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EDITORIAL

21st Century-India is struggling in myriad ways to emerge to a true level of development, to make systems work in a well-coordinated way by the use of emerging technologies and rule of law. On legal front there are various issues to be dealt with due concern. The Supreme Court of India lately maintained a 'Mississippi law', necessitating age authentication and parental accord for minors expending social media. It points towards current worries about the wellbeing of children Online and the accountabilities of respective platforms. Equally disturbing is the issue of Citizenship Amendment Act (CAA) flashing protests and legal battles, underlining the concerns of equality and justice, in the country. Legal encounters about environmental issues are much on rise, particularly regarding climate change proceedings and biodiversity preservation, increasingly to address the balance between development and environmental sustainability.

As India experiences a digital revolution, questions linked to data confidentiality and cybercrime need robust legal frames to protect peoples' rights urgently with a delivering redress-system. In another line of problems, the Supreme Court has focused on the removal of stray dogs from Delhi's streets, nurturing thinking about animal rights and safety of the people. There is a debate now on humane handling and the accountabilities of municipal ruling classes. In retrospect, there are discussions about reservation policies for numerous communities, which remain haunting many and pleasing others. Social justice, however, remains a big concern in all perspectives.

These questions replicate the dynamic and difficult nature of the legal landscape of India, necessitating incessant restructurings and revisions to assure justice with equity in a swiftly altering social environment. Addressing these challenges needs thorough research by the academicians of the country and its critical evaluation in legal journals and related portfolios. *IILM Law Journal* encourages such engagements and presents another volume of this journal to readers for reflection and participation.

Prof. (Dr.) M. Afzal Wani

Editor

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Introduction

The economic relations between India and Germany have considerably intensified within the recent years. A growing number of companies maintain establishments both in India and in Germany. As per the report of the Embassy of India in Berlin, Germany has become the largest trading partner of India in Europe. More than 1700 German Companies are operating in India through their establishments in numerous sectors, mainly in electrical equipment, chemicals, transportation, insurance service sector, construction activity, automobiles, trading and metallurgical industries. More than 213 Indian companies having their establishments in Germany in IT, manufacturing, pharma, biotech and automotive industries.[2] While the branches in India are subject to Indian law, the German establishments have to apply German law. This leads to the question about the differences and similarities of both jurisdictions, in particular regarding labour and social insurance law. This article examines the questions of how sickness affects employees' income under Indian and German law? Who shall bear the loss caused by sickness of an employee—the employee, the employer, or the social security insurance corporation?

The statistics revealed the importance of this question: In 2022, the level of sick leave in Germany amounted to around 5.6% of the employed persons.[3] Consequently, the income maintenance costs are increased. Employers in Germany paid continued remuneration approximately € 45 billion in 2015 due to sickness of employees.[4] Further, health insurance scheme paid 12 billion in 2016 as sickness benefit.[5] A similar situation also exists in India.

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[2] India-Germany Economic & Commercial Relations, Embassy of India, Berlin, Germany, available at: https://indianembassyberlin.gov.in/pages?id=NA,,&subid=MTk0&nextid=MjQw accessed 24 September 2023.

[3] Statista Research Department, Monthly sick leave in statutory health insurance by gender in 2023, https://de.statista.com/statistik/daten/studie/38600/umfrage/krankenstand-bei-pflichtmitgliedern-der-gkv/ accessed 15 September 2023.

[4] BDA DIE Arbeitgebe (Federal Association of German Employers' Associations, https://www.arbeitgeber.de/www/arbeitgeber.nsf/id/DFD1F1B8A7ED572DC12574F2003F4EDE accessed 1 January 2023.

[5]The AOK Federal Association, GKV financial results 04/2016 http://aok-bv.de/hintergrund/gkv-finanzergebnisse/index_18173.html accessed 1 January 2023.

Income maintenance under Indian Law

How far sickness affects employees' income in India? To answer this question, two steps would be taken. First, how Indian law divides the risk of sickness loss. Secondly, it is necessary to find out how much modification has been done in distribution of said risk under the Indian Labour and Social Security Laws.

Indian Civil Law and Distribution of Risk of Loss

The Indian civil law governing the relationship between employer and employee can be derived from the Indian Contract Law. In case of non-performance of work by an employee due to sickness, to what extent an employer can claim for performance, and whether an employee can claim remuneration even if any work has not been done by the employee, can be answered from the Indian contract law by taking reference from the following provisions of Indian contract law:

- *Employer's claim for work performance*

The provision for incapacity of an employee due to illness to perform employment contract is provided under section 56 of the Indian Contract Act, 1872. Section 56 provides that if the performance of contract becomes impossible due to incapacity or illness (where personal performance is required) then contract becomes void. Therefore, if an employee is incapacitated to work due to the illness, the employer cannot claim for the employee's work performance. The legal consequence of section 56[6] is that employer losses his right to claim performance; whereas, the employee is relieved from performance liability.

