment on a global scale. Since signing the Paris Agreement in 2016, the nation has ramped up its climate ambitions, showcasing a determined resolve to tackle environmental challenges head-on.[412] One of the major pledges is to reach a staggering 500 gigawatts of renewable energy capacity by the year 2030![413] The objective is to fulfill 50% of energy demands through renewable sources by the year 2030. Additionally, it is aimed to decrease carbon intensity by a minimum of 45% by 2030 in comparison to the levels recorded in 2005. Furthermore, the goal includes the establishment of an additional carbon sink capable of absorbing between 2.5 to 3 billion metric tons of CO2 equivalent by 2030.[414]

- Implementation Status

  NITI Aayog has devised a comprehensive framework to keep tabs on progress. They've crafted a unified index that allows for the monitoring of Sustainable Development Goals (SDGs) across all States and Union Territories.[415] Every year, the Ministry of Statistics and Program Implementation (MoSPI) unveils its progress reports, meticulously crafted from the National Indicator Framework. This initiative serves as a vital compass, guiding us through the ongoing journey of the nation's development.[416]

  As of now, India proudly stands as the globe's third-largest producer of renewable energy, with a remarkable 42% of its installed capacity dedicated to clean and sustainable sources. However, the journey towards a greener future is not without its hurdles, particularly in the realm of financing. Currently, green finance only meets a mere quarter of the country's requirements. To achieve its ambitious climate targets, India needs to mobilize a staggering INR 11 lakh crores each year. In a bid to foster sustainability, the Reserve Bank of India has taken a proactive stance by joining the Network for Greening the Financial System, offering essential frameworks and guidelines to steer sustainable finance in the right direction. Meanwhile, the power of digital technologies comes into play, providing real-time data analysis and predictive modeling to help navigate the challenges posed by climate change.[417]

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[411] Government of India, "Sustainable Development and Climate Change" 104-127 (Ministry of Finance, 2019)
[412] Kaushik Deb and Pranati Chestha Kohli, "Assessing India's Ambitious Climate Commitments" 1-6 (2022)
[413]How India can balance growth and sustainability in its net zero journey, *availale at*: https://www.ey.com/en_in/insights/climate-change-sustainability-services/how-india-can-balance-growth-and-sustainability-in-its-net-zero-journey (last visited on Dec. 2, 2024).
[414] *Supra* note 26 at 1-5.
[415] *Supra* note 25 at 104-124.
[416]"Sustainable Development Goals", *Press Information Bureau*, Mar. 29, 2023, *available at*: https://pib.gov.in/Pressreleaseshare.aspx?PRID=1911844 (last visited on Dec. 2, 2024).
[417] *Supra* note 27.

Environmental Governance

India's approach to environmental governance is a fascinating tapestry woven from a myriad of institutions, monitoring frameworks, and enforcement strategies dedicated to safeguarding and managing its precious natural resources. In this intricate dance, both official bodies and grassroots players collaborate harmoniously to pinpoint environmental challenges and devise innovative solutions to tackle them.[418]

- Institutional mechanisms

  India's approach to environmental governance is like a well-orchestrated symphony, harmonizing efforts across three levels: national, state, and local. At the helm of this grand ensemble is the Ministry of Environment, Forest, and Climate Change, conducting the national agenda in collaboration with the Central Pollution Control Board. Meanwhile, the State Pollution Control Boards take charge of the regional notes, ensuring that every area plays its part in the melody of sustainability.[419] The system thrives on a robust network of support from various pillars:

  - Legislative bodies crafting the framework of environmental laws;
  - Executive agencies bring those regulations to life;
  - The judiciary ensuring that justice prevails in environmental matters;
  - Dedicated environmental organizations and vibrant civil society groups;
  - And the invaluable input from local communities and stakeholders, all working together for a greener future.[420]

  Judicial systems have demonstrated their effectiveness in safeguarding the cultural heritage of India by intervening to shield historical landmarks. The majestic Taj Mahal required a guardian against the encroachment of industrial pollution, while the Dehradun Valley grappled with the dangers posed by stone quarrying. In both instances, the courts rose to the occasion, ensuring these treasures were preserved for future generations.[421]

- Monitoring systems

  In the intricate tapestry of India's environmental governance, monitoring systems serve as the bedrock. The Environment Monitoring and Research Center diligently observes atmospheric components, playing a vital role in the World Meteorological Organization's Global Atmosphere Watch initiative.[422] The state-of-the-art monitoring network is equipped with cutting-edge technology to assess our environment:

  - In bustling urban centers, air quality stations diligently measure PM2.5, PM10, and a variety of other pollutants;

[418]Environmental Governance in India, *available at*: https://ecoinsee.org/conference/conf_papers/conf_paper_125.pdf (last visited on Dec. 3, 2024).
[419] Environmental laws in India, *available at*: https://www.enhesa.com/resources/article/new-environmental-laws-in-india-the-next-chapter-of-change/ (last visited on Dec. 3, 2024).
[420] *Supra* note 32.
[421] *Ibid*.
[422]ENVIRONMENTAL MONITORING AND SERVICE, India, *available at*: https://mausam.imd.gov.in/responsive/servicesMetEnvironment.php (last visited on Dec. 3, 2024).

- Eleven specialized stations analyze the chemistry of rainfall;
- Twelve sites are home to sky radiometers, keeping a watchful eye on aerosol levels;
- And a robust network of sixteen stations is dedicated to tracking Black Carbon.[423]

- Enforcement Strategies

  The entire legal structure is still grappling with hurdles when it comes to upholding environmental laws. A lack of synergy among government bodies and feeble institutional strength continue to be the primary obstacles in the way.[424] Present-day approaches home in on three key domains - proactive measures, environmental benchmarks, and accountability through legal frameworks. This system is dedicated to steering sustainable growth by meticulously analyzing environmental patterns. By keeping a watchful eye over time, it ensures that reactions to potential threats are well-considered rather than hasty. Additionally, it incorporates economic strategies by assigning financial worth to our natural resources and holding those who pollute accountable for their impact.[425]

Innovation and Sustainability

India leads environmental protection efforts through state-of-the-art technology that powers environmentally responsible solutions in sectors of all types. The country has become a major force in the global sustainability arena through its dedication to green technology development.

- Clean Technologies

  The clean technology landscape in India is blossoming at an impressive pace! Forecasts suggest that this vibrant sector could soar to a staggering INR 3797.12-55 billion in just five years, boasting an annual growth rate of 25-30%. Exciting times lie ahead![426] The National Green Hydrogen Mission is a bold government endeavor aimed at achieving a remarkable production capacity of 5 million metric tons of green hydrogen by the year 2030.[427] This initiative is set to unleash a wave of over 600,000 job openings, slashing fossil fuel imports by a staggering INR 1 lakh crore. Plus, it aims to cut down greenhouse gas emissions by a remarkable 50 million metric tons each year![428]

- Circular Economy

  A holistic plan for achieving environmental sustainability takes shape through the lens of a circular economy. Research indicates that embracing circular economy principles could slash material consumption by as much as 30%, all while fulfilling the needs of society.[429] This framework is anchored by three essential tenets:

  - *Cut Back*:- Slash resource use and waste to the bare minimum;
  - *Revive*:- Champion the use of renewable resources for a sustainable future;

[423] *Ibid*.
[424] Shyam Sundar, "Challenges in Implementing Environmental Laws and Policies in India" 3 *Current World Environment* 1250 (2023).
[425] Ritu Raj Kaur, Sakshi Sahni, *et.al.*, "Environmental Governance and Key Challenges at Local Level in Indian Context" 43 *Nagarlok* 25-37 (2021).
[426] Developing Countries on Green Tech Revolution, *available at*: https://www.investindia.gov.in/team-india-blogs/developing-countries-green-tech-revolution (last visited on Dec. 4, 2024).
[427] Government of India, "Advance Sustainable Energy Solutions" (Ministry of Science and Technology, 2024)
[428] *Supra* note 40.
[429] Government of India, "India's Tryst with a Circular Economy" 2-12 (Economic Advisory Council to the PM, 2023)

- *Reallocate*:- Guarantee that resources are distributed wisely and effectively.[430]

The government is championing the principles of a circular economy with a range of innovative policies. The National Resource Efficiency Policy and the Swachh Bharat Mission are at the forefront, emphasizing the importance of waste segregation and recycling efforts to create a cleaner, more sustainable future.[431]

- Green Innovations

  India is making waves in the realm of green innovation with a flurry of technological advancements. Proudly standing at the fourth position worldwide, the nation shines in its renewable energy installed capacity, as well as in the realms of wind and solar power installations.[432] The government's green-tech endeavors are truly impressive! They've rolled out the innovative "Recycling on Wheels" program, bringing waste management right to your doorstep. Plus, they're paving the way for sustainable infrastructure with cutting-edge steel slag road technology. And let's not forget the RUCO van project, which transforms used cooking oil into eco-friendly biofuel. It's a trifecta of eco-conscious initiatives![433]

  The Technology Development Board is passionately championing sustainable energy innovations. Their mission revolves around harnessing green power, pioneering cutting-edge energy storage technologies, and tapping into the potential of bio-energy.[434] These initiatives align perfectly with India's commitment to reach net-zero carbon emissions by the year 2070.[435]

Success Stories and Case Studies

India's environmental laws and green initiatives are changing the country's ecological landscape through coordinated efforts. Companies and communities are working together to protect the environment, and their success stories show what works in environmental protection.

- Corporate Initiatives

  Indian companies are at the forefront of the green revolution, championing environmental sustainability with their cutting-edge initiatives. The Adani Group is on a mission to become the first carbon-neutral port operator by 2025, with plans to harness a whopping 1,000 MW of renewable energy. Meanwhile, Reliance Industries Limited (RIL) is setting the pace in sustainable development, pouring substantial resources into renewable energy ventures and pioneering carbon capture innovations. Not to be outdone, the Tata Group is making strides in renewable energy generation, heavily investing in solar and wind projects, all while laying the groundwork for electric vehicle infrastructure across the country.[436]

[430] *Ibid*.
[431] *Ibid*.
[432] *Supra* note 40.
[433]National Circular Economy Roadmap, India, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1983269 (last visited on Dec. 4, 2024).
[434] *Supra* note 41.
[435]Promoting Clean and Green Technologies for a Sustainable Future, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=2020350 (last visited on Dec. 4, 2024).
[436]Transformative Green Initiatives by India's 5 Leading Companies in 2023, *available at*: https://www.ceoinsightsindia.com/business-inside/transformative-green-initiatives-by-india-s-5-leading-companies-in-2023--nwid-16191.html (last visited on Dec. 4, 2024).

- Community Projects

  Community-driven conservation initiatives are making waves in the realm of biodiversity protection and local economic support. In the coastal areas of Andhra Pradesh, Tamil Nadu, Odisha, and Maharashtra, dedicated local communities have rejuvenated approximately 2,025 hectares of once-degraded mangrove forests. Meanwhile, India's pioneering carbon offset venture, the Khasi Hills Community REDD+ project, safeguards an impressive 27,000 hectares of enchanting cloud forests, all while honoring sacred groves and vital watersheds.[437]

In the realm of community conservation, some remarkable milestones have been reached:

- The Begun Community Reserve proudly generates an impressive annual income of 5 million rupees, all while safeguarding endangered species;
- The Yaongyimchen Community Biodiversity Conservation Area has blossomed into a sanctuary for 85 diverse bird species, successfully putting an end to hunting practices;
- Sahyadri Nisarga Mitra's olive ridley conservation initiative is not only shielding turtle populations but also fostering a vibrant eco-tourism scene.[438]
- Government Achievements

  India is embarking on a transformative journey in environmental protection and sustainable development, thanks to innovative government initiatives. Among the shining examples of this green revolution is the city of Indore, which has become a beacon of excellence in waste management. With an astounding daily processing of 1,000 metric tons of waste and a remarkable 95% recovery rate, Indore is setting the standard for others to follow. The city's commitment to sustainability is further highlighted by the enthusiastic participation of over 90% of households in its mandatory waste segregation program.[439]

  Thanks to these innovative changes, public health has seen a remarkable boost, with vector-borne diseases plummeting by an impressive 60% thanks to the revamped system. Indore has proudly claimed the title of India's cleanest city every year since 2017, a testament to the power of thoughtful environmental policies and active community involvement working hand in hand.[440]

International Cooperation

India's environmental protection strategy relies heavily on international cooperation. The country builds strategic collaborations and shares knowledge across borders to tackle global environmental challenges. These international partnerships have led to substantial progress in multiple environmental domains.

[437] 5 Leading Community Based Conservation Projects In India, *available at*: https://thinkwildlifefoundation.com/5-leading-community-based-conservation-projects-in-india/ (last visited on Dec. 4, 2024).
[438] *Ibid*.
[439] Sustainable Waste Management In Indore: A Case Study, *available at*: https://earth5r.org/sustainable-waste-management-in-indore-a-case-study/ (last visited on Dec. 4, 2024).
[440] *Ibid*.

- Global Partnerships

  India has taken a significant step on the global stage by joining the Climate & Clean Air Coalition (CCAC) as its 65th member. This move underscores India's commitment to tackling air pollution with actionable strategies. By collaborating with fellow Coalition members, the nation is embracing cleaner energy and eco-friendly practices across various sectors, paving the way for a healthier planet.[441] India has forged powerful alliances with various global organizations, showcasing its commitment to environmental stewardship. A standout collaboration with the UNDP has been instrumental in championing sea turtle conservation, paving the way for both national and international action plans that unite efforts for these magnificent creatures.[442]

  The nation's green diplomacy thrives on its bilateral ties. A shining example is the Indo-Russian agreement aimed at safeguarding migratory bird species, which paves the way for smoother scientific collaboration in wetland management and the protection of avian life. These alliances have significantly boosted India's reputation within the global conservation arena. Notably, the country has played host to significant gatherings, such as the IUCN's Regional Conservation Forum for South and South-East Asia, showcasing its commitment to environmental stewardship.[443]

- Technology Transfer

  India has made remarkable strides in the realm of technology transfer, particularly when it comes to eco-friendly innovations. The nation has put forth a comprehensive plan to the World Trade Organization (WTO), aimed at simplifying the development and sharing of environmentally sound technologies among its member nations.[444] Here are some exciting suggestions on the table:

  - Launching a dynamic WTO web portal dedicated to EST databases;
  - Simplifying the licensing processes for eco-friendly technologies;
  - Introducing groundbreaking arrangements for sharing intellectual property rights.[445]

These innovative technology transfer methods have shown their prowess across various industries. India has benefited from 10 grants aimed at curbing methane emissions, courtesy of the Global Methane Initiative. Additionally, the nation has cultivated a wealth of knowledge in environmental enforcement and compliance, thanks to fruitful international collaborations.[446]

- Capacity Building

  Global partnerships have turbocharged efforts to enhance skills and capabilities. The Swiss Agency for Development and Cooperation is championing sustainable urban growth with its innovative project,

[441] India joins the Climate and Clean Air Coalition, *available at*: https://www.unep.org/news-and-stories/press-release/india-joins-climate-and-clean-air-coalition (last visited on Dec. 4, 2024).
[442] International Cooperation, *available at*: https://moef.gov.in/international-cooperation (last visited on Dec. 4, 2024).
[443] *Ibid*.
[444] Joe Mathew, "India Proposes WTO Roadmap for Transfer of Climate-Friendly Tech", *Fortune India*, Oct. 30, 2023, *available at*: https://www.fortuneindia.com/enterprise/india-proposes-wto-roadmap-for-transfer-of-climate-friendly-tech/114594 (last visited on Dec. 4, 2024).
[445] *Ibid*.
[446] EPA Collaboration with India, *available at*: https://19january2017snapshot.epa.gov/international-cooperation/epa-collaboration-india_.html (last visited on Dec. 4, 2024).

Capacities, which focuses on fostering low-carbon and climate-resilient city development.[447] This initiative has celebrated a series of remarkable triumphs:

- Eight cities across India are now equipped with enhanced abilities to reduce their greenhouse gas emissions;
- These urban areas have bolstered their resilience against climate change by adopting holistic strategies;
- Innovative financial solutions are paving the way for infrastructure that can withstand the challenges of a changing climate.[448]

Every year, the India Climate and Development Partners' Meet unites state governments, financial institutions, businesses, and innovative climate start-ups to champion local climate initiatives. This dynamic platform emphasizes pioneering leadership in climate financing and sparks creativity in tackling environmental challenges. Attendees dive into the latest technologies for climate action, explore sustainable cooling solutions, and enhance coastal resilience strategies.[449]

Conclusion and Recommendations

India faces daunting environmental challenges today. Urban pollution affects millions of lives while rapid biodiversity loss threatens countless species. The country has made the most important strides through detailed legal frameworks, breakthroughs, and mutually beneficial alliances to protect its environment.

Environmental governance in India has evolved remarkably. Judicial activism and growing institutional strength drive this change forward. Budget-friendly environmental regulations work well, as proven by various corporate initiatives, community projects, and government achievements. Indore stands out as a model city for waste management. The Khasi Hills Community REDD+ project protects 27,000 hectares of cloud forests, marking another soaring win.

Clean technology markets shape India's environmental protection strategy. These markets show promising growth as circular economy principles reduce resource consumption. India's steadfast dedication to renewable energy shows through its ambitious target of 500 GW capacity by 2030. This positions the country as a global leader in environmentally responsible development.

India's environmental future relies on better enforcement, expanded breakthroughs, and stronger international cooperation. The combination of resilient legal frameworks, community participation, and expandable solutions creates a foundation for sustainable development. This comprehensive approach and growing global partnerships pave the way for environmental preservation that works alongside economic growth.