- *Employee's claim for remuneration*

As section 56 of the Indian Contract Act, 1872 declares that, a contract, the performance of which becomes impossible, becomes void. The consequence is that an employee who has not rendered his/her service for incapacity due to illness cannot claim remuneration. Thus, *"no work, no wages"* policy is attached to the section 56 of the Indian Contract Act.

- *Final result:*

[6] The Indian Contract Act 1872.

Thus, as per the Indian law, risk distribution in the event of an employee's illness would operative as follows: The performance risk has to be borne by the employer and the employee has to bear the remuneration risk. The Indian Contract Law promotes the principle of *"no work no wages*". However, with the passage of time, through the emergence of labour and social security laws this principle has been diluted in favour of an employee.

Indian Labour and Social Security Law and Distribution of Risk of Loss

In India, there has been a modification of the "no work no wages" principle as enshrined in the contract law.[7] The modification, as brought forth by labour and social security laws, favours employees; whereas, the position with respect to the employer's right to claim performance in case of illness of an employee has not been changed. The result of the modification by Indian labour and social security law is that the employee is, now, on certain grounds, entitled to claim remuneration or for a payment of compensation. However, the employee's claim for continued payment from the employer depends upon state laws where the employee is working and the nature of industrial establishment. Therefore, law on continued payment from the employer in case of sickness is not uniform across the industries and across the country. The employee is usually eligible to continued payment of remuneration from his/her employer during the first eight to fifteen days of his sickness depending on the state laws which govern the employee and the industry where the employee is working. If the employee is insured under the Employee's State Insurance Act, 1948 (ESI Act), he/she may draw sick pay from the statutory employee's state insurance corporation. If the insured employee's incapacity to work is due to the reason that the employee has suffered an injury arisen out of or in the course of employment, then the sick pay is to be replaced by disablement benefit from the Employee's State Insurance Corporation. However, if the employee is not insured under the Employee's State Insurance Act, 1948 then he can claim disablement benefit from his employer under the Employee's Compensation Act, 1923.

The benefits to be drawn by the employee for disablement from the employer and those arising from the employee's state insurance fund shows distinct feature. These benefits are not described here in detailed way. A closer analysis has been drawn on the prerequisites of sickness benefits from the employer and the Employees' State Insurance Corporation.

[7] The Indian Contract Act 1872, s 56.

Employers' liability for continued remuneration

To claim continue payment of remuneration from employer two aspects has to be considered. Firstly, in which state the industrial establishment is situated? Secondly, what is the type of industrial establishment? Every state has its own law for sickness benefit. Shops and Establishment Act is enacted in every state, where the number of days for which sickness benefit is to be provided to the employee by the employer has been prescribed. The sickness benefits period, amounts of sickness benefits and the prerequisites for availing the benefits depend on the state where the employee is working. The following are the a few examples of some of the state laws governing sickness benefits:

Pursuant to subsection 5, section 30, of the Andhra Pradesh Shops and Establishment Act, 1988, an employee has a right to continue payment of remuneration by the employee up to the period of twelve days in a year if the employee is incapable to perform his/her duty due to sickness irrespective of the cause of sickness. However, pursuant to sub-section 3, section 14, of the Orissa Shops and Establishment Act, 1956, an employee has a right to claim fifteen days of full wages in case of sickness, irrespective of the cause of sickness, yet such right is subject to two conditions—firstly, the employee has to complete one year of service to claim sickness benefit from the subsequent year[8] (working of 240 days in a year excluding the days of holiday is considered completion of one year of service). Secondly, the employer has further liberty to prescribe conditions for availing sickness benefits.[9] Pursuant to section 22, sub-section 1, clause (a) of the Delhi Shops and Establishment Act, 1954, an employee can claim a twelve-day full wages in case of incapacity of the employee due to illness irrespective of the cause of illness. It has also been provided that the employee's right of sickness benefit shall not be refused by the employer.

Thus, sickness benefit to employee and the prerequisites for those benefits depend on the state laws and different states have come up with their own legislations. The period of sickness benefit which employees are entitled in different states in India ranges from eight days to fifteen days. On the expiry of sickness benefit days, the employee has to bear the risk of loss of income unless the employee is an insured under the ESI Act. One similarity amongst the prerequisites across the states is the employee's sickness is the sufficient ground for availing the benefit hence, it is not necessary to establish that the sickness is not caused due to the fault

[8] The Orissa Shops and Establishment Act 1956, s 14(3) (proviso1).

[9] The Orissa Shops and Establishment Act, 1956, s 14(3) (proviso2).

of the employee. The number of days which the employee is required to work before availing the leave varies in different states.

Apart from the State Laws, a few Central Legislations also provide provisions for sickness benefits. Pursuant to section 7 of the Working Journalist and other News Paper Employee's (Condition of Service) and Miscellaneous Provisions Act, 1955, sickness benefit can be claimed by a working journalist from the employer, on producing medical certificate, one day for every eighteenth day period of service.[10] Further, the Rules made under the Act provides for sickness leave for one month on each eighteen months of service of an employee at the rate of half of his/her wages.[11] However, the employee will cease to claim such benefit when the sickness benefit on medical certificate amounts to ninety days.[12]

Pursuant to section 4, sub-section 1, clause b, of the Sales Promotion Employees (Conditions of Service) Act, 1976, an employee can claim sickness benefit of one day for every eighteenth day of the period of service at the rate of half of the wages. However, producing medical certificate is important for availing such benefit.[13]

Pursuant to section 32, sub-section 1, of the Plantation Labour Act, 1951, an employee of plantation industry can claim sickness benefit from the employer on producing medical certificate from a qualified medical practitioner at such rate as may be decided by making rules by the states.[14] If any employer employs an apprentice, the apprentice can claim sickness benefit up to fifteen days for each year of his/her training. However, a maximum forty days is allowed for accumulating unused leave.[15] It is interesting to note that the word 'sicknesses has not been defined in any of the above-mentioned legislations.

Sickness relief from statutory health insurance

An employee who is insured under the ESI Act is eligible to get sickness benefit from the Employee's State Insurance Scheme (ESI Scheme). If an insured employee receives sickness benefit under the ESI Scheme, the employer is allowed to subtract the assistance received by the employee under the Scheme from his/her liability to pay sickness benefit under the State Laws.[16] Pursuant to section 46, sub-section 1, clause 1 of the the ESI Act, 1948, an employee

[10] The Working Journalist and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act 1955, s 7, r 28 (proviso).
[11] Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules 1957, r 2028.
[12] Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules 1957, r 2028 (proviso).
[13] The Sales Promotion Employees (Condition of Service) Rules 1976, r 15.
[14] The Plantation Labour Act 1951, s 32(2), r 74 (1) of the Assam Plantations Labour Rules 1956.
[15] The Apprenticeship Rules 1992, r 13(1)(b)(I).
[16] The Employee's State Insurance (General) Regulations 1950, regulation 97.

is entitled to claim periodical payment of sickness benefit. Thus, sickness benefit under the ESI Act, 1948 and continued remuneration under other State Laws help the employee to financially protect himself or herself from the risk of sickness. There are a few differences pertaining to prerequisites and the legal consequences with respect to both the forms of income maintenance.

- The sickness benefit under the ESI Act, 1948 applies only to an insured employee, but the sickness benefit from the employer has been considered as inherent right, which the employer is bound to give to the employee. Therefore, the employee who is not covered under the ESI Act, 1948 is not entitled to claim right under this Act. The categories of employees who are qualified under the ESI Act, 1948 are those whose monthly wages not exceeding ₹ 21,000.[17]
- The term "sickness" is defined for the first time in the ESI Act, 1948. Sickness is described as a state of health condition that needs attendance and medical treatment and also requires abstention from work.[18] The requisites conditions for sickness to get benefits under this Act are; firstly, that condition of the employee seeks medical treatment, secondly, an attendant is required the employee due to such sickness, and thirdly, abstention from the work is required for the employee for such sickness condition. Therefore, without any requirement of attendant, treatment and an advised to take rest an employee is disqualified to seek sickness benefit under this Act.[19]
- Pursuant to section 46, sub-section 1, clause a, of the ESI Act, 1948, an insured employee is entitled to claim a periodical payment in the event of his sickness is certified by a medical practitioner. Under rule 55, sub-rule 2, of the Employee's State Insurance (Central) Rules, 1950, an employee is entitled to a sickness benefit of 70 percent of the standard benefit rate. Standard benefit rate has been defined as the average daily wage of the employee.[20] However, the employee can claim higher benefit that is equal to full wage in case the employee is going through sterilization for 7 days/14 days for male and female workers respectively.[21] The sickness benefit will be paid for a maximum period of 91 days in any two consecutive benefit periods, irrespective of same or multiple sicknesses.[22] There are two benefit periods in a year; first, January 1st to June 30th and second, July 1st

[17] The Employee's State Insurance Act 1948, s 9(b).
[18] The Employee's State Insurance Act 1948 s. 2(20).
[19] Dr. V.G. Goswami, *Labour and Industrial Law* (Central Law Agency, Allahabad, 10th edn 2015) 285-286.
[20] The Employee's State Insurance (Central) Rules 1950 r 2(7A).
[21] The Employee's State Insurance Scheme http://www.esic.nic.in/information-benefits accessed 20 July 2024.
[22] The Employee's State Insurance (Central) Rules 1950 rule 55 (1) (proviso 2).

to December 31st.[23] Sickness benefits can be extended after the expiry of 91 days, up to the periods of two years at an enhanced rate of 80% in case the employee is suffering from any of the 34 different malignant and long term disease.[24] A list of these disease is mentioned in the Act.