Important Suggested Reading Materials and Links

- India: Climate Change Impacts and https://www.worldbank.org/en/news/feature/2013/06/19/india-climate-change-impacts
- Sustainable Development Goals and https://pib.gov.in/Pressreleaseshare.aspx?PRID=1911844

[447] Capacity Building Project on Low Carbon and Climate Resilient City Development in India (CapaCITIES Phase II), *available at*: https://southasia.iclei.org/project/capacity-building-project-on-low-carbon-and-climate-resilient-city-development-in-india-capacities/ (last visited on Dec. 4, 2024).
[448] *Ibid*.
[449]India Climate and Development Partners Meet, *available at*: https://www.worldbank.org/en/events/2022/11/28/india-climate-and-development-partners-meet (last visited on Dec. 4, 2024).

- Environmental Governance in India and https://ecoinsee.org/conference/conf_papers/conf_paper_125.pdf
- ENVIRONMENTAL MONITORING AND SERVICE AND https://mausam.imd.gov.in/responsive/servicesMetEnvironment.php
- EPA Collaboration with India and https://19january2017snapshot.epa.gov/international-cooperation/epa-collaboration-india_.html

Chapter – 17

Detriments of Sustainable Development: Marine Oil Pollution with Special Reference To Ennore – An Analysis for Viksit Bharat

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Abstract

Globally, the human activity is causing immense damage to environment. The last fifty years have seen a more severe degradation of nature than at any other time in human history. Human activities such as transportation, offshore oil exploration, port development etc., will contribute more to the disorder of marine environment. Oil spill happened during transportations through human error, equipment failure, collisions, grounding and weather conditions in the oceans is one such environmental damage, which result in the destruction of habitats, marine lives, water pollution and economic losses, also it puts human health at risk. One such accident occurred in Ennore, Chennai, Tamil Nadu during 2017 at the cost of the environment, which was one of the major blows to the sustainability. This chapter attempts to explain the Ennore oil spill in detail and also to analyse the legal frameworks available internationally and nationally to prevent marine oil pollution through doctrinal research with an objective of giving a plausible solution to thwart oil spillage from ships and to include necessary amendments in the laws.

Introduction

Contamination of marine ecosystem and water by release of liquid petroleum hydrocarbon through spillage is known as oil pollution. Leakage from tankers, seaward platforms, sea bed mining, penetrating operations, shipwreck etc., may result in oil pollution. The impact of marine oil pollution is vast and it lowers the water's dissolved oxygen content, decreases bio-productivity by lowering solar penetration. It causes marine animals breathing systems to get upset, decreases their capacity to insulate, increasing their vulnerability to changes in temperature, impair birds' ability to fly by causing kidney disease, liver dysfunction and digestive tract irritation. Habitats of coastal areas such as mangroves, coral reefs, estuaries are damaged. The pollution also makes seafood dangerous to eat.

One such accidents in the Bay of Bengal at about two nautical miles from Ennore, Chennai, Tamil Nadu, India happened during January 28, 2017 because two ships BW Maple and MT Dawn Kanchipuram were collided. Oil spilled during that collision is estimated up to 251.46 tonnes and the coastline affected was up to 30 km approximately[450]. The impact was very crucial to marine ecosystem, marine lives and humans.

[450] The Hindu Net Desk, "Ennore Oil Spill: What happened?" *The Hindu*, November 11, 2017 12:20 pm IST https://www.thehindu.com/news/cities/chennai/ennore-oil-spill-what-is-happening/article20044550.ece. (Last Visited on 23-11-2024)

Research Gap

Regional case studies, like the Ennore Oil Spill, receive little attention in the current body of research on oil pollution in India. While oil pollution has been considered in connection to international legal frameworks, investigating about India's domestic legal system regarding the path whether it conforms to or departs from international standards is necessary. In light of both national and international legal requirements, there are not many thorough studies that look at India's post-oil spill rehabilitation process, as well as the distribution of responsibilities, damages, and recovery initiatives.

Research Objectives

1. To evaluate and contrast the national and international legal frameworks that control oil pollution in India.
2. To investigate the environmental, social and economic damages of oil spills in India, emphasising the Ennore Oil Spill incident.
3. To examine the legal frameworks pertaining to the compensation and liability systems for victims of oil spills.
4. To make suggestions for encouraging India's national legal system in order to enhance oil spill response, cleanup, and prevention in accordance with global best practices and sustainable development objectives.

Research Methodology

In order to investigate oil pollution, its legal frameworks, and the effects of events such as the Ennore Oil Spill in India, this study will use a doctrinal method of research which includes investigating existing materials such as laws, acts, policies, rules and regulations. Also, the mixed-methods approach, integrating qualitative and quantitative methodologies has been adopted. While a comparative legal analysis will compare India's national legislation to international frameworks, quantitative data analysis will determine the frequency and impact of oil spills. In order to enhance India's legal response and bring it into line with sustainable development goals, the research will also evaluate the efficacy of policy and enforcement tools.

Key Findings

The environmental and economic effects of the Ennore Oil Spill were exacerbated by inadequate containment infrastructure, slow reaction times, inadequate enforcement mechanisms, and a lack of agency cooperation. Inadequate rehabilitation and compensation were provided to impacted populations, especially fishers, which was a reflection of shortcomings in the recovery and liability procedures. Stronger prevention, response, and ecological restoration measures are required, as evidenced by India's domestic policies' poor integration with international commitments and failure to connect oil pollution management with the Sustainable Development Goals (SDGs).

Key Words: Oil Pollution, Impact of Oil Pollution, Ennore Oil Pollution, Impacts of Ennore Oil Pollution, Plausible solutions and legal frameworks.

Oil Pollution and Development of International Legal Frame Work

Fortunately, the microbial communities that can break down hydrocarbons at sea have developed because the oil had been leaking into the marine environment millions of years. During World War II fuel oil spills occurred more frequently, in greater amounts, and with a horrifying death toll, marine fisheries populations recovered because overfishing was prevented in crucial waters during the battle. Oil spills have an impact on ocean ecology and seawater quality. Shipwrecked lubricant is frequently present and damaging the sea, estuary, and delta environments, especially in wetlands and sediments. Oil contained in the sea always have major negative effects on natural resources, influencing biodiversity, environmental sequence and contamination depending on how well reaction and cleanup efforts work. The closing of markets for wild fisheries, oiling of seafood aquaculture facilities, desalination and cooling water intakes, and tourism amenities are among the socioeconomic activities impacted. During some situations even human health is being impacted which includes crew mortalities and injuries. Some spills have well-established effects, which we do not go into great depth about here.

During 1903, the S.S. Petriana[451] experienced its first oil spill while shipping petroleum from Borneo to Australia. An excessive number of tons and tons of oil released into the Ocean because of the incident. Marine life affected and Coastal pollution also reported. This increased the scrutiny of maritime safety regulations. After the Titanic disaster, during 1914, the first form of SOLAS[452] Convention remained accepted. During 1929, the second form was accepted and in 1948 the third type of the convention was adopted, 1960 the fourth one was adopted. According to the 1974 version's tacit acceptance method if it is not objected by the determined number of parties prior to that date the amendment will come into effect. The 1974 Convention has therefore undergone multiple updates and amendments. SOLAS, 1974, as revised, is another name for the current Convention.

The greatest environmental settlement of compensatory damages was granted in the Exxon-Valdez oil spill[453] as the incident affected the coastline up to 1,300 miles including wildlife refuges and national parks which dropped millions and millions of gallons of crude oil[454]. The incident also impacted on seabirds, sea otters, harbour seals and bald eagles[455]. Incident also creates a devasting impact on fishing population and also had a long-term effect on habitat destruction and ecosystem damage. A variety of regulatory frameworks are available under international law to control marine oil contamination. The 1958 Geneva Convention includes safeguards to preserve the marine environment from oil contamination caused by expanding continental shelves because of the laid pipelines. Torrey Canyon[456] disaster in the English Channel, leads to the establishment of a legal committee to address the deficiencies in the global arrangement for fixing the liability and compensation for the loss suffered by the oil spillage and also to meet out the issues in the environment a subcommittee also had been established by the IMO, as the incident impacted more in the

[451] An oil tanker built in 1879 in England
[452] International Convention for the safety of life at sea (SOLAS) 1974.
[453] Oil spill occurred in Alaska in 1989 March
[454] United States Environmental Protection Agency, Emergency Response, November 19, 2024. https://www.epa.gov/emergency-response/exxon-valdez-spill-profile. (Last Visited on 23-11-2024)
[455] Missy Sullivan, Exxon Valdez Oil Spill, *History.com Editors,* updated March 23, 2021 | Original: March 9, 2018 https://www.history.com/topics/1980s/exxon-valdez-oil-spill. (Last Visited on 23-11-2024)
[456] International convention relating to Intervention on High Seas in case of Oil Pollution casualties, 1969 and International Convention Civil Liability for Oil Pollution damage (CLC), 1969.

coastline of France and it has created a devasting effect over marine life. In result of the incident the United Nations adopted the MARPOL[457], the Convention for the prevention of ship pollution.

During 1972, the Stockholm Declaration has created awareness about marine environmental issues, encouraged international cooperation, also had a significant part in influencing the development of marine environmental policy. Principle 2 of Stockholm declaration[458] speaks that the present and future generation need to be profited only when earth's natural resources including air, water, land, flora and fauna are saved. Principles 6 elaborates that environmentally vulnerable countries need to be protected. Principle 7 describes that to stop contaminating the marine environment the measures should be taken by the states. Guaranteeing suitable living and working environment through economic and social development which should not affect the nature is mentioned under Principle 8. Responsibility of saving and conserving the marine environment becomes an obligation to state while exploiting the same for their use under Principle 21. Principle 22 of the Stockholm Declaration explains about the responsibility and reimbursement for environmental damage caused by the states both inside and outside their borders. Agenda 21 of the Earth Summit [459], a program for sustainable development scheduled by UNCED in its chapter 17 covers the growth of the living resources in oceans, all type of seas, enclosed and semi-enclosed seas, coastal areas and the conservation and intelligent use of the same.

In addition, general measures regarding the protection of the ocean environment are enshrined in UNCLOS[460], which is known as the "umbrella convention" UNCLOS stressed that state inside its jurisdiction should not conduct any activities which will cause damage to the other states by pollution after the Montara oil spill[461] which affects marine lives such as sea turtles, whales and fish and also it has a greater impact on coral reefs and seagrass beds. International Convention on Oil Pollution preparedness, Response and cooperation (OPRC) 1990[462] was made to take further steps to prevent marine oil pollution. Civil Liability Fund Convention[463] 1969 which was later replaced by 1992 Protocol implicates liability on ship owners and establishes a compensation framework for victims. The 1996 international convention that adopted the HNS convention was an outcome of the inspiration from "The Civil Liability and Fund Conventions" which shelters the pollution damage from chronic oil spills from tankers.

When marine accident occurred which includes hazardous and noxious substances like chemicals, as same as the original oil pollution compensation scheme the HNS[464] Convention will make a two-tiered system for compensation. It also covers the dangers of fire and explosion, which can result in fatalities or serious injuries as well as property loss or damage. Shipowners will be able to restrict their liability by obtaining mandatory insurance. The donations from the HNS recipients will be constituted as the fund for making second level compensations when the insurance does not cover an incidence or if it is insufficient to shield the claim. Contributions are used to be determined by the amount received by each party in the previous calendar year.

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[457] Adopted on 1973 and came into force on 1983.
[458] The Declaration of the United Nations Conference on the Human Environment, 1972.
[459] The United Nations Conference on Environment and Development, 1992.
[460] The United Nation Convention on the Law of the Sea, 1982
[461] It occurred in November 2009, Timor Sea, Northern coast of Western Australia.
[462] Adopted by International Maritime Organisation.
[463] Adopted on November 29, 1969.
[464] The International Convention on Liability and compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

Numerous incidents of oil spills have been documented throughout history, endangering the maritime environment and its inhabitants. International Convention on civil liability on bunker oil pollution Damage 2001[465] ensure prompt, effective reimbursement for damage caused by oil spill. Sustainable Development Goal[466] speaks about Life below water which clearly indicates to conserve the ocean and allows sustainable use of the ocean resources, Actions are taken to stop climate change and its impacts including ocean acidification and sea level rise[467]. Ensuring assesses to clean water and sanitation, including the protection of marine ecosystem[468]. Safeguarding human health from the impacts of marine pollution[469]also the wellbeing and healthy lives for all are confirmed. Also, for business community, business responsibility frameworks are there, and various nations ship building companies need to align with SDG goals under corporate social responsibility and they can implement environmental sustainability initiatives that support climate action[470] and responsible consumption and production[471]. States are also under obligation to incorporate the SDG goals properly in their municipal laws and to protect the ocean environment. International law by numerous treaties and conventions persisting the countries to keep an eye on environment viz., marine. In spite of the effective role played by international legal framework in combating marine oil pollution, due to the inadequate enforcement mechanisms and implementation processes in the international law becomes a major drawback for preventing the marine oil pollution.

Incidents in India

In India the oil spills happened in various parts persisted the environment concern. Many incidents had been traced in the history to describe the devasting effects not only in the environmental ecosystem but also in human beings. The environmental damage had happened in one such incident in Goa Coast. The ore carrier M.V. Sea Transporter grounded on rocks a few meters off Sinquerim beach after drifting to the Siqueirim - Goa coast from Mormugao harbor on June 5, 1994, during a windstorm that hit the Goa coast. Approximately 1000 tons of leftover oil were transported by the ship. Oil seeped from the ship on July 2, 1994, after a crack formed on the starboard side as a result of strong winds. It was estimated that two tonnes of oil leaked. The environmental impacts are more severe and the distribution of petroleum hydrocarbons in surface sediments showed the contamination of oil in marine environment. Bacterial count was more and remains same for few weeks. Phytoplankton and chlorophyll become lesser[472].

On August 5, 2010, around 10 kilometres off the coast, of Mumbai, MV Chitra, an outgoing commercial vessel which was registered in Panama from Jawaharlal Nehru Port Trust (JNPT) owned by Mediterranean Shipping Company (MSC), and MV. Khalija III, which was registered in Saint Kitts hit with each other as the ship Khalijia was approaching towards Mumbai Port Trust for docking purpose.

MSC Chitra was transferring 2,662 tonnes of oil, 288 tonnes of diesel, and 88 tonnes of lubricants apart from 1200 containers. The ship was titled 75 degrees, in the evening after the tragedy, causing nearly 300 containers to fall into the sea. The oil spill spread over 100 km along the coast affecting several areas and resulted in habitat destruction and caused heavy impact on fisheries destroying their livelihood Authorities

[465] Bunker Convention.
[466] SDG Goal 14 adopted by United Nations on 2015.
[467] SDG 13.
[468] SDG 6.
[469] SDG 3.
[470] SDG 13.
[471] SDG 12.
[472] Report by National Institute of Oceanography, July 1994

had to close the bustling port for six months after thousands of barrels of fuel from the crashed vessel flowed along the Mumbai shoreline. The Panamanian bulk carrier Rak Carrier sank 35 kilometres[473] off Mumbai Port, India, carrying 50 tonnes of diesel, 290 tonnes of heavy fuel oil and 60,000 tonnes of coal. The cause of the sinking is unknown, the Coast Guard and the Indian Navy evacuated the 30 crew members. Indian Coast Guard estimated that ship's structure was streamed by water on August 6th, which caused oil leakage at a rate of 1.5 to 2 tons per hour. Because of the accident environmental ecosystem was severely polluted and it endangered the marine lives.

In Mumbai High-Uran pipeline burst at Uran Plant in Mumbai in October 2013, the spill happened when the Uran plant's electricity went out. Processing units were shut down as a result of the power outage, and during this time, oil line pressure rose, causing oil to seep within the plant. The estimated spill is about more than 3000 litres.[474]Clamping was used to stop the leak. Quantities of Crude oil spilled over the water or shoreline[475]. Hydrocarbons sediment elevated, Macrofauna, Macroalgae and amphipods got decreased. In October 2013, a cargo vessel M.V, Bingo sunk in Sagar Island during the severe cyclone Phailin. The vessel was carrying Diesel on board during the sink. The crew members were rescued, obviously the oil got spilled. It damaged the mangroves also contaminated the soil there and gave a major blow to fishing communities. During the internal transfer of fluids, a spillage occurred in the drillship platinum explorer[476] during August 2014. Synthetic oil-based mud and water was split over the ocean. Southern Star oil spill occurred in December 2014 in the Sela River, within the Sundarbans Delta of Bangladesh, which was the world's largest mangrove ecosystem. The spill happened when the oil tanker Southern Star, carrying approximately 350,000 litres of furnace oil, collided with another vessel. The accident caused extensive contamination in the fragile mangrove forest, which is home to diverse wildlife, including endangered species like the Bengal tiger and Irrawaddy dolphins. Likewise, so many accidents resulted in oil spills which clearly endanger the environment and livelihood of humans happened throughout the timeline.

National Legal Framework

India is trying to regulate oil pollution by a set of national legal frameworks and regulations that aim to prevent, control, and mitigate the effects of oil spills. Under the Indian constitution right to clean environment[477] is guaranteed also it is responsibility of the state to endeavour to preserve and improve the environment.[478] Also, it is the responsibility for every citizen to protect and improve the environment.[479] The Merchant Shipping Act, 1958 is one of the principal laws that regulate shipping in India, including oil pollution. In case of noncompliance, the act makes shipowners responsible for oil pollution and provides for penalties and liabilities. The construction, operation, and maintenance of ships to prevent oil pollution also regulated under the act. The act was amended then and there and it was recently amended on 2017 and a bill is pending with further proposed amendments made on 2022. The amended act has given more significance for the compliance of international agreements, enhanced environmental protection and punishments for any contraventions of the act. Discharging of oil or oily mixtures are prohibited into the sea from Indian ships or ships in Indian waters under the provisions of the 1958 Act. The provision provides issuance of pollution

[473] August 4, 2011.
[474] Report by Maharashtra Pollution Board.
[475] Report by Oil and Natural Gas Corporation.
[476] Ship designed for oil and gas exploration.
[477] The Constitution of India, 1950, Art 21.
[478] The Constitution of India, 1950, Art 48A.
[479] The Constitution of India, 1950, Art 51A(g).

certificate, requirement of constructing ships to avoid contamination, inspection of oil tankers and the act empowers the government to issue notice to the owner of the polluting ship It also requires the shipowners to initiate the necessary actions to prevent oil pollution, including the utilisation of oil pollution prevention equipment. Shipowners are liable for destruction which caused to the ocean because of the oil leakage from their ships. For oil pollution damage, limitation of liability is also provided under the act. The act specifies for covering the damage caused by the oil pollution the ship owners need to have insurance or other financial security. A fund was also established under the act to compensate the damage. The act empowers the Director-General of Shipping to take enforcement action against ships which contravenes the provisions of the oil pollution and also the act provides for penalties, including fines and imprisonment, for contravening the provisions related to oil pollution. Shipowners need to report incidents of oil pollution to the Director-General of shipping and the act gives power to the central government to make necessary rules for the prevention and control of oil pollution.[480]

The Environmental Protection Act, 1986 is another crucial law that regulates environmental pollution, including oil pollution. The act provides for the control, abatement and abatement of environmental pollution and sets ideals for environmental quality. The act also provides for the establishment of authorities to regulate and monitor environmental pollution. Prohibits the discharge of any pollutant, including oil, into the marine environment[481]. It also empowers the Central Government to appoint authorities to perform functions under the act[482]. The act gives power to the central government to give directions for the closure, prohibition or regulation of the industries if it contravenes the provisions of the act and also empowers government to prescribe the allowable limits of the discharges, hazardous substances which includes oil, into the marine environment[483]. Penalty may be imposed for contravening the provisions and it also provides for imprisonment for violating the act[484]. By making rules the central government is empowered to carry out the provisions of the act[485].

A comprehensive plan known as National Oil Spill Disaster Contingency Plan that outlines the procedures and protocols for answering to oil spills in India which established a national oil spill response team and plans the roles and the responsibilities of government agencies, authorities of the port and shipowners. The 2015[486] plan has several provisions related to marine oil pollution viz., oil spills prevention, minimizing the risk of pollution from oil, ensuring an effective response to spills and minimize the effects on the environment. The plan brings the resources of Central government including coast guard, State government and its emergency services and shipping, ports and industries in coordination for effective functioning. The concerned state governments are accountable for implementing the plan at state level. Port Authorities working in the respective port are responsible for implementing the NOSDCP within their ports. For detecting and reporting the spill effective system for detection and reporting of spills are categorised under the provisions of the act, that is regular inspection of ships to ensure compliance with safety and environmental regulation. Training will be given to the crew members with respect to oil spill protection. The equipment used for oil spill prevention will be regularly maintained. Oil spill prevention equipment will be regularly maintained. Reporting of oil spills to the National Authority has to be done immediately. Response

[480] Sec 356 A to 356 O.
[481] Section 3(2):
[482] Section 3(3)
[483] Section 5 and 6.
[484] Section 15.
[485] Section 25.
[486] In operation from July 1996.

plan have to be properly activated including mobilization of response equipment and personnel. Spilled oil has to be recovered and contained. Shipowners are liable for damage caused by oil spills. Establishment of a compensation fund to provide relief to affected parties also mentioned in the plan. Regular training programs for personnel involved in oil spill response have to be conducted. Public awareness campaigns to educate the public on oil spill anticipation and response is there in the plan. NOSDCP[487] will be regularly viewed to ensure its effectiveness. Updating and revising of the NOSDCP is mentioned as necessary. In 1983, International Convention for the Prevention of Pollution from Ships MARPOL 1973 was ratified by India. In 1994 India ratifies International Convention on Oil Pollution Preparedness, Response and cooperation [488]. In 1976 International Convention for the safety of Life of Sea[489] was ratified by India. International Convention on Liability for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.[490] In compliance of the Sustainable Development Goals (SDGs) of the UN, India has made major pledges to eliminate marine pollution. For sustainable development, SDG Goal 14, Life Below Water India specifically seeks to preserve and responsibly exploit the seas, oceans, and marine resources. By 2025, India wants to prevent and drastically cut down on marine pollution of all types, especially those caused by land-based activities. In order to preserve marine ecosystems, India has implemented programs such as the National Plan for the Conservation of Aquatic Eco-systems. To guarantee the sustainable management of marine resources, India seeks to regulate fishing and harvesting methods.

Ennore Oil Spill

On January 28, 2017 a collision had occurred at Ennore Kamarajar Port around two nautical miles between MT Dawn Kanchipuram, the chemical tanker and the outgoing BW Maple, Liquified Petroleum Gas ship. From the reports of the local port authority, it was known that the hull of the MT Dawn was torn, causing damage to the ship's accommodations and deck pipelines. In consequence of the disaster heavy furnace oil of 196.4 tonnes had leaked according to the Indian Coast guard which led to the spillage of oil. It became evident, when big oil patches showed up on the rocky shores the following day, around 13 kilometres south of the Port, how much damage had been done. While the organized cleanup got underway oil had already reached the Ennore groin field, which was 30 kilometres away from the source. Over 25 miles of the coastline was contaminated by the oil spill within 48 hours, stretching from the northern suburban town of Ennore in to Thiruvanmiyur the southern suburban town and also 180 kilometres from the scene of the incident, in the waters of Puducherry, oil residues were found two weeks after the incident. It is also evident that most of the oil was still limited to the area north of Royapuram Fishing Harbor. As confirmed by the field survey of Indian National Centre for Information Services, another portion floated onshore and made its way to the shoreline outside of south Chennai.

Petroleum wastes seriously spoiled a number of popular beaches, including Chennai's famous Marina Beach. Local fisherman and urban beachgoers have been suggested to avoid these beaches for number of days due to the shoreline being extensively polluted by thick layers of emulsified oil. The spill happened because of the strong coastal currents flowing from south because of the northeastern monsoon season. Oil was carried by shoreline currents to a number of southern leisure beaches with in the time span of one week. Coast Guard under Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) and Chennai Corporation

[487] National Oil Spill Disaster Contingency Plan
[488] OPRC 1990
[489] SOLAS 1974
[490] (HNS), 1996.

conducted manual attempts to clean up the oil spill under the monitor of Tamil Nadu Pollution Control Board (TNPCB) which is responsible for enforcing the Environment Protection Act, 1986 and the Water Prevention and Control of Pollution Act 1974 at the state level. Chennai Corporation cleaned up the oil spill using three large buckets. To prevent oil from spreading further oil booms were deployed. Many of the local residents and fishermen involved themselves in the cleanup activities. More than 5000 people involved in the process of cleaning and approximately 160 metric tonnes of sludge were in the oil spill. The oil spill was contained within few days and ecological assessment was made to determine the extent of damage to the marine ecosystem.

Amidst the spill had long-term effects on the aquatic ecosystem and caused major ecological harm, especially to fish and marine life. The ennore creek was very much affected because of the spillage and the ecosystem which is an important habitat for many marine species including fish, turtles had a serious blow. It had a negative impact on sea birds, whales, dolphins and animals. Animals which live naturally and depends on water to maintain their body temperature suffered more, also animals which finds their young ones through the smell got distracted because of the smell of the oil in the Ocean. As far as the plants are concerned mangroves and the seagrasses which provides habitat for marine species got damaged. The phytoplankton which is a major component for food web got destructed. The effects of the oil spill may have caused long-term harm to important ecosystems that are essential for fish breeding, foraging, and shelter, including as coral reefs, mangroves, and coastal wetlands. Fish populations may drop as a result of the destruction of these habitats, which would further reduce the region's biodiversity. The water's quality and the general health of the environment may be impacted by contaminants and oil residues left over from the spill. Fish behaviour, reproduction, and general survival may all be hampered by contaminated water, which would present long-term problems for the resilience of marine ecosystem. The smell of the oil spread to the nearby village which creates breathing disturbances to the people residing there.

In spite of the government provided compensation under the Tamil Nadu Marine Fishing Regulation Act, 1983 the Tamil Nadu Marine Fishing Regulation Act, 1983 which provides a framework for coordinating fishermen who are among the first affected during oil spills compensated their losses viz., loss of their livelihood and property, the leak also had serious social and economic ramifications for the fishing sector, leading to a decline in goodwill and financial difficulties for fishermen and fishing towns. Customers' faith and confidence were damaged by the bad press surrounding the Ennore oil leak, which also damaged the region's fishing economy. This was a loss of goodwill and financial consequences for fishing communities who depend on a good reputation to support their enterprises and means of subsistence.

Conclusion and Recommendation

At the verge of implementing SGG goals nations need to concentrate on preserving and protecting the environment while exploiting the same. The ships, pipelines which are transporting oil need to be regularly inspected and to be maintained properly. The use of double-hull tankers needs to be stimulated which reduce the risk of collisions and groundings. Collisions and groundings can be avoided by using proper navigation services such as radar and GPS services. The oil spill response plans have to be developed and regularly updated including contingency plans. The spreads of oil will be contained by using oil containment booms. Skimmers and Vacuum systems can be employed to remove oil from the water surface. The technique of bioremediation such as adding nutrients to stimulate the growth of oil degrading microorganisms need to be encouraged. It is vital that the governments and the policy makers has to enact and enforce stricter regulations

and laws on the industries who are involved in the business of oil transportation in oceans and distributing the oil through pipelines. The penalties need to be increased for violation of laws with respect to marine oil pollution. Nation's prerequisite to increase their coordination internationally, to develop and implement global standards for oil pollution and prevention. Based on the National Oil Spill Disaster Contingency Plan, India requires to develop more stringent laws based on the with respect to oil pollution as because there is no proper legislation for oil pollution prevalent in India. While making laws, mandatory provisions have to be made for use of oil-resistant materials during ship building and also to predict the behaviour of oil spills improved techniques need to be implicated. More public awareness campaigns need to be launched to educate the public about the risks and consequences of oil pollution. Effective education and training programs for the people involving in the business of oil need to be undertaken. The fishing community needs to be engaged to participate in oil pollution prevention efforts. The world community is developing and technology is advancing with the advent of science, though it is the responsibility of the human community to save and conserve our mother nature by hook or crook. Nations are under obligation to conserve the oceans, the nature's gift.

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Chapter – 18

Distinctiveness of Trade Marks and Its Importance in The Market Place Under Intellectual Property Rights in Viksit Bharat – A Critical Overview

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Introduction

There are different types of consumers in the market. According to their choice, they will purchase the goods or hire services from the market when they observe that the quality of goods or services are well-known and have acquired reputation. Regarding the goods there are some securities from the manufacturer or suppliers that the goods have been produced by them, there may be some similarities, but marks are different. The goods which have been produced by the maker or company that have particular brand and quality. This brand and quality will identify the manufacturer. Marks means Trade mark which has played an important part in the market.

What is Trade Marks?

Trade Mark means a particular mark which is capable of being represented graphically. This mark has some special capacity to distinguish the goods or services from one person to those of others.[491] There are different types of trade mark in the market. The company or the manufacturer has applied the mark as per its own discretion. A mark may be a device, brand, label, ticket, name, signature, words, letter, numeral, shape of goods. Not only the abovementioned mark but also trade mark including packing or combination of colors or any combination thereof. A trade mark is a symbol which has been applied in the market at the time to sale the goods because a confusion has been created regarding the similarity of two goods. This mark will distinguish the two goods and identify it with a particular trader which is the actual owner of a particular business. The goods have been selected, imported, certified to depend on the trade mark because this mark has been registered under the provision of the Trade Mark Act. The trader's goods have been attended by the trade mark which consists of a picture, label, word or words. For the advertisement of one's product and benefit of customer, the trade mark has got the importance.

Forms of Trade Marks

There are different forms of trade marks in the market. Such as –

I. Marks regarding letter- Letter has been used as a mark. The letters which have been used as the mark for identification of goods must have distinctiveness and individuality. For the work of designer, the

[491] G.B.Reddy, Intellectual Property Rights & the Law, Pages no. 256,260-262 (Gogia Law Agency, Hyderabad, 6th edition, 2007)

letter mark is the useful element and successful mark. IBM, GE, GM, ELBEE, LG, are the reputed letter marks which have been used as the trade marks in the market.

II. Marks regarding symbol – The shape brands or logos are the part of symbol. A logo is visual depiction which has given an identity of a manufacturer or a company. In modern times, logos have been identified as a symbol which belongs to a particular company and represents the quality. Daimler Benz., B.M.W., Tata Nike and Adidas etc. are the best example of popular logo which have been used as the trade mark in the market.

III. Brand – Brand means the brand of goods. Brand has been used as the kind of trade mark to identify the category of goods. As for example, Ship brand has been used for identification of the matches. Similarly, the cycle brand for Agarbathi.

IV. Label and Ticket – Labels is a composite mark. It has various features including devices and words. It has been used for painting on a paper and attached to the goods. The label may contain, apart from the trade mark, even matter which does not have the trade mark value. Like label, a ticket is a part of trade of mark. A ticket may be said well-known brands of readymade clothes like Flying-machine Jeans, and 'Freeman' undergarments.

V. Combination of Color – The definition of Trade Marks Act 1999 has declared that the combination of colour or scheme can also constitute a mark. Combination of colour was considered as a mark in the application of Reddway Co. Ltd. Combination of colour may be declared as a trade mark of a dealer through not an individual colour.

VI. Trade Marks regarding Numerals – Numerals also can be used as trade mark for the benefit of the consumer in the market. As for example '555' or No. 10 is a successful brand of cigarettes.

VII. Trade Marks regarding Containers – Under the provision of section 2(m) of the Trade Marks Act 1999, a container which is in a three-dimensional form may fall within the definition of a mark. However, it has been declared that two dimensional marks may also form part of 'trademarks.

VIII. Pattern of goods – Pattern of goods has been declared as a part of trade mark. There are different shapes of soap or tooth brush in the market. But a shape will be a trade mark when it is registered under the provision of the Trade Mark Act.

IX. Trade Mark regarding Packaging –The other trade subject is packaging. There are different types of packaging in the market. For the benefit of the customer, pouch, box, container, lid, folder, cap etc., have been used at the time to package the goods. A company can apply a particular package at the time to delivery of goods. But there will be a distinctive feature of the package when it will be used as the trade mark.

X. Trade mark regarding Device- There is a mark in the device which separates from all other categories.

Functions of A Trade Mark – A mark has been declared as the trade mark which performs the following functions-

- Every product has its own identification and origin. A product will be identified only by the trade mark. As for example, the "Hamam" is a trade mark which identifies the soap. The company which has produced the soap that will be identified by the trade mark "Hamam"
- The quality of the production will be guaranteed by the trade mark. There are different types of soap in the market but the quality of that the soap is not the same. As for example the smell of 'Rexona' and 'Lux" is not same. The trade mark of the two soaps will decide the quality in the market.
- In the society, advertising is required in favour of every product. A product will be represented only by the trade mark. The term 'Sony' is related to electronic terms. The trade mark 'Sony' has offered the particular quality of a particular class of electronic items.
- In the mind of the public, the trade mark creates an image of the product specifically consumers or the prospective consumers of such goods. As for example, the mark 'M' has been used as the food items. It has originated from the American Fast Food Chain Macdonald which creates an image and reputation for food items in the market

Meaning of the term 'Distinctiveness'

The term 'distinctive' means distinctive marks in relation to goods. At the time to deliver the goods in the market, the proprietor will use a mark for identification of goods. It is necessary to register the trade mark. But the trade mark will be distinctive and separated from others in relation to goods. There will be no similarity with other marks.

It is possible to understand the term 'Distinctiveness' to mean some quality in the trade mark which earmarks the goods marked as distinct and separate from those of other products of goods in the market.[492]

Distinctiveness in Trade

It is necessary to establish the distinctiveness of marks in trade. It is a notion by itself. Depending on distinctiveness in trade, goods will be transferred for sale or there will be an advertisement relating to the goods. But the distinctiveness in trade will prove to be based on the quality of goods. It is a hard, laborious and time- consuming process in business to distinguish the mark in trade. No specific period of time has been declared for acquiring the distinctiveness. Reasonable time must be there for one to acquire distinctiveness in the ordinary world of business. There is no hard and fast rule for distinctiveness of marks in trade.

Types of Distinctiveness

Distinctiveness is of two types – namely distinctive per se and factual distinctiveness.

Distinctive per se – A mark to be distinctive per se must have the inherent capacity to distinguish one trader's goods from those of others.

Everyone has the right to apply for trademark registration before the Registrar. But the mark which has been used for registration that may be distinct or may not be separated. Then the burden of proof will lie to

[492] V. K. Ahuja, Law Relating to Intellectual Property Rights, Pages no. 280-283 (Lexis Nexis, Haryana, 3rd edition, Reprint 2023)

the applicant for proving the distinctiveness in trade mark. A geographical name adopted as a distinctive mark without its conveying any idea of a geographical origin or association would come within the provisions of the Act and will be registered if the Registrar is satisfied with its distinctiveness (Section 9 of the Trade Marks Act 1999).[493]

The proprietor of the mark can then claim "monopoly right" on the mark in respect of only the non-disclaimed part of it, or when no disclaimer is imposed, or the mark in its entirety. The 'philosophy' of distinctiveness is its monopoly right, which, in turn, will exclude the use of that mark or the particular features of that mark by others. Hence, in Joseph Crosfield & Sons Ltd.'s Application, 1909 RPC 859, the word PERFECTION was refused registration by Lord Justice Fletcher Mowlton, not only on the grounds that it was highly laudatory (PERFECT) but also on the grounds that it was indistinctive.

This type of distinctiveness should also be considered from the point of view of the articles or the class of articles on which the symbol is proposed to be applied. Lord Justice Simond, while administering justice on the famous YORKSHIRE case 1954 RPC 154, made an incidental comment stating that paradoxically regarding the goods of manufacturer, more words have been used but not in distinctiveness. Consequently, distinctiveness bears an inverse relation to the descriptive capacity. Most of the invented words are considered distinctive per se.

Factual Distinctiveness

Factual distinctiveness means distinctiveness acquired by user. Factual distinctiveness has to be substantiated by means of an affidavit or declaration or oath, putting therein the quantum of yearly sales and publicity expenses supported by documentary evidence by way of attested or photocopies of invoices, publicity material, literature, etc. It other words, there must be proof that the purchasers have right to identify the mark with the relevant goods of the trader or company. When a device / a word is being used on some goods as a trade mark, it should be shown that the word has lost its actual meaning to those purchasers and come to mean the articles of that proprietor of the mark. Hence, words like good, best, perfect etc., which are simply direct statements of quality, cannot even have factual distinctiveness. Consequently, some descriptive words, in relation to a particular class of goods in which these are used as trademarks, may be shown to have acquired distinctiveness.[494]

Therefore, a question has been arisen regarding the trade mark whether it is distinctive in character or not. But the distinctiveness of trade mark has been decided by considering the circumstances of the cases. Factual distinctiveness is usually to be proved by the applicant with the help of an affidavit to be drawn in accordance with Rule.

The Spectrum of Distinctiveness

There are some proposed marks which are not eligible for protection in the market. These marks have got the protection under federal law. The distinctiveness of the trademark exists on a spectrum.[495]

From lowest to highest, there are the five categories of distinctiveness which are as follows-

[493] J. K. Das, Intellectual Property Rights, Pages no. 426, 444 (Kamal Law House, Kolkata, 1st edition, 2008).
[494] J.S.Sarkar, Trade Marks Law & Practice, Pages no. 75-80 (Kamal Law House, Kolkata, 5th edition, 2008)
[495] https://www.dram.com

The marks which are 'Generic' – For the production of a goods, a common word has been used which are in generic mark. As for example, for a foot-powered the term 'Scooter' has been used. Similarly for a service employed the term 'Valet' has been used to part cars. The source of goods will not be identified by generic marks. For the protection of trade mark, a generic mark is not eligible sufficiently.

The marks which are 'Descriptive'- At the time to use of goods, a mark which has been declared as descriptive is an ingredient, quality, characteristic, function and feature. The mark, which is descriptive, will not get protection automatically, but in the mind of people there is association with the relevant goods. As for example, the cold drink 'Coco-Cola' is a descriptive mark made using ingredients from the Coco-plant. There is a close association between 'Coco-Cola' marks with a particular brand of beverage. Subsequently it has acquired distinctiveness.

The mark which has been used for 'Suggestive' – A mark which suggest at a goods or service but to arrive at the ultimate meaning of the mark, it has required some imagination. For the protection of marks, a suggestive mark is distinctive and eligible less than an arbitrary and fanciful mark. There are some suggestive marks in the market, such as for canned tuna "Chicken of the sea", for convenience stores "7- Eleven" (which were originally named for their operating hours).

The marks which are 'Arbitrary' – There are some words which have been used as "Arbitrary marks" but have no relation with the relevant goods or services. "Dove' for hygiene product is the common example of arbitrary marks. Similarly for a ride-hailing mobile app 'Uber' and for cigarette 'Camel' have been declared as arbitrary marks. Arbitrary marks have been used as distinctive and afforded higher trademark in the society.

The marks which are 'Fanciful'- The marks which are related to invented word or phrase have been declared as fanciful marks. The most protection has been provided to the fanciful marks from the court which are at the highest end of the distinctiveness-spectrum in the society. There are many well-known trademarks which are fanciful marks, such as 'Google' for an inherent search website. Similarly, 'Kodak' for cameras and film, 'Xerox' for copiers.

The ' Distinctiveness' which has been acquired after enquiry

A question has arisen regarding the test of acquired distinctiveness. It means that a mark has been used in favour of goods which has indicated to the purchaser that goods have been delivered by the proper person and nobody else. Like others, there are the particular features of the distinctiveness. There is a distinction between two goods. Because the goods have been delivered by the particular person and the source is different. A word is sufficient which creates the distinction of person's goods. The petition regarding goods will prove their distinctiveness.[496]

It is necessary to decide whether a mark has obtained the distinctive nature or not. An overall assessment must be made by the competent authority for the collection of evidence. A mark has come to identify the product because it originated from a particular source. The mark will create a distinction between the products of goods of other undertakings.

[496] P.Naryanan, Law of Trademarks & Passing Off, Pages no. 268-271 (Eastern Law House, Kolkata, 6th edition, 2nd Reprint, 2010)

There is a question that must be had in particular about the specific nature of the geographical name. It is indeed that people are well acquainted with geographical names. Geographical names can acquire distinctive nature if there has been long-standing and intensive use of the mark. Mark has been used and applied for registration by undertaking.

A fortiori, where a name is already familiar as an indication of geographical origin in relation to a category of goods, an undertaking and applying for registration of the name in respect of goods of that category must show that the use of the mark-both long-standing and intensive-is particularly well established.

At the time to assess the distinctive nature of a mark, an application may be filed before the office for registration. The distinctive mark has held the market share, and it has been used long-standing and graphically widespread. At the time to promote the mark, the specific amount has been invested by undertaking. Depending on the mark, the proportion of the relevant class of person will identify the goods which have originated from a particular source and offer the statement from the chamber of commerce and industry and professional associations.

When the competent authority observes that the relevant class of people have identified the goods, or a significant proportion has got the origin of the goods because of mark then it will be decided that all procedures of registration have been properly maintained under the provision of section 3(3) of the Trade Marks Act 1994 of UK.

In seeking to apply for the test, the Court is unlikely to be assisted by repetitious evidence from individual consumers. The task for the court is to inform itself, by evidence of which a reasonably well-informed and reasonably observant and circumspect consumer of the product would know and then, treating itself as competent to evaluate the effect which those matters would have on the mind such a person with that knowledge, ask this question; would he say that the words or word identify, for him, the goods as originating from a particular undertaking.

A question has been arisen regarding the acquired distinctiveness in Windsurfing Chiemsee case[497], the Court of Justice in Europe has given the advice on the distinctiveness of the mark Chiemsee.

In the case of The Imperial Tobacco Co. of India Ltd. V. The Registrar of Trade Marks[498], it has been stated in the High Court of Calcutta that the distinctiveness means some quality in the trade mark. At the time of delivery of goods in the market, the mark which has been applied that are different from those of other producers of such goods.

In ITC Limited v. Philip Morris, Products A.A[499], the Court has examined the term 'Classic' in this case. It has been acknowledged that due to long-standing use, the term classic has acquired distinctiveness. At the time of the sale of goods, the consumer recognized the mark which will give the protection as a well-known trade mark.

An English Court has stated its opinion in respect of two expression 'adapted to distinguish' and 'capable to distinguish' of a mark. The former emphasized that it was because of the presence of a sufficient

[497] (1999) ETMR 585 ECJ
[498] AIR 1977, Cal 413
[499] (2020) SCC online Del 1477

distinguished characteristic in the mark. The appropriate user will use a particular mark which secures the positive quality of goods. It is the expectation of distinctiveness of mark. In case of second expression, the appropriate user will acquire distinctive marks for avoiding the negative quality and the mark will carry sufficient distinctive character.

Distinctiveness of Trade Marks

A distinctive trade mark means a mark which has distinguished the goods in the market. The person who uses the mark has the capacity to present the mark with goods. For determination of distinctiveness, one of the tests is required to recognize whether registration would tend to protect the purchaser from imposition on the result would be reverse of it. There are some principles which will be maintained at the time to distinguish the trade mark. The rules are that by using the name of an individual or of a company as a trade mark, no one should be allowed to restrain any person or company of a same or similar name for using his name or initials in connection with the goods manufactured by the second one. The mark will be allowed for registration, if the initials or the name or part of the name has by constant and extensive use acquired distinctiveness.

In Imperial Tobacco Co. of India Ltd., Vs. Registrar of Trade Marks[500], it has been held by the Division Bench of Calcutta High Court that if there is no inherent distinction qualities or features of a mark, the appropriate user may acquire the distinctions or other circumstances thereby overcoming the negative quality in the mark. The provision of section 9(1) of the Trade Mark Act 1999 has explained that the registrar shall not refuse the trade mark from registration if before the date of application for registration, it has acquired a distinctive character as a result of the use made or it or is a well-known trade mark[501].

A trade mark will be refused from registration but there will be proper grounds. The trademark is not in distinctive character and there are some similarities with other trademarks.

Invented Word- Two or more words may be combined in regard to the term 'invented' which has been used in relation to trade description. A new product has been described by using it. In Griffiths Hughes Ltd. Vs. Vick Chemical Co[502], it has been held by Calcutta High Court in every case, the two English words which have been combined are not an invented word, even though the combination may not have been used before nor mere variation of the orthography or the termination of word sufficient to constitute on invented word if to the eye or ear. As by the word, the same idea would be conveyed in its ordinary form. The Court has observed in the instant case that by dropping of 'U' and 'R' from the word 'Vapo Rub'. The term 'Vapo' has been ceased as an ordinary English word. The same element of novelty is introduced into it, which gives it the appearance of a coined word but still the status has not been changed as an invented word.

It has been observed that the 'trade description' will be the subject matter of registration and contain one invented word. The eligibility of registration depends on the invented word even if the trade mark does not contain any other particulars. The distinction of petitioner's goods from others has not been adopted. An invented word "Lorven" which is a combination of parts of 'Lord Venkateshwara', which can be called a distinctive and invented word.

[500] AIR 1977 Cal. 413
[501] G.B.Reddy, Intellectual Property Rights & the Law, Pages no. 268-287 (Gogia Law Agency, Hyderabad, 6th edition, 2007)
[502] AIR 1959 Cal 654

Surname Has Been Used as Trade Mark

For their benefit, the 'Surname' of the founder has been used as the trade mark by the business group at a limited time. During that time, the said trade mark obtains reputation and goodwill which may prompt either their competitors or potential competitors to use the same surname as their own trade mark. In Bajaj Electrical Limited, Bombay vs. Metals and Allied Products, Bombay[503], in this case, the plaintiffs whose company was incorporated as "Radio Lamp Works Ltd" in 1938 and changed to "Bajaj Electricals Ltd" in 1960, challenged the action of the defendants in adopting an identical mark "Bajaj". The only dissimilarity between the mark of the defendant no. 1 and the plaintiff was that the first letter "B" is in capital and except the mode of writing of letter "B" and joining the letters. In the instant case, the Bombay High Court has observed that the word "Bajaj" has a great reputation not only in India and but also in abroad. The defendants have not maintained the honesty at the time to use the word "Bajaj". An attempt has been made by them to pass off the goods as that of the plaintiff. Their intention was to secure the advantage of the reputation which has been earned by the plaintiff.

A mark which shall not be applied for registration as a trade mark if it is –

i) The mark which is similar to others or the nature of it is to deceive the public or create confusion among the people;

ii) Any matter which consists of hurting the religious sentiment of any particular community of the citizens in India.

iii) The matter which are comprising scandalous or obscene in the eye of society;

iv) A mark which is prohibited in the market under the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.

A businessman may apply a mark for his own purpose. Any type of mark shall not get registration as a trade mark under the provision of the Trade Mark Act 1999, if it consists exclusively of-

i) The pattern of goods, resulting from the quality of goods themselves; or

ii) The pattern of goods which is necessary to achieve a technical result; or

iii) The pattern of goods which provide authentic standard to the goods.

Geographical Names

In the region, the appellations of origin and indications of source are commonly used by a number of independent traders. The law may be National or International, but it has been applied to prevent any of them at the time to secure a vital advantage over the others. Thus, in Thomson vs. seppelt,[504] one of the seven wine growers in a town was not allowed as a trade-mark name to register the name of town. The legitimate interest of other traders lies behind the special requirement. According to the ordinary signification, if a word is a geographical name, it is registrable only upon some sufficient proof of distinctiveness. Therefore, in the case of Magnolia Metal's T.M.[505], the trade mark "Mangolia' was sought for an alloy and was granted even

[503] AIR 1988,BOM 167
[504] (1925) 37 C.L.R. 305
[505] (1897)2 Ch. 371; 14 R.P.C 621 (C.A)

though several towns in the U.S. bore that name, but the produce was connected with none of them. In India, the procedures of registration of Geographical Indications have been dealt with under the provisions Geographical Indications of Goods (Registration & Protection) Act, 1999.

In Hi-Tech Pipes Ltd. vs. Asian Mills Pvt. Ltd[506], the Delhi High Court held that the term 'Gujrat' is a geographical name which can be used as a trade mark in relation to steel pipes. Due to its continuous use, the same has acquired a secondary meaning and distinctiveness over a period of time. Thus, the defendants were restrained from using the mark who wanted to use a similar name "Gujarat" in respect of 'MS ERW' pipes.

Strategies for Enhancing Distinctiveness

Here are key strategies for fostering and maintaining the distinctiveness of trademarks-

Strong trademark should be chosen- The foundation of distinctiveness lies in the selection of strong trademarks. Business should opt for inherently distinctive elements right from the inception. For achieving inherent distinctiveness, coined words or symbols that bear no direct relation to the products or services they represent often possess a higher potential. This strategic selection sets the stages for a trademark's journey toward recognition and exclusively[507].

Consistent user and the trade mark which has got promotion- Consistency in the use of a trademark is paramount. Ensure the continuous and widespread utilization of the trademark in connection with associated goods. From advertising campaigns to packaging and various promotional materials, consistent visibility reinforces the association between the mark and its offerings. In the mind of consumers, this unwavering presence in the marketplace contributes to the imprinting of the trademark.

Enforcement and Monitoring- Vigilance is the cornerstone of maintaining distinctiveness. Regularly monitor to swiftly detect any potential infringement or unauthorized use of similar marks. In curbing unauthorized usage, prompts enforcement of trademark rights through legal channels is crucial, thereby preserving the distinctiveness of the mark. This proactive stance safeguards the brand's identity and prevents dilution.

Limitation of Acquired Distinctiveness

The acquired distinctiveness in the market is not available. For the protection of trade marks, there are some limitations of acquired distinctiveness[508].

i) Evidentiary standards which are high- Substantial evidence is required to prove the acquired distinctiveness. The burden of proof regarding distinctiveness lies with the trade mark in the society. The high evidentiary standard can be challenged in the meeting.

ii) Scope of protection is limited – When a mark will get protection to base on acquired distinctiveness in a specific goods or services then the distinctiveness will prove. The marks which are vulnerable may remain used by others for unrelated goods or services.

[506] 2006 (1) RAJ 177 (Del)
[507] https://www.gleamlaw.com.
[508] https://markshield.in

iii) The obligation which has been used continuously – The marks may be used continuously and substantially but the acquired distinctiveness is often contingent in connection with the goods or services. A mark will loss the acquired distinctiveness and subsequently the protection of trade mark when it will not be used in proper way.

iv) Capability of opposition – The claim of acquired distinctiveness may be challenged by the competitors during the process of registration and leading to the proceeding to oppositions. It can be time consuming at the time of overcoming the challenges. Additional evidence may be required at the time of legal argument.

Conclusion and Suggestions

At the time to obtain the protection of the trade mark, it is necessary to ensure that the inherent distinctiveness has been possessed by the mark or through extensive use the mark has acquired distinctiveness. A registered distinctive trademark will protect not only the brand owner's right but also fosters consumer confidence and brand loyalty. In the market place, the number of competitions has increased regarding the distinctiveness of the trade mark. It is not only indispensable to understand the distinctiveness of a trademark but also to recognize the brand identity in the market place. To ensure the protection of trademarks, the consumers are primarily unable to understand the use of trade mark as referring to the product itself.

For maintaining the distinctiveness doctrine within the Indian Trade mark system, it is necessary to follow some guidelines –

i) From the trade mark office, a comprehensive guide line will be provided to prove distinctiveness as acceptable evidence. The digital marketing practice and non-traditional trademarks will be considered by these guidelines.

ii) The process for proving distinctiveness and reducing the evidentiary burden could encourage more business to seek protection based on acquired distinctiveness especially for well –known marks.

iii) The trade mark which are not traditional will be protected and recognized in the market place by the Indian legal framework continuously. It is necessary to establish some guidelines for proving their distinctiveness.

iv) It is necessary to consider the cross-border trade and the impact of globalization. At the time to assess the acquired distinctiveness, the door of the Indian Courts should be opened for the Indian Market to consider the reputed global mark.

v) It is necessary to encourage the use of scientifically conducted consumer surveys as a reliable method to establish consumer recognition and association with a mark which will provide a more objective basis for assessing distinctiveness.

Regarding the registration of trade mark and protection based on distinctiveness, it is necessary to implement some guidelines. The practicality of the distinctiveness will be enhanced by the Indian trademark system. For brand owners the trade mark system will provide a more efficient and equitable framework.

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Chapter – 19

Balancing The Rights of Unborn Child and Women`S Reproductive Autonomy- A Constitutional Challenge

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Abstract

The right to life is essential for the enjoyment of all other fundamental rights. Therefore, these basic human rights should be recognized from the moment a child is conceived in the mother's womb. However, this emphasis right to life of an unborn child can jeopardize women's reproductive rights. Hence, it has become a controversial issue that has been uprooted with a question of whether the rights of the unborn child supersede the women`s choice to reproductive rights, including the right to terminate the pregnancy under the Indian Constitution. According to the ethical and moral standards of society, abortion has been referred to as a criminal offense or as a sin. Municipal laws were enacted in various nations to regulate the laws related to abortion, allowing women to abort the child under rare circumstances. The US Apex Court decided that the "right to privacy also includes women`s right to an abortion". According to this decision, women now have the option to abort during the entirety of the pregnancy. Thus, this paper attempts to settle this ongoing debate over balancing the abortion right of women with reference to privacy. This paper examines the abortion problem with a focus on India. Analysing the rights of the unborn child and women's reproductive liberty is the key constitutional question of this paper. Such halting in legal intercourse between the protection of the potential life of an unborn child and in women's right to decide on their own bodies creates legal and ethical conundrum. The article examines the total concerted effort and the hue and cry in judicial and legal essays to address this problem as well as the constitutional and or women's reproductive rights. At a final step, it calls for a prolife position in favour of the unborn child but also in consideration of the fetus as a person and the concern with women's rights, and social and ethical implications of the case.

Keywords: Unborn, Legal Personality, Right to Privacy, Abortion

Introduction

The rights of unborn children and women's reproductive freedom – or lack of it – remain something of a constitutional enigma in India. It really depicts the constant fight between freedoms and what society requires or demands. As per the Constitution and more precisely Article 21, women enjoy rights of life and personal freedom which also encompass a woman's decision to terminate her pregnancy. But here's the catch: this right isn't absolute. It must be weighed against any rights of the unborn, and that makes me think of a lot of legal, ethical and social issues. Today whenever we discuss about abortion laws in India, we get MTP Act from the year 1971. It has been adjusted a few times to reflect the growing requirements in the society. The MTP Act would like to provide women with protection in making their own decisions towards their health by permitting the abortion of fetus under some circumstances. At the same, it underlines the state's concern to protect potential life with gestational restrictions and other measures.

Court cases, like Suchita Srivastava v. Chandigarh Administration (2009) and X v. Principal Secretary, Health and Family Welfare Department (2022), have helped clarify what reproductive rights really mean. These decisions emphasize the importance of bodily autonomy while also recognizing that the state has a duty to protect vulnerable lives. But here's where it gets complicated: how do we balance a woman's right to choose with the rights of an unborn child? As society's views change and medical technology advances—changing how we think about fetal viability—the conversation around reproductive rights in India continues to be a hot topic filled with legal and ethical implications. Finding a way to achieve this balance isn't easy. It requires a thoughtful approach that respects personal freedoms while also considering wider societal and ethical concerns. This whole issue is, without a doubt, a key part of India's constitutional discussions.[509]

Examining Legal Status of Unborn Child in India

Officially, a child that is still inside its mother`s womb is not considered to be a person. A legal fiction, however, treats an unborn child as having already been born. Another way to say it is that they are given legal personhood. When that child is born alive, they will have legal status. To what point an unborn be regarded as a person, However, philosophers and lawyers have expressed varying opinions. In terms of biology, a human being is only regarded as existing after conception. The fetus at 14 days after conception is regarded as a person in embryology.[510] According to Hindu religious texts and doctrine, the abortion of an embryo at any stage is wrong. Islam has also accorded the fetus the status of an entity, declaring its rights and outlining penalties for those who violate them.[511]

The legal status of the unborn child in India represents a complex interplay between constitutional principles, statutory provisions, and evolving judicial interpretations. While the Indian Constitution does not explicitly define the rights of an unborn child, its provisions on balancing their potential rights with other competing interests.[512]

[509] Right of Unborn Child with reference to article 21 of the Constitution, available at: www.https://lexforti.com (Last Modified on July 3, 2022).
[510] J J Miklavcic and P Flaman, "Personhood Status of The Human Zygote, Embryo, Fetus" available at: https://www.ncbi.nlm.nih.gov (Visited on Nov 01, 2024).
[511] Dr. Zainab Amin, Dr. Muhammed Zahid, Dr. Rizwan Ullah, Shuhrat Iqbal, "Right of Fetus in Islam and Western Law – A Comparative and Analytical Study", 6 *Journal of Positive School Psychology* (2022).
[512] Shalini Dhyani, The Reproductive Right of Women and Unborn Children Rights, 9 *The International Journal of Social Science and Humanities* 1267 – 1278 (2023).

The Medical Termination of Pregnancy (MTP) Act, 1971 that outlines when pregnancy can be legally ended and this SF deposits it, which implies that the state has interest in protecting potential life. The Act places gestational limits and medical standards; at the same time, it is not indifferent to fetal rights and women's freedom, The provisions of Indian Penal Code IPC Section 312 provide that it is unlawful to abstain a woman child bearing, if it is not done in good faith for the preservation of the mother's life. There is also prior case law which strengthens this conversation. In similar cases such as Suchita Srivastava v. In Chandigarh Administration the Supreme Court affirmed the right of women to choose without interference but at the same allowed the states to put in place measures to halt abortions to protect potential life. Similarly, X v. In order to critically look at abortion rights and the fetus interest, the Principal Secretary for the Health and Family Welfare Department stated that there is need to look at each case.[513]

The unborn child's status remains contingent on the broader societal and ethical context. While recognized in specific areas, such as inheritance rights upon birth, there is no comprehensive legal identity until birth occurs. This makes the legal status of the unborn in India an evolving issue, reflecting the dynamic intersection of individual freedoms, ethical considerations, and societal values.[514]

Whether Fetus has Right to Life or Not- An Ongoing Debate

The Unborn are increasingly being acknowledged as both human beings and as people who are entitled to legal protection. According to the current scientific understanding, the fetus is indeed a human being from the very moment of its conception.

The zygote, the first cell of a new individual is created when male and female gametes come together. This means that by the time, the mother`s pregnancy is detected, the fetus has already developed entirely. Many contemporary human embryologists believe that upon fertilization, when maternal and paternal DNA unites to form a set, a new human being, is produced.

The electrical brain waves start to work as early as day 43, and the fetus`s heart starts to beat between 18-25 days following conception, according to scientific research. The absence of brain waves is a sign of death. When the abortion is performed, the infant already has a heartbeat and audible brain waves.

Thus, a developing human inside the mother is a unique individual. The detection of human DNA only a few days after fertilization is the opinion of modern biologists, established without a reasonable question that a child no matter how small is a human life. Thus, the state must safeguard the fetus`s fundamental freedom.[515]

The lack of legal personhood of the embryo, and consequent lack of rights, is another defense offered by this side. Therefore, having an abortion does not violate anyone`s personal rights. Abortion only happens during the first trimester since a fetus cannot survive without its mother at that point. Its health is reliant on her health because the placenta and umbilical cord connect them. A fetus cannot exist outside of the mother`s womb, hence it cannot be regarded as a separate entity.

[513] Anshu Sharma and Sarthak Sangwai, "Rights of An Unborn Vis a Vis Rights of Women" 4 *International Journal of Law Management and Humanities* (2023).
[514] Suchita Srivastava and Anr. v. Chandigarh Administration, (2009) 9 SCC 1.
[515] Anita Ghai and Rachana Johri, 'Prenatal Diagnosis: Where Do We Draw the Line?' 18 *Indian Journal of Gender Studies* 291 - 306 (2008).

Abortion- a right or denial of, right?

Actually, the idea of abortion has existed since the dawn of mankind. The only difference is that abortion was practiced in the country before modern technologies and cutting-edge medical tools were available, and it was completely different from the situation as it is today. But these kinds of practices without taking appropriate and proper care will have a harmful impact on both the mother`s health and the unborn child. It's the fact that abortion can`t be justified as a woman`s only right because it can harm the rights of an unborn child violating its legal and fundamental rights enshrined under the Indian constitution.[516]

Abortion is primarily motivated by two factors, the first of which is more legal and is performed in order to protect the mother`s health. Thus, legal abortion can be performed under The Medical Termination of the Pregnancy Act, which allows for such procedures to be performed with relative ease. Secondly, the law here does not expressly state that only married women may choose abortion, which is why unmarried women without marital ties are choosing abortion after becoming pregnant out of wedlock.

Therefore, conservative Indian society vehemently opposes the practice of abortion because, according to the statements of religious authorities and other conservative organizations, such practices not only violate morality and ethics that must be upheld in a traditional society like that of India where religious philosophies play a vital role in the right way to live, but also shatters religious beliefs. Another significant criticism of the Medical Termination Act in India is that it only addresses women`s right to perform abortion, the rights of the unborn child are not mentioned explicitly or implied anywhere in the said legislation. The question of whether the practice of having an abortion can be viewed as a legal right of a woman carrying a child in her womb or whether or not an unborn child`s right, including his right to life, are being curtailed by evil practices like abortion, is thus forever in dispute.[517]

Therefore, women must exercise caution and due diligence when choosing abortion because, even today, the social stigma associated with abortion persists in societies like India and many of its residents do not fully support the practice, despite it being legal there.

Balancing Rights: Woman vs. Unborn child

Indian law emphasizes a woman's freedom in future decisions regarding her body, but there are still loopholes, particularly volatile ones. The Indian law favours women's self-rule, but legal questions of concern remain when it comes to unborn children. The CJI led Bench therefore flips back and forth between a woman's right to an abortion and the rights of an unborn child. Indian law relating to abortion can be described as progressive since courts have generally aligned themselves with the woman's right to choose. The ongoing Supreme Court case outlines the legal or otherwise moral complexities of abortion in India. It was also agreed that while the law provided for a woman's reproductive freedom the real issue lies in trying to strike the correct balance for conflict of interest between the woman and the fetus. The legal process in this compelling case raises awareness regarding the issues on which legal discussion should persist and may require legislative changes in reproductive rights.[518]

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[516] Asit K Bose, "Abortion in India- A Legal Study" 16 *Journal of Indian Law Institute* 535-548 (1974).
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[518] Ventre David "Legal Status of Infant" 17(2) *The University of Chicago Law Review* 395-400 (2009).

Judiciary on Women`S Reproductive Autonomy in India

In the past, abortion was not legal and was greatly frowned upon by society. Pregnancy termination was referred to as the murder of a fetus. India was the first country to legalize induced abortion and allows women to obtain an abortion if being pregnant poses a risk of serious physical harm, endangering psychological health arises from the failure of the married woman`s contraception to prevent rape, which results in the birth of a child who is physically or mentally abnormal. There is no need for a spouse`s consent for abortion up to 20 weeks of pregnancy.[519]

Most of the time the life of a woman is at risk any time an unwanted pregnancy poses a danger on the physical, mental or psychological wellbeing of the woman. In the rape situation, women's respect in society disappears as well. However, abortion in India was not legal until the Medical Termination of The Pregnancy Act of 1971[520] in India though abortion had been prohibited under the Indian Penal Code 1860.[521] The IPC drafters used the word "miscarriage" not "abortion" in section 312. Subsequently, Medical Termination of Pregnancy Bill Act of 1971 made the right of women to have an unwanted abortion effective by licensed doctor in the public hospitals. The right of women in this regard is not fully equipped because its applicability depends with several factors, which are the doctors' considerations by whether or not the woman's life or her physical or mental well-being is at severe risk of being threatened, whether or not the abortion is necessary for saving the life of the woman and if there is evidence that the child would be born with severe physical or mental illness. Court has played an important role in making sure that women possess these rights. Abortion rights are part of privacy because of that.[522]

In case of **Suchita Srivastava & Anr vs Chandigarh Administration[523]**

The Delhi High Court decided in the light of Article 21 of the Indian Constitution that a right of a women to make reproductive choices is considered under the scope of personal liberty. Pregnant women who are disabled cannot be forced to have an abortion said to the court. In this case, Laxmi Mandal was the first to maintain that there is a human rights violation with maternal mortality.

Nand Kishore Sharma v. Union of India[524]

The Act says that any woman seeking for a medical termination of pregnancy has to meet certain requirements set by Section 3(2)(b) of the Medical Termination of Pregnancy Act, it was held that this restriction was reasonable and legal therefore did not infringe on the petitioner constitutional right. The Court highlighted the need to safeguard the liberties of the unborn kid and also put it clear that the State has a rational interest in controlling the abortions with a view of safeguarding the lives of the mother as well as the baby. The Court also pointed out that the restriction which exist under the Act was grounded on medical and scientific factors and was within the recommendations of the expert committees and global standards. Thus, the Court rejected the present petition with directions and affirmed the constitutionality of Section 3 (2) (b) of the Medical Termination of Pregnancy Act, 1971.

[519] Ibid
[520] The Medical Termination of The Pregnancy Act of 1971, available at: www.indiancode.in (Visited on Nov 14, 2024).
[521] The Indian Penal Code 1860, available at: www.indiancode.in (Visited on Nov 14, 2024).
[522] Sai Abhipsa Gochhayat, "Understanding the right of abortion under Indian constitution" 8 *International Journal of Management and Humanities* (2023)
[523] (2009) 14 SCR 989
[524] AIR 2006 Raj 166 and 2006 WLC Raj UC 411

Dr. Nikhil Datar v. Union of India[525]

The petitioner was enthusiastic to rid the extremely arbitrary restriction of 20 weeks in cases of abortions even in instances of severe fetal abnormality by way of an amendment to the MTP Act. Thus, save our Babies may be considered as the turning point in the attempts to challenge the current legislation of the UK as the court did not limit the provisions of the Act but the case focused on the necessity of the legislative reform providing new grounds for raising the gestational limit in some instances in 2021.

Principal Secretary, Health and Family Welfare Department[526]

This recent Supreme Court judgment enlarged the definition of 'woman' under the MTP Act and allowed unmarried women also the right to abort up to 24 weeks pregnant. Most importantly, the Court highlighted on the principles of privacy, bodily integrity, and non- discrimination which affirmed the constitutional compliance on the Act while at the same time as a advocating for safeguard of women's rights.

Recent Development

The Supreme Court on Thursday (12.10.2023) pointed to the need to respect the rights of a woman to decisions about her body and reproductive system together with the rights of the unborn child. The CJI D Y Chandrachud and justices J B Pardiwala and Manoj Misra on Wednesday were hearing a plea for medical abortion of the current pregnancy of a married woman who is 26 weeks pregnant. The woman — 26 weeks pregnant, married with two, struggling with postpartum psychosis — claimed she was incapable of carrying, delivering or raising a child physically, emotionally, mentally, financially, or medically. Rejecting the plea, the three-judge Bench led by CJI D. Y. Chandrachud further pointed out that the Court cannot allow the recognition of a woman's agency undermine the rights of the 'unborn child'. The Court showed some measure of resistance to a medical termination where the pregnancy is viable, and the woman's life is not at risk.

This decision therefore is made with reference to a clause of the MTP Act, 1971 Section 5 which permits termination of pregnancy only if the woman's life or health is at risk. Thus, the three-judge Bench, headed by the CJI made it clear that a women cannot assert an 'outright, superordinate right' for abortion where the medical reports record that the pregnancy or consequential childbirth is not a threat to the woman's life or the fetus's life. The words 'life' as used in section 5 of MTP Act, 1971 was not to be understood like life under article 21 of the constitution of India as the former was contextually perceptive to life and death incidences. Article 21 safeguards the intrinsic right of right of every citizen to live a life with dignity and of his/her choice.

Conclusion

The current research investigation makes it clear that protection rather than personality is needed for an unborn child. Giving a child legal individuality would only cause issues for the mother, the father, other people, and the state. Questions about the responsibility of the unborn materialize in this circumstance. The state must enact a law in order to provide protection. The mother`s freedom must be protected by the law and the public interest in safeguarding potential human beings. The welfare of an unborn child is ensured when the mother`s rights are first respected, and her health is given the attention it deserves. The unborn child's most fundamental right is to live, or in other words, not to be aborted. We do not enjoy the status of

[525] W.P. (C) 1816/2008 (Bombay High Court)
[526] (2022) SCC OnLine SC 1321

humans when we are in the womb, killing an unborn child is not regarded as a homicide. However, it is very important to protect the rights of a child who is not in existence. However, the law has prioritized women's interests over an unborn child's interests. Since the issue of abortion has been a topic of debate for the longest time it involves medical, ethical, and social complications. In India, a woman has been given the right to terminate the pregnancy in some special circumstances. Currently in India, The Medical Termination of Pregnancy Act 2021, includes legislation related to abortion, thus, protecting the rights of `women to terminate their pregnancies. The main purpose of this legislation was to provide women with more feasible options to terminate their pregnancies. However, the MTP Act permits a woman to abortion if her pregnancy has lasted longer than 24 weeks as long as the medical superintendent believes that the mother`s life would be seriously endangered. Moreover, the judicial system still has to concentrate on proactive state-level policies that guarantee just and equitable access to abortion.

Thus, the practice of abortion should only be necessary in cases of extreme contingencies, such as severe health conditions of mother and child, or even unborn child has become a threat to the life of the mother. Abortion should only be regarded as an exceptional rule not as a general rule. Furthermore, it is important to note that the protection of an unborn child is equally necessary as protecting the rights of a pregnant mother, as an unborn child also has some vested rights, including the right to life, which the government is obligated to uphold through appropriate legislative measures.

Suggestive Readings:

- Judith Jarvis Thomson – A Defense of Abortion (1971)
- Ronald Dworkin – Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom (1994)
- Michael Freeman (Ed.) – Law and Bioethics: Current Legal Issues
- Glenn Cohen – Patients with Passports: Medical Tourism, Law, and Ethics
- John Keown – Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982
- Rosalind P. Petchesky – Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom
- Maya Manian – The Irrational Woman: Informed Consent and Abortion Decision-Making Ethical & International Perspectives
- United Nations Human Rights Committee – General Comment No. 36 on the Right to Life.
- World Health Organization (WHO) – Safe Abortion: Technical and Policy Guidance for Health Systems.

Chapter – 20

Using Artificial Intelligence to Improve Judicial and Litigation Efficiency

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Abstract

Such data would be wrong (it was not utilized in the judicial framework of courts and legal procedures) and information gleaned only after novelty of a few new opportunities created (and which have the potential to deliver increased efficiency, access, and fairness in the dispensation of justice). In respect of managing monotonous routine/clerical work, systematic case/issue planning along with the use of predictive high-tech aids to aid decision making, AI can really resolve the burgeoning problem of too many cases, few resources and long delays in dispensing justice. But the emergence of artificial intelligence in the legal field raises some essential and significant questions that must be addressed concerning transparency, accountability, responsibility and several other ethical dilemmas. The current compendious research scholarly article illustrates different ways how AI can take out many dimensions of courts and legal work, thoroughly elaborating both its various advantages, the challenges it brings as well as some practical real-life illustrations we can witness from across the globe. The paper compares current trends, case studies, and expert opinions on building a guideline to practice AI in judicial processes correctly and responsibly.

Key Words: Artificial intelligence, Judiciary, Litigation, Efficiency.

Introduction

The judiciary serves as the most important pillar of democratic governance and it is responsible for protecting justice and upholding the rule of law. But, in all country judicial institutions have many concerns—slow movement of cases, packed courts and uneven access to legal facilities.

This can be viewed from the NJDG[527] 2024, there are over 45 Million pending cases in the courts in India. This kind of huge backlog is not just a reason to make the public lose their trust in the judicial system but in addition to this, it goes against the principle that justice should be given in a timely matter. In the wake of the growing problem, AI offers the contemporary solution for this by providing intelligent automation and data analytics as the bottleneck removal to increase process efficiency.

[527] National Judicial Data Grid (NJDG), Government of India, 2023.

Such immense variation of analysis, pattern detection, and finally predictive assessments, makes automation of the judiciary and litigation processes a possibility. Thus, AI offers the means for simplification in legal searching, case workflows administration, the assumption of case outcomes, thus, amplifying human skills in enhancing justice steadily more productive and attainable ultimately. For example, technological developments SUPACE or Supreme Court Portal for Assistance in Court Efficiency of India and in China the Smart Court system. This chapter sets out to investigate the following:

- How is AI currently being used in judiciary and litigation?
- On the moral, legal and technical issues of introducing AI into the court system.
- Global initiatives and case studies of AI in judicial systems
- Guidance for responsibly incorporating AI systems into legal contexts.

Ai In Judiciary

For the first time, AI is now an integral and essential element of legal systems after a decade of service of very important applications: digitisation and basic database management. However, as technologies like machine learning and natural language processing evolve, these systems can now also conduct legal research, case management, and case prediction.

In Online Courts and the Future of Justice (2019)[528], Richard Susskind noted the democratizing potential of AI driven online courts. AI systems are well within their means to offer avenues like Online Dispute Resolution that can reduce a court's necessary costs and make true, often, and justly make an effort to justice of the peace, for every person, especially those on the margins who have the most stake. AI could potentially fix the bottlenecks in the current working of the judiciary and also mentioned the risks of algorithmic bias and data privacy concerns (NITI Aayog report 2021)[529], also AI Application can ease description, supporting data/statistics, case backlog reduction. AI tools reduce delays in the process by streamlining case management, automating routine tasks, or prioritizing cases. India, which has 4+ crore pending cases, is already using AI tools such as SUPACE by Supreme Court of India which can analyse large volumes of data for legal judgment and fast delivery of verdict[530].

Legal Research and Analysis

AI helps judges and lawyers out by processing precedents and legal documents quickly. In March 2023, ChatGPT was used by Punjab & Haryana High Court with an aim to gain insights into bail jurisprudence pertaining to complex and heinous cases.[531] SUVAS, an AI-powered tool, translates judgments into regional languages, making it more accessible. As of August 2024, 36,271 Supreme Court judgments have been translated into Hindi and 17,142 into 16 regional languages[532] data trained up to October 2023. AI makes virtual hearings and real-time transcription of oral arguments possible. The Supreme Court's Live

[528] Susskind, Richard, "Online Courts and a New Era of Justice", Oxford University Press, 2019.
[529] NITI Aayog, "Responsible AI for Social Empowerment (RAISE) Government of India", 2021.
[530] From Backlogs to Breakthroughs–The Integration of AI In India's Judiciary, India AI, July 22, 2024.
[531] "AI in Indian Courtrooms: Riding the Tightrope of Innovation and Vigilance," NLIU Law Review, October 4, 2024 [accessed 9th May 2024] https://nliulawreview.nliu.ac.in/blog/ai-in-indian-courtrooms-navigating-the-tightrope-between-innovation-and-vigilance-2/
[532] "Artificial Intelligence in Judiciary", Press Information Bureau (PIB), August 5, 2024, [https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2043476]

Transcription Project is underway for Constitution Benches since February 2023.[533] Structured by historical data, AI anticipates the outcome of cases, guiding decisions. An AI system that could read legal orders of judges and help them analyse case trends has been developed by IIT Kharagpur.[534] AI is being used to automate analytical processes behind document analysis, contract review, and generation of notices (e-notices) to drive down time taken and costs. Continued use of AI tools for effective document appraisal in civil cases lowers the costs of litigation.[535]

SUPACE and the like help the judges out by adding facts or legal references relevant to the case in front of them. SUPACE speeds up judicial research by providing case-specific information in no-manner influencing decisions. This outlines the use of AI being adopted across different aspects of Indian judicial system to improve efficiency, accessibility, and decision making in the judiciary so as to resolve issues like case backlogs.

Ai Intelligence and Laws

There has been writing using different theoretical lenses to analyse AI's relationships into the judiciary:

Legal Formalism: This paper argues that AI's adoption in law is a natural fit for the legal theory of formalism, which believes the law can be understood by a set of rules and data. More than 80% of organizations say they depend on traditional approaches to legal risk management such as predictive analytics tools, which are grounded in the uniform application of legal rules to analogous cases.

Critical Legal Studies: Accused from a different viewpoint, critics of this line of thinking say AI that's built to make decisions based on data that it was trained on will only exacerbate the bias seen in that data. The history of favoritism that is reflected in the datasets by which judges are guided, for instance, can be 'fed' into the artificial intelligence systems, and thus lead to continued injustice.

AI in judicial procedures: that relates in fact by the literature to different correlative benefits and drawbacks or risks, and therefore a demand as having to be vacation fundamentally hone ethical standards and control systems.

AI has taken the judicial systems by storm and led to so many changes that make this arm of government to be efficient and also wham accessible. This section explores numerous options on how AI is been used in judiciary and highlights it as the powerful way to revolutionize the field of litigation.

AI helps speed up legal research, which has till now been an extremely tedious process involving reviewing through statutes, case laws and legal precedents. Natural language processing (NLP) is used to enhance search results in large databases such as Lexus nexis[536], Westlaw or CaseMine amongst many modern systems.[537] Among those tools are citation analysis, the ability to generate legal briefs and visual case map, all of which will help lawyers and judges to independently find relevant legal materials.

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[533] "Artificial Intelligence (AI) in Indian Judiciary", Drishti Judiciary, 8th of March, 2022. Link: [https://www.drishtijudiciary.com/editorial/artificial-intelligence-ai-in-indian-judiciary]

[534] Md. Arif Imam, "The Integration and Impact of Artificial Intelligence in the Indian Judiciary," LinkedIn, January 1, 2024, Available at: https://www.linkedin.com/pulse/integration-impact-artificial-intelligence-indian-judiciary-1nx3c

[535] "Artificial Intelligence in Judiciary," Drishti IAS, Available at: https://www.drishtiias.com/daily-news-analysis/artificial-intelligence-in-judiciary

[536] LexisNexis, "Related: The Role of AI in Legal Research", (2019).

[537] CaseMine, Indian Lawyers Demand Curbing Use of AI-Powered Legal Research Tools, 2020.

A good example is Case Mine's Case IQ, which helps produce a connection map of the related cases that aid legal professionals in crafting their strong cogent arguments and plans. This is a huge time saver, particularly as Monthly Extracts are published for both countries and Fresh Case Laws are generated almost every week for e.g. India and the United States. "The capabilities of Case IQ showcase how AI not only supports legal practitioners but complements their expertise by providing quick, intuitive, and reliable legal insights that were previously unheard of."[538]

Predictive Analytics

In a legal sense, predictive analytics tools involve the use of previous case data to forecast future litigation outcomes.[539] These tools employ algorithms that examine variables such as case type, jurisdiction or prior rulings to provide a likelihood of success or a range of optimal settlement value.

As one example, Premonition is a US based legal analytics firm that ranks lawyers and law firms based upon their performance using court records in certain judicial jurisdictions. In a similar vein, the Supreme Court Portal for Assistance in Court Efficiency (SUPACE)[540] in India has been designed to assist judges by analysing the likelihood of previous case results.

SUPACE is, out of many, the most recent AI that was launched in 2021, and that serves as main tool of the judges in handling of the cases. It will highlight the way India dreams of deploying AI for rebooting its judiciary.

Automated Case Management

Automated case management systems exemplifying AI have annihilated most of the administrative processes in the judiciaries. These systems mitigate routine tasks with regard to the scheduling of hearings, notifications, and case files that need considerable human effort.

An example is ROSS Intelligence and Legal Files[541] that collaborates with court solutions to make them work better. For instance, the documentation pulling and case management is managed by ROSS Intelligence, allowing the legal person to focus well on the analysis, e-Courts Mission Mode Project, designed to spare case records written paper based conditions and the court front for management in a controlled centre. The classification is on the system to make out cases by urgency and type and finishes these flows. The social complexity of subsidization of the court for the judges in overcoming the business of the court through mechanized systems by the Emancipation of the case management

[538] NITI Aayog, Responsible AI for Social Empowerment (RAISE) Government of India, 2021.
[539] Premonition Analytics, "Predictive Legal Analytics", available at www.premonition.usa.org.
[540] Supreme Court of India, "SUPACE: AI in Judicial Processes," official statement, 2021.
[541] ROSS Intelligence, "AI Tools for Lawyers. e-Courts Mission Mode Project, Ministry of Law and Justice, Government of India, official report 2023 [19].

Virtual Hearings

AI technologies fastened the trend of virtual hearings worldwide in the time of COVID-19. Various AI-enabled tools are being pumped into virtual courts in relation to transcription services, linguistic translation, and better more effective ways of presenting cases in the courts etc.

Example: Indian Based Justice Technologies' Online Dispute Resolution (ODR) solution which has AI as a doer of end-to-end virtual hearings. It finds that these tools have an effective record in documenting legal developments, harmonizing international legal cooperation and reducing burdens for claimants and their legal representatives.

Another example of how AI does this is through solving linguistic diversity–real time translation. For instance, Chinese courts utilize AI enabled translation technology while proceeding if any such multicultural gathering takes place.

"AI-led virtual hearings and e-courts are the future of justice delivery to the citizens, where we not only provide convenience but also enhance inclusivity without sacrificing procedural fairness. – Richard Susskind, Online Courts and the Future of Justice[542]."

Online Dispute Resolution (ODR)

One of the best usage of AI in judiciary and litigation is in Online Dispute Resolution (ODR) platforms. Both are ADR platforms, which use artificial intelligence to settle disputes that would otherwise have to go through a traditional court system at lower cost and less time.

The use of AI can enhance existing ODR processes through communication as well as evidence analysis and predictive models for settlement. For example, Modria, an artificial intelligence system, describes solving disputes for all types of transactions including those related to electronic commerce and money transfers. The algorithms take a look back at past instances to identify logical solutions that are fair towards each.

As shown in the table below, India has also done fairly well in ODR, with a considerable number of India's International Scheduled disputes being heard and resolved through ODR. Some other industry fields use SAMA[543] platform to make the real time dispute solving based on artificial intelligence, for example, the banking and insurance industries. It is relevant to mediator matching using machine learning algorithms that seek to ensure neutrality in identifying which cases are best-suited for mediation.

AI-based chatbots are other forms of ODR that even include providing required legal assistance while Do Not Pay. With these, users are conversed as they address inquiries and draft legal works, and even challenge absurd legal incidences such as being fined for parking.

But with ODR challenges do remain; such as issues of the digital divide and public confidence. The opposition assertion: This boils down to the fact that some, if not a lot of legal claims require empathy, so too much on board with AI in claims settlement can backfire.

[542] Susskind, Richard, Online Courts and the Future of Justice, Oxford University Press, 2019.
[543] SAMA, "Resolving Disputes with AI." Available at www.sama.live.

Case Studies

In order to look at potential practical implementations of AI in judiciary and litigation, this chapter highlights a few successful examples such as

India: SUPACE Initiative

The latest AI project in the judiciary is the Supreme Court Portal for Assistance in Court Efficiency in India launched in 2021. Designed for judges, SUPACE uses artificial intelligence techniques for gleaning information and offering summaries and recommended actions from case documents.

It has especially been beneficial in reducing the time spent on research when the judges took more interest in delivering judgments. In one of its applications, for example, in a 2022 lawsuit on property dispute, SUPACE pre-processed a court case and then just took a few minutes to find major antecedents of the affected property, which would have required a record search for weeks of time if done manually.

Nevertheless, the system cannot be immaculate and as we are about to see it has its own flaws. It alleges that it is only beneficial to superior judiciary while ordinary judiciaries still use traditional methods. Widening the scope of SUPACE could democratize the experience and bring these advantages to bear on the judiciary more widely.

China: Smart Courts

Artificial Intelligence applications in court systems in China[544] which carries out under the Supreme People's Court have redefined the submission of proof, processing of cases and preparation of judgements. It reported that by 2023, over 3 million cases had been processed through AI enabled platforms, reducing the average timeline for litigation by as much as a third.

In view of this, a special Hangzhou Internet Court has been established for functionaries of adjudicating e-commerce and IPR cases. The AI tools used in this court are case document categorization, case results forecasting, and assistance in formulating the ruling of the judges. It also includes a model of a court but where litigants still have the option of appearing remotely.

Nevertheless, despite being relatively highly efficient in dealing with cases, China's Smart Courts have been criticized for the improper utilization of data as well as opaque work. Yet humans remain almost irreplaceable in the process of ensuring fairness and accountability in those systems.

U.S.: COMPAS Tool

The United States and other English-speaking developed countries have made great strides in the utilization of artificial intelligence (AI) in the intelligent adjudication of legal issues. The most prominent example of these types of tools is the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)[545]. Originally developed to predict offenders recidivism rates, COMPAS works by analyzing data on offenders' history and risk factors in conjunction with machine learning – then suggests recommendations related to punishing the criminals.

[544] Fairness and justice through automation in China's smart courts, available at www.sciencedirect.com.
[545] COMPAS, "Correctional Offender Management Profiling for Alternative Sanctions," 2023.

Leveraging Artificial Intelligence (AI) within legal and litigation processes has proven its importance in terms of efficiency, savings, error reduction, and access to justice. The pie chart shows these advantages in the following percentage division:

Efficiency Maximization (40%): AI improves efficiency through the automation of repetitive tasks like document review, legal research, and case evaluation.[546] An example of this is found in AI systems such as Brazil's "Victor" and China's "Smart Court," in which cases are processed faster using vast datasets and Artificial Intelligence.[547] This helps courts work through backlogs and focus time and resources on complex cases.

Error Reduction (30%): AI reduces human error introduced into the legal process by supplying consistent and correct data analysis, entry points to inconsistencies in the evidence, and suggestions for decision-making. In the U.S., tools such as COMPAS show judges how to assess risks more accurately; in Argentina, for example, predictive systems such as Prometea help ensure consistency in rulings.[548]

Cost Reduction (20%): Routine legal tasks can be automated, reducing litigation costs for courts and litigants. AI-based tools automate workflows, and decreases the time and resources required for manual labour. AI-assisted transcription tools such as Estonia's "Salme," for example, reduce the time it takes to transcribe a recording.[549]

Increased Access to Justice (10%): AI helps democratized legal services by making legal information available to everyone through chatbots and predictive analytics. This enables low-income people access to justice in a very real way.[550]

On the backend, COMPAS is spread out across the State courts of the America that assist the judges in two ways, firstly in determining the type of bail that a given accused should be given along with the conditions, and secondly helping in determining parole time and the suggested length of time of sentencing. In one case, in a civil defendant for the Wisconsin Supreme Court in 2016, the system generated a risk prediction that would help determine the judicial decision of how to sentence a recidivist.

This holds great significance for COMPAS since it aims to lessen the biases which are integral to manual assessments while also offering structured and elaborate insights on the problem. Its use, it has been said, has led to quicker steps being taken before trial and greater consistency in sentencing patterns.

Conclusion in Limitations, Pros and Cons, Pros and Cons, Limitations, Limits, Challenges and Ethical Issues.

But COMPAS's analogous scroing has been criticized as furthering systemic racism. In 2016, the news outlet ProPublica reported on the axle problem with the tool, which had assumed that African American defendants had a greater chance of reoffending than white defendants.

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[546] The Role of AI in civil cases in India - Exploring its possible consequences. June 27, 2023, Enhelion Blogs. Available at: https://enhelion.com/blogs/2023/06/27/use-of-ai-in-civil-cases-in-india-an-analysis-of-possible-implications/

[547] Bar & Bench Three Harvard graduates using AI to boost productivity in the Indian legal practice. October 10, 2024; Bar & Bench. Available at https://www.barandbench.com/news/three-harvard-graduates-jhana-ai-lawyers-in-india.

[548] https://www.barandbench.com/columns/artificial-intelligence-in-context-of-legal-profession-and-indian-judicial-system

[549] https://woxsen.edu.in/research/white-papers/exploring-the-use-of-ai-in-legal-decision-making-benefits-and-ethical-implications.

[550] NJA Report Emerging and Future Technology for Effective Judicial Governance. National e-Committee, National Judicial Academy (NJA) of India, 2022-23. Available at https://nja.gov.in/Concluded_Programmes/2022-23/P

Furthermore, the proprietary nature of COMPAS's algorithm leads to a "black box" problem, where its decision-making processes are opaque. Critics including in the government maintain that lack of accountability undermines the integrity of AI in the judiciary.

To avoid such troubles, experts suggest to use open-source AI models and with the ones that are getting audited regularly for biases and built using fair approach.

Benefits of AI in Judiciary

All these changes indicate that evolution of the AI in judiciary comes with a lot of innovative solutions that can help to handle this problem and challenges. The legal profession surely stands to benefit tremendously from developments in artificial intelligence — whether by increasing operational efficiency or simply making more people millions of dollars more powerful among people with legal problems.

"The future of justice and technology will not be about human judgment, rather it will be about leveraging technology to promote fairness, accountability, and efficiency." — Prof. Richard Susskind, Legal Futurist[551].

Enhanced Efficiency: AI takes less time on routine jobs so that the legal persons will spend more time on the analytical jobs related to the case. Tools such as ROSS Intelligence and Lex Machina provide tools used to search for existing cases as well as managing legal documents and organization. These tools can today search with other existing legal databank and fetch other legal case laws and even predict verdicts.

For instance, the SUPACE Initiative in India reduced the number of time that the judges spent in researching cases by creating summaries of case documents and developing insights out of it. In the U.S., the standard AI-driven case management systems have reduced the average trial prep time by over 1/3.

As AI begins these monotonous and mundane tasks, over time, it increases productivity and dependability as the error margin is less.

Enhancing Access to Justice: Using AI, helped democratize that basic right of human existence, i.e, access to justice. For those of you who might not know, DoNotPay[552] is an Aritificial Intelligence lawyer that provides free services to those unable to afford the service of a normal lawyer. A few of these systems involve natural language processing (NLP) to process a user's query and provide relevant legal advice or drafts.

In India AI-powered systems have been deployed to ensure that marginalized groups in the society are provided with access to legal services which they would otherwise have less access to. The multilingual AI chatbots ensure that every person from the rural region is served with legal information in his/her local languages.

AI declassifies the courts and realize the equality in society because of cost efficiencies artificially rendering legal procedures affordable.

Decision-Making Based on Data: The AI systems are based on archival data collected over a number of years and will give insight into judicial patterns. Applications such as Premonition for legal decision–

[551] Susskind, Richard. Tomorrow's Lawyers: An Introduction to Your Future. Oxford University Press, 2017.
[552] DoNotPay, "AI Legal Assistance." Available at https://donotpay.com

making and performance prediction analyse the likelihood of particular outcomes from a given case as well as judge ability, thereby advising the policy- maker on the best reform paths.

But additional areas of application for AI courts include higher risk cases or resource allocation between states. Alongside increasing the speed of judicial proceedings, this has the added benefit of introducing more transparency and accountability for the Parties.

Decrease in number of pending cases: One of the most pressing problem in the problem areas that we can be singled out in the Judiciary is problem of backlog. AI solutions help in the arrangement of cases because they include things like document sorting, the timing and exchange of information.

Example: In China's Smart Courts, the AI systems help in classifying and generating case judgments, thus reducing the length of litigation processes by as much as 30%. Similarly, India's SUPACE Initiative too has led to competency in enhancing speed of case disposal in the higher courts.

Here, AI addresses yet another pain point that causes delays in litigation: admin issues can be resolved by AI, freeing up the courts to address the meat of the issues so that justice can be delivered in a timely fashion.

Challenges and Ethics Problems

While there are plenty of untapped opportunities to leverage Artificial intelligence in judiciary and litigation processes, the journey is not free of some major challenges and ethical concerns. These are technical, legal and social issues that need to be treated systematically with a proper degree of care to ensure the responsible adoption of AI in courts.

Algorithmic Bias

One of the most significant issues has been algorithmic bias, and there has been a plethora of concern in this area of artificial intelligence. This is important because AI systems are only as diverse as the data they were trained on; if the data sets used are discriminatory in nature, then the AI model created is discriminatory. In the example there is the study of the COMPAS Tool in the United States, which concluded that the African American defendants are tagged as high-risk offenders compared to the White ones even if their offense records were analogous.

"AI won't replace lawyers, lawyers who use AI will replace lawyers who don't." — Richard Susskind.[553]

The reason behind this is that machine learning algorithms, by which the AI models are predicted, is still dependent on historical judiciaries that may already have a preference of bias embedded in them. In these cases, as minorities, we benefit from AI-provided decision making that reproduces these discriminations on behalf of specific minority groups. Avoiding algorithmic bias is difficult but starting with careful and critical evaluation of the data used to train the algorithms and are used equal and strong bias detection algorithms.

[553] Susskind, Richard. The End of Lawyers? Questioning the Very Concept of Legal Services. Oxford University Press, 2008.

Lack of Transparency

Often the algorithms of AI, especially those that are drawn from machine learning and deep learning, function as "black boxes. This implies that even the system creators don't always understand how the systems come to the conclusions they seek. Such aspects are undesirable in the judiciary because the public has entrusted its trust in the officials by expecting visible and accountable decisiveness.

For example, if AI tools provide specific suggestions on a sentence or a risk assessment, the stakeholders may not be entirely confident that the decision leading to such aspects was legal and moral. Some observers even claim that explainability hurts the most—that AI systems will not be admitted in court.

Data Privacy and Security

In most cases the process includes sensitive specifying information of the participants, evidence and other private information related with the specific case. While data leakages are a problem for them, so are hacking, for AI systems are based on data to function.

Good Example: Personalized data between cases were leaked in the Indian eCourts Project breach just recently in 2021 and was under scrutiny over the efficiency of current cyber-protective procedures in place. All risks, strong encryption, a periodic audit, or even compliance with the GDPR can be done in such cases.

The Judicial Independence Consequence

Focusing more on AI might compromise the independence of our judiciary because machines are incapable of adjudicating. Now if Judges start depending on AI also while analysing the cases or while pronouncing their judgements, then the farness of judges gets diluted, there exists a decline in the humanity in the way of providing justice.

For instance, predictive analytics based on AI shall make the judges make their judgments based on statistical data and not on independent judgment. Such scenarios can undermine people's trust in the judiciary that the answers it provides could serve the situation adequately.

Automation Ethics and Moral Issues in the use of Judgment of Automation

Partial automation of judgments directly calls into question some key tenets of ethical standards. Can understanding of the legal conflict and its prescription be accomplished by an algorithm that is devoid of either empathy or moral sentiments? For example, legal cases on things related to children, divorce, sexual abuse, etc. are not just about legal verdict but also involves human emotions and cultural beliefs and all these are unable to embed in AI system.

Cost and Resource Limitation

Incorporating any system into existing infrastructure requires massive investment in training, resources and capital and something that cannot be sustained within developing nations as has been seen with the judiciary systems in developing countries. Some courts may not have sufficient technological infrastructure to accommodate artificial intelligence, or they operate in rural areas with populations that cannot access the courts as easily as urban dwellers can, leading to a widening of the justice gap.

Solutions

In order to cope with these challenges, judicial systems should follow a multi-pronged strategy:

Bias Mitigation: Use various data sets when training, and audit regularly to detect and remove biases.

Transparency: Create explainable AI models that enable users to comprehend the rationale of the decisions.

Data Security: Adhere to robust cybersecurity standards and framework to maintain compliance with global data protection practices.

Judicial Training: Educate judges and legal practitioners about the strengths and weaknesses of AI systems, so they are aware that human judgment shouldn't be replaced.

If we can continue ahead of the curve by addressing these challenges proactively instead of reactively, we can put AI into the hands of judges as a tool to enhance, not a threat to replace, human decision-making in the judiciary.

Recommendations

The role of Artificial Intelligence (AI) in judiciary and litigation has its own merits and challenges. It is precisely this need that should be addressed: hence the need to present the proper approach for applying AI to advance judicial reform and the ethical and technical qualities mentioned above. Here draw out key findings and recommendations intended to inform the responsible, principled, and effective AI introduction into judicial systems around the world.

"Ethics in AI is not an option; it's a must-have, if we want to develop these technologies sustainably in society." — Timnit Gebru, AI Researcher and Advocate for AI Ethics[554].

The Time is Right with Ethics Codes

Indeed, one of the essential prerequisites for regulating the provisions of artificial intelligence in the judicial system sector is the creation of integrated ethical rules. Such frameworks should also exculpate the browser adjured oxymoronic concerns, like justice, transparency, and foment. It was obvious that governments and judicial bodies must collaborate with technology developers, legal scientists, and ethicists to devise principles of using artificial intelligence.

For instance, recently, European Union published the Ethics Guidelines for Trustworthy Artificial Intelligence, which emphasizes on several key focuses specifically Transparency, Data Protection, and avoiding High Risk AI bias. These guidelines might be broadly designed and adapted to the particular circumstances of courthouses in judiciary systems around the world.

Increasing AI Awareness among Legal Employees

No matter who applied for the post of the job, whether it is a freelance lawyer, a judge, or any other staff of the court, the central nerve of the successful implementation of the AI is absolutely correlated with the skill

[554] Gebru, Timnit. "Ethics in AI: A Roadmap for Sustainable Technology." AI Ethics Journal, 2020.

set of the involved individual. • The merits and demerits of AI systems. • Tips for evaluating ai recommendations for higher criticality. • Methods for using Computer Science in Exploring Bias in AI

The adoption of AI tools in this domain will, therefore, critically hinge on the capacity of judges, lawyers, and court staff to comprehend and use AI applications satisfactorily. Training programs for legal professionals should be designed to inform them about:

- The strengths and weaknesses of AI systems.
- Techniques to assess the legitimacy of AI provided suggestions.
- What to look out for in AI tools to recognize bias.

For instance, despite the need to expand the use of capacity building programs for legal professionals, Singapore has included training on the use of AI within its judicial development programs.

Hybrid decision making systems

AI should not automate the decision process but rather be a decision-making support. Using and AI for research, case management or data analysis tool, and, on the same time through human intervention at each step using the data we got, we make the final decision in a particular case — satisfies equally the technological and empirical-approach.

A good example of this balance is India's SUPACE platform, which assists judges in filing reviews without directly biasing them on the case. These types of systems can help preserve the judicial branches' previous stature while still incorporating advances in AI.

Cybersecurity and AI Models That Are Explainable

This "black box" element of many AI systems creates serious challenges within the judicial domain. Importantly, transparency and accountability must be established, meaning that the models built for its application have to be explained. Enumerate every outcome that is calculated by using them. I would suggest you use with such aids that can help while you are describing decision making to others. Give stakeholders a way to audit the AI systems for errors and/or biases. AI systems that have a discussion in the judicial context might be a dreadful issue. It is important to develop explainable models so there is proper transparency and accountability. These models should:

- Reasoning for their outputs.
- Provide graphic guides based on decision trees.
- Enable signifiers to check AI systems for errors or biases.

We need to make more explainable AI systems, and amongst the first efforts was the Explainable AI (XAI) initiative driven by DARPA[555].

[555] DARPA, "Explainable AI (XAI) Initiative." Available at https://www.darpa.mil.

Enhancement of Data and Information Security

Judicial AI systems need to have sufficient protection of data in order to prevent a breach and unauthorized access. Coded all judicial data to secure the aforementioned data. Reinforcing systems through consistent cyber security checks, and. Using standard practices such as GDPR to protect data from potential breaches or unauthorized access.

Recommendations include:

- Encrypting all judicial data to maintain confidentiality.
- Regularly auditing for cybersecurity.
- Using international best practices such as the General Data Protection Regulation (GDPR) for protecting the integrity of data.

An example can be the Smart Court System in China that has adopted high-level encryption in all relevant judicial data, making it an ideal model for data protection in a legal framework on AI.

Provision of Encouraging Public Participation

This is exactly what makes it essential to bring the public to the table to help the AI driven judicial systems gain the public's trust in their usage. Have public consultations before approving items. Where AI systems work and are protected, disclose that information. Encourage feedback from Civil Society Organizations. Since the introduction of AI-based judicial systems requires the data and knowledge till October 2023, it is the need of the hour to bring people into the picture when we talk about its implementation. Governments and judiciary authorities should:

Conduct public consultations to address concerns.

- • Provide information to others on how AI systems work and what protections are in place.
- Feedback from civil society organizations

Such participatory approaches serve to enhance accountability and can potentially foster greater buy-in for the technologies in the courts.

Ensuring the Equity in AI Implementation

Also, this must be applied to AI, the potential of AI has to benefit everyone, including rural and marginalized communities. To prevent further widening of the justice divide, governments should:

- Invest in AI infrastructure development in rural communities.
- Retrain local court personnel in proper AI use practices.
- Create additional AI tools in multiple languages for various populations.

One such project with a positive application of artificial intelligence in India is the eCourts Project where civil judicial system across all states and localities in India, both urban and rural will be computerized.

Continuing Assessment

Firstly, there is vital need to iteratively and continuously evaluate and assess judicial AI systems in order to keep responding to the most appropriate ethical, legal and technical standard. Independent boards whose sole responsibility is AI system consideration. Planing of the AI tools for future amendments based on the received feedback and new amendments in the legislation to continuous assessment and assessment since they must comply with moral, legal and technical standards. This can be achieved through:

- Regular performance audits.
- AI systems to be reviewed by independent oversight committees.
- Updated AI tools with download option to comply with the change in law based on feedback.

However, if these recommendations were implemented, judicial systems would be able to take advantage of AI as a technology and to reduce some risks associated with it. Some of which include ethical considerations, the development of organizational capacity, development of hybrid systems of decision making, public participation are key in the quest to establish standards that must guide the development of AI that will reinforce the administration of justice.

Conclusion

There is great potential for AI in the judicial and litigation fields to overcome the challenges in order to yield a better, smarter outcome for all while providing access equally. It is thus that AI may have a pivotal role to play in addressing the growing challenges of backlog of cases, delay in disposals and inequality of access due to e-access to justice. But the overall application of AI within the judiciary cannot be anything other than a tremendous opportunity, which needs to therefore be embraced with respect and accountability. Algorithmic bias, data privacy, threats to the independence of judiciaries in the information age — these are just the ethical, legal and technical issues that may demand reflection and action.

This piece of work has also concluded that an intelligent design when applied correctly in the legal jurisdiction could result in the judiciary experiencing major changes through the implementation of artificial intelligence. In the paper, we show that AI can reduce administrative burdens on judges and court staff and ultimately leave more of the judiciary's time free to exercise the law and make decisions. India has launched SUPACE and Smart Courts in China are two similar cases of how far AI can take judicial effectiveness, one of the primary characteristics the judiciary should ideally have, through providing judges facilities for case analysis, evidence evaluation and predictive analytics. Likewise, AI's predictive functions have proven helpful to lawyers with platforms like Premonition reporting the likely result of individual legal cases, useful to substantiate the case strategy. These all enhancements not only help improve the efficiency of the justice delivery system but also the quality of justice delivered as the decisions are taken on a more informed and timelier basis.

However, the development of appropriate ethical standards correlates with the process of integrating AI into the judiciary. Such systems should also be transparent and interpretable, and moreover, such systems cannot have bias, as it can affect the judicial decisions. The introduction of AI-augmented judgement assistance alongside human evaluative judgement in discrete instances assures that the human component remains central to the prosecutorial decision-making process. In addition, legal and the public needs to obtain

necessary AI literacy in order for legal professionals to promote the correct, suitable application and usage of such technologies. Part of the process of introducing AI in the judicial system is then the consideration of to what extent it considers certain recommendations made by judges and other lawyers Apart from training the judges, lawyers, and other court personnel about understanding the advantages and disadvantages of AI and other associated systems, AI uses a variety of means to supplement, rather than replace, judicial discretion.

One of the most important issues that need attention is related to data privacy and security. Since judicial data is private in nature, the AI systems should respect the fundamental principles of data protection. When developing AI systems in a judiciary sequence strong encryption & cybersecurity must be adoption to keep the information it uses secured stimuli.

In fairness, there should be a regular assessment of the performance of the AI systems used in courts and the judiciary. No current regulation requires AI systems to be periodically audited regarding their efficiency, bias or compliance with the existing legal frameworks. The aforementioned potential benefit of the AI system is subject to strict regulation and oversight by independent supervisory committees, and, more importantly, to the results of performance audits that will be determinant when defining a permissible zones of AI system usage in the judiciary.

Overall, what AI can bring, is the opportunity for a different strategy to make the justice system much more efficient. But its execution needs to be executed properly by calling out precisely the ethical issues, an emphasis on performance transparency, and human-centric approach. The problems that are highlighted in this research are such that the recommendations would allow AI to blossom into a more equitable, effective, and accessible justice system. Thus, its future will be determined by how far the technology that will be used in the process has developed while keeping the existing benchmarks for any person as the benchmark of justice, fairness, and tool to protect him.

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Chapter – 21

Addressing Fugitive Economic Offenders: Legal Framework, Challenges, and Recommendations

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Abstract

The Fugitive Economic Offenders Act, 2018 (FEOA) was enacted to address the growing menace of high-value economic offenders absconding from India to evade prosecution. This paper examines the legislative framework, definition, and key provisions of the Act, along with its implications on India's legal and economic systems. It also explores notable cases, challenges in implementation, and the role of international cooperation in combating economic crimes. The analysis aims to provide a holistic understanding of the FEOA and its effectiveness in curbing economic offences.

Introduction

A Fugitive Economic Offender (FEO) is an individual who has committed economic offences involving ₹100 crore or more and has fled India or refuses to return to face prosecution. This term was introduced under the Fugitive Economic Offenders Act (FEOA), 2018, which aims to address cases of high-value financial crimes that undermine the economy. The Act empowers authorities to confiscate the offender's properties, including proceeds of crime and benami assets, both in India and abroad, without encumbrances. It also bars offenders from defending civil claims, ensuring that they cannot exploit legal loopholes while evading justice. The law applies to offences under various acts, such as fraud, money laundering, and tax evasion.

The FEOA creates a streamlined process for declaring individuals as FEOs through a Special Court under the Prevention of Money Laundering Act (PMLA), 2002. Authorities can provisionally attach properties even before a formal declaration by the court. Notably, proceedings under the Act cease if the accused returns to India and submits to the jurisdiction of the court. Since its enactment, several high-profile offenders like Vijay Mallya and Nirav Modi have been declared FEOs, with assets worth thousands of crores confiscated to recover public funds

Definition of Fugitive Economic Offender

Under Section 2(1)(f) of the Fugitive Economic Offenders Act, 2018, a fugitive economic offender is defined as an individual against whom an arrest warrant has been issued for committing specified offences involving an amount of ₹100 crore or more and who has left India or refuses to return. These offences include money laundering, counterfeiting government stamps or currency, cheque dishonour, and fraudulent transactions.

Legislative Framework: The Fugitive Economic Offenders Act, 2018

The Fugitive Economic Offenders Act, 2018 (FEOA) is a landmark legislation enacted by the Indian Parliament to address the growing issue of economic offenders fleeing the country to evade prosecution. This Act was introduced in response to high-profile cases such as those involving Vijay Mallya and Nirav Modi, where individuals committed financial frauds worth billions and absconded abroad. The primary objective of the FEOA is to deter such offenders by enabling the confiscation of their properties and ensuring they face legal consequences under Indian law.

Objectives of The Act

The FEOA aims to:

- Prevent economic offenders from evading prosecution by fleeing India.
- Strengthen India's legal framework for addressing financial crimes.
- Confiscate assets derived from proceeds of crime or held as benami properties.
- Restore public trust in the financial system by holding offenders accountable.

Definition of A Fugitive Economic Offender

Under the Act, a fugitive economic offender is an individual who meets two criteria:

- An arrest warrant has been issued for committing scheduled offences involving ₹100 crore or more.
- The individual has left india or refuses to return to face prosecution.

Key Provisions

The FEOA includes several provisions designed to ensure swift action against offenders:

Application for Declaration: Authorities can file an application before a Special Court established under the Prevention of Money Laundering Act (PMLA), 2002, seeking a declaration that an individual is a fugitive economic offender. The application must include details of the offender's whereabouts, properties to be confiscated, and evidence supporting the claim.

Attachment of Property: The Special Court can order provisional attachment of properties, including proceeds of crime and benami assets, even before declaring an individual as an offender.

Notice to Appear: A notice is issued to the alleged offender requiring them to appear within six weeks. Failure to comply results in being declared a fugitive economic offender.

Confiscation of Assets: Once declared an offender, all properties listed in the application are confiscated and vested in the Central Government free from encumbrances. This includes assets both in India and abroad.

Disentitlement from Civil Claims: Offenders are barred from filing or defending any civil claims related to their property, ensuring they cannot exploit legal loopholes.

Special Court's Role: The Special Court oversees proceedings under this Act and ensures timely resolution of cases. It may exempt third-party properties with bona fide interest from confiscation.

Significance and Impact

- The FEOA has had a profound impact on India's legal system and economy:
- Deterrence: Strict provisions act as a deterrent against financial frauds.
- Economic Recovery: Confiscated assets contribute to repaying creditors and funding welfare programs.
- International Cooperation: Facilitates extradition and repatriation of offenders through global collaboration.
- Transparency: Promotes accountability in handling financial crimes.

Challenges and Concerns

Despite its strengths, the FEOA faces certain challenges:

- Access to Justice: Barring offenders from defending civil claims may infringe upon constitutional rights under Article 21.
- Treatment of Sale Proceeds: Lack of clarity on how confiscated assets are distributed among claimants like unsecured creditors.
- Safeguards Against Abuse: Provisions allowing searches without warrants may risk harassment or misuse of power

Landmark Case Laws on Fugitive Economic Offenders

The Fugitive Economic Offenders Act, 2018 (FEOA), has been instrumental in addressing cases of high-value economic fraud committed by individuals who abscond from India to evade prosecution. Several landmark cases have emerged under this legislation, highlighting its application and impact. Below is a detailed note on some of the most significant cases:

1. Vijay Mallya Case

Background: Vijay Mallya, the former promoter of Kingfisher Airlines, was the first individual to declare a Fugitive Economic Offender under the FEOA in January 2019. Mallya fled to the UK in March 2016 amidst allegations of loan defaults amounting to ₹9,000 crore owed to 17 Indian banks.

Court Proceedings: A special court in Mumbai invoked the FEOA after the Enforcement Directorate (ED) filed an application. The court allowed confiscation of his properties in India and abroad. Mallya's assets worth ₹8,441.5 crore were transferred to public sector banks that suffered losses due to his fraudulent activities.

Significance: This case set a precedent for using the FEOA against high-profile fugitives and demonstrated India's commitment to recovering public funds through asset confiscation.

2. Nirav Modi Case

Background: Nirav Modi, a diamond merchant, was declared a Fugitive Economic Offender in December 2019 for his involvement in defrauding Punjab National Bank (PNB) of ₹14,000 crore through fraudulent Letters of Undertaking (LoUs). Modi fled India before the scam was uncovered in January 2018.

Court Proceedings: A special PMLA court declared him a fugitive after extensive hearings and allowed confiscation of assets worth ₹329.66 crore under Section 12(2) and (8) of the FEOA.

Significance: The case highlighted loopholes in banking systems and reinforced the role of FEOA in tackling large-scale financial frauds.

3. Mehul Choksi Case

Background: Mehul Choksi, Nirav Modi's uncle and co-accused in the PNB scam, allegedly defrauded PNB of ₹13,850 crore. Choksi fled India and obtained citizenship in Antigua and Barbuda to evade prosecution.

Court Proceedings: The ED filed proceedings under the FEOA, but Choksi contested them on procedural grounds. In December 2024, a special PMLA court refused to drop proceedings against him, allowing further confiscation and monetization of assets worth ₹2,565.9 crore.

Significance: This case underscored challenges in extradition processes for fugitives who acquire foreign citizenship.

4. Sandesara Brothers Case

Background: Nitin Jayantilal Sandesara and Chetan Jayantilal Sandesara, promoters of Sterling Biotech Ltd., were declared Fugitive Economic Offenders for laundering ₹8,100 crore through shell companies abroad.

Court Proceedings: A Delhi court declared them fugitives under Sections 4 and 12 of the FEOA after they evaded summons and non-bailable warrants. The ED attached assets worth ₹4,700 crore linked to their fraudulent activities.

Significance: The case demonstrated how economic offenders exploit international jurisdictions to hide illicit wealth.

5. Iqbal Mirchi's Family Case

Background: Iqbal Mirchi's wife Hajra Memon and sons Junaid Memon and Asif Memon were declared Fugitive Economic Offenders for laundering money linked to organized crime.

Court Proceedings: A Mumbai court directed the ED to seize their properties after declaring them offenders under Section 12 of the FEOA.

Significance: This case extended the scope of FEOA beyond corporate frauds to include proceeds from organized crime.

Impact of Landmark Cases

These cases collectively demonstrate:

- The effectiveness of FEOA in combating financial crimes by enabling asset confiscation.
- Challenges posed by international jurisdictions and extradition processes.
- The role of judicial systems in ensuring timely prosecution despite procedural hurdles.

The Fugitive Economic Offenders Act has proven to be a robust tool for addressing large-scale financial frauds while deterring offenders from evading justice. However, continued efforts are needed to streamline extradition processes and strengthen international cooperation for recovering assets held abroad.

International Cooperation: Many offenders seek refuge in countries with weak extradition agreements with India.

Legal Loopholes: Offenders often exploit procedural delays and legal ambiguities to contest confiscation orders.

Resource Constraints: Enforcement agencies like the ED face limitations in tracking assets abroad.

Comparative Analysis: Fugitive Economic Offender Laws in India and Globally

Feature	India (FEOA)	United States	United Kingdom	European Union	Canada
Threshold Value for Action	₹100 crore	Varies by law	No specific threshold	No specific threshold	No specific threshold
Asset Confiscation	Proceeds of crime & benami properties	Proceeds from crime	Proceeds from crime	Proceeds from crime	Proceeds from crime
Civil Claim Restrictions	Disentitlement from civil claims	Civil penalties alongside criminal actions	None	None	None
Extradition Mechanism	Bilateral treaties	Over 100 treaties	Extradition Act	European Arrest Warrant (EAW)	Extradition Act
Special Court/Authority	Special Courts under PMLA	Federal Courts	Crown Courts	Europol & EAW	Federal Courts
International Cooperation Tools	INTERPOL Red Notices, MLATs	INTERPOL Red Notices, MLATs	INTERPOL Red Notices, MLATs	Europol, EAW	INTERPOL Red Notices, MLATs
Focus on Human Rights Standards	Moderate	Moderate	High	High	High
Asset Recovery Mechanisms	Confiscation through court orders	Asset forfeiture laws	Confiscation orders	AML Directives	Asset forfeiture laws
Unique Features	Disentitlement from civil claims; confiscation of global assets. Focused on high-value crimes (₹100 crore or more).	Strong whistleblower protection under Dodd-Frank Act. Civil penalties alongside criminal prosecution.	Complex extradition system; high human rights standards during proceedings.	Simplified extradition via EAW; unified legal framework for EU nations.	Strict extradition conditions requiring assurances against capital punishment or unfair treatment.

Key Observations

1. Threshold Value for Action: India's FEOA sets a high threshold (₹100 crore), while other countries address economic crimes without specific monetary limits.
2. Extradition Mechanism: The EU's European Arrest Warrant (EAW) simplifies extradition within member states, while India relies on bilateral treaties, which can be time-consuming.
3. Asset Recovery: All jurisdictions emphasize confiscating proceeds of crime, but India's FEOA uniquely targets benami properties as well.
4. Human Rights Standards: Countries like Canada and the UK impose stricter conditions for extradition to ensure human rights protections, which can delay proceedings.
5. Civil Claim Restrictions: India's FEOA bars offenders from filing or defending civil claims related to confiscated properties—a feature not commonly found in other jurisdictions.

This table provides a structured comparison of how countries approach fugitive economic offenders, highlighting similarities and differences in their legal frameworks and enforcement mechanisms.

Loopholes in Indian Laws Regarding Fugitive Economic Offenders

The Fugitive Economic Offenders Act, 2018 (FEOA) is a significant legislative measure aimed at tackling economic crimes committed by individuals who abscond from India to evade prosecution. While the Act has strengthened India's ability to address such issues, it is not without its shortcomings. Below is a detailed analysis of the loopholes in Indian laws concerning fugitive economic offenders:

1. High Threshold for Applicability

Issue: The FEOA applies only to economic offences involving ₹100 crore or more. This high threshold excludes smaller but significant financial crimes, enabling offenders to exploit this provision by committing multiple smaller offences below the threshold.

Impact: Many offenders who commit frauds involving amounts below ₹100 crore escape the purview of the Act, limiting its comprehensiveness.

2. Ambiguity in Utilization of Confiscated Assets

Issue: The Act does not clearly specify how proceeds from confiscated assets are to be utilized. This lack of clarity creates potential loopholes for misuse or mismanagement of confiscated funds.

Impact: The absence of a transparent framework for asset utilization undermines efforts to recover public funds effectively.

3. Procedural Delays

Issue: Although the Act provides for a statutory 90-day timeline for disposing of confiscated property, it does not set a clear time frame for concluding court proceedings or declaring an individual as a fugitive economic offender.

Impact: This ambiguity allows cases to drag on indefinitely, delaying justice and enabling offenders to evade accountability.

4. Limited International Agreements

Issue: The effectiveness of the FEOA in confiscating assets abroad depends on cooperation with foreign jurisdictions. However, India has not established agreements with all countries, limiting its ability to enforce orders internationally.

Impact: Offenders can exploit this gap by transferring assets to countries where India lacks legal agreements, making asset recovery challenging.

5. Restriction on Civil Claims

Issue: Section 14 of the FEOA disallows fugitive economic offenders from filing or defending civil claims in India. While this provision pressures offenders to return, it has been criticized for potentially infringing upon their fundamental rights under Article 21 of the Constitution.

Impact: This restriction raises constitutional concerns and may face legal challenges, undermining the Act's credibility.

6. Ex-Parte Orders

Issue: Section 10(3)(b) allows courts to declare an individual as a fugitive economic offender and confiscate their property based on mere failure to appear at specified hearings. Critics argue that this provision could lead to unfair ex-parte orders if sufficient opportunity is not provided.

Impact: Such provisions may be perceived as violating principles of natural justice and due process.

7. Lack of Comprehensive Coverage

Issue: The Act primarily targets high-value financial crimes and does not address other forms of economic offences comprehensively, such as tax evasion or creditor deception below ₹100 crore.

Impact: This narrow focus limits the scope of the law in dealing with diverse types of financial crimes.

8. Challenges in Asset Recovery Abroad

Issue: The process for recovering assets located in foreign jurisdictions requires letters of request and cooperation under international treaties. Without pre-existing agreements with certain nations, enforcement becomes cumbersome.

Impact: Offenders often transfer assets abroad, exploiting gaps in international cooperation mechanisms.

9. Overburdening Courts

Issue: The absence of streamlined procedures for handling cases under the FEOA can lead to overburdening Special Courts designated under PMLA.

Suggestions and Recommendations

To combat the challenges and loopholes in the Fugitive Economic Offenders Act, 2018 (FEOA), a multi-pronged approach is necessary. Below are specific recommendations addressing each issue:

1. High Threshold for Applicability

Solution: Lower the threshold of ₹100 crore to include smaller financial crimes under the Act's purview. Alternatively, aggregate multiple smaller offences committed by the same individual to meet the threshold.

Impact: This will enhance the Act's comprehensiveness and prevent offenders from exploiting this provision.

2. Ambiguity in Utilization of Confiscated Assets

Solution: Establish a clear framework for the utilization of confiscated assets. Priority should be given to repaying creditors, compensating victims, and funding public welfare programs.

Impact: This will ensure transparency, accountability, and effective recovery of public funds.

3. Procedural Delays

Solution: Introduce stricter timelines for court proceedings and declaring individuals as fugitive economic offenders. Fast-track courts could be designated for these cases.

Impact: This will expedite justice and reduce opportunities for offenders to evade accountability.

4. Limited International Agreements

Solution: Strengthen international cooperation by negotiating more extradition treaties and mutual legal assistance agreements with foreign jurisdictions. Leverage platforms like G20 to advocate for multilateral frameworks.

Impact: Enhanced global collaboration will improve asset recovery and extradition efforts.

5. Restriction on Civil Claims

Solution: Amend Section 14 to allow limited civil claims under judicial oversight while ensuring it does not undermine the deterrent effect of the Act.

Impact: This will address constitutional concerns under Article 21 while maintaining pressure on offenders to return.

6. Ex-Parte Orders

Solution: Strengthen safeguards by ensuring adequate notice and opportunities for offenders to appear in court before issuing ex-parte orders.

Impact: This will uphold principles of natural justice and reduce potential misuse of the provision.

7. Lack of Comprehensive Coverage

Solution: Broaden the scope of the Act to include other significant economic offences like tax evasion and creditor deception below ₹100 crore.

Impact: A wider coverage will make the law more robust in tackling diverse financial crimes.

8. Challenges in Asset Recovery Abroad

Solution: Streamline processes for sending letters of request under international treaties and establish dedicated teams for cross-border asset recovery.

Impact: This will simplify enforcement mechanisms and improve recovery rates from foreign jurisdictions.

9. Overburdening Courts

Solution: Increase the number of Special Courts under PMLA or designate additional judicial resources exclusively for FEOA cases.

Impact: This will reduce delays and improve case resolution efficiency.

Additional Measures

- Improved Financial Oversight:
- Mandate stricter due diligence by banks, including obtaining certified copies of passports for high-value loans (₹50 crore or more).
- Enhance monitoring mechanisms to detect early signs of financial fraud.
- Public Awareness Campaigns:
- Educate stakeholders about legal provisions under FEOA to deter potential offenders.
- Technological Integration:
- Use advanced technology like blockchain to track financial transactions and prevent illicit fund transfers.
- Inter-agency Coordination:
- Foster better collaboration between enforcement agencies like ED, CBI, and RBI to ensure seamless investigations.
- By addressing these loopholes through legislative amendments, procedural reforms, and enhanced international cooperation, India can significantly strengthen its fight against fugitive economic offenders while safeguarding constitutional principles.

Conclusion

The Fugitive Economic Offenders Act, 2018, represents a significant step in India's efforts to combat financial crimes by addressing the issue of economic offenders fleeing the country to evade prosecution. By empowering authorities to confiscate properties and assets of offenders, the Act aims to deter such behavior and ensure accountability. However, while the legislation strengthens the legal framework against economic offences, it also raises concerns about access to justice, procedural safeguards, and clarity regarding the treatment of confiscated assets. To enhance its effectiveness, it is crucial to address these gaps by incorporating robust safeguards against misuse, ensuring transparent asset management, and fostering international cooperation for extradition. A balanced approach that upholds constitutional rights while maintaining stringent measures against offenders is essential for protecting national interests and restoring public trust in the financial system.

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