- However, for the entitlement of sickness benefit, during the contribution period the employee's contribution must have been paid for not less than 78 days.[25] It is pertinent to mention that if two spells of sickness fall within 15 days, an employee is not entitled to sickness benefits for the first two days of sickness in the second spell of his or her sickness.[26] With respect to contribution under the act, the contribution period is also divided into two categories—first, April 1st to September 30th; whereas the second is, October 1st to March 31st of the next year.[27] If the employee entered insurable employment for the first time, his benefit period will start on completion of nine months of his service.[28]
- There are certain conditions which the employee is required to maintain to claim sickness benefit under the Act: (a) The employee has to be under treatment in clinic, hospital, dispensary or other institutions designated under this Act and shall follow the instruction of medical officer in charge thereof; (b) The employee shall abstain from any action that may delay his/her chance of recovery; (c) The employee shall not leave the area where he/she is receiving medical treatment under this Act without the approval of concern medical officer; (d) The employee is required to permit himself/herself to be medically checked by any medical officer.[29]
- Like the provisions under the state laws for sickness benefit, under this Act also there is no provisions for reduction of sickness benefit of the employee in case of sickness is resulted by the own fault of the employee. The employee is entitled to the sickness benefit in case of sickness which has been certified by qualified medical practitioners without any consideration to the cause of sickness.
- In summary, conclusion may be derived that an insured employee's sickness risk from 8 to 15 days (depending on the state where the employee is working) shall be borne both by

[23] The Employee's State Insurance (General Regulation) 1950, regulation 4.
[24] The Employee's State Insurance Scheme □http://www.esic.nic.in/information-benefits□ accessed 20 July 2024.
[25] The Employee's State Insurance (Central) Rules, 1950 r 55 (1).
[26] The Employee's State Insurance (Central) Rules 1950, r 55 (1) (proviso 2).
[27] The Employee's State Insurance (General Regulation) 1950, regulation 4.
[28] The Employee's State Insurance (General Regulation) 1950, regulation 4, proviso
[29] The Employee's State Insurance Act 1948, s 64.

the employer and Employee's State Insurance Corporation at the ratio of 30:70 respectively. Consequently, after 8 or 15 days, as the case may be, the Employee's State Insurance Corporation will bear 70% of the sickness loss till 91 days (if illness fall under the 33 categories of disease, then it may extent till two years with 80% of loss of employment to be borne by employer and 20% by the employee) and 30% will be borne by the employee himself. However, if the illness is caused due to sterilization, then the Employee State Insurance Corporation will bear 100% of sickness loss for first 7 days for male employee and 14 days for female employee and 70% of sickness loss up to 91 days has to be borne by health insurance corporation. The employee who is not insured has to bear the entire 100% of risk after initial 8 or 15 days, as the case may be.

- The funding of the Employee's State Insurance Corporation is contributed by both employees and employer. Currently, an employee contributes 1.75% of his/her wages and an employer contributes 4.75% of the wages paid or payable. The employees who receive a daily average wage upto Rs.137/- are not required to contribute as their contributions shall be borne by their employers.[30]

Final result

Thus, with respect to the Indian law on continued payment by the employer in case of sickness of employee, law is more picemael, as different laws cover different industries and sectors. However, the following conclusion can be drawn pertaining to the risk distribution between the employer and the employee. The employer is responsible to bear the entire risk during the first 8 to 15 days of the emloyee's incapacity to work, however, in case the employee is insured under the ESI Act, 1948 the employer can share the risk for intial 8 to 15 days of incapacity in the ratio of 30:70 by employer and Employees State Corporation. From 8 or 15 days, as the case may be, upto the period of 91 days, the risk is distributed among the Employee's State Insurance Corporation and the employee in the ratio of 70:30. However, if the sickness is due to any of the out of 33 categories of disease, the distribution will be in the ratio of 80:20 between the Employee's State Insurance Corporation and the employee up to the period of two years. The employee who is not covered under the Employee's State Insurance scheme shall bear the entire risk after the expiry of initial periods of benefits receive from employer.

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[30] The Employee's State Insurance Scheme http://www.esic.nic.in/contribution accessed 20 July 2024.

Reasons for the distribution of risk of loss of income

The differentiate treatment in the legislations put forth a question that what is the objective which drives the Parliamentarian to make such risk distribution in the event of sickness of an employee?

Risk Bering by the employee

In the initial stage of sickness, ranging from 8 to15 days, the employee is fully secured in case of sickness irrespective of the cause of sickness. Though, the employee may have received injury or got infected by decease due to his or her own fault, the employer has to shoulder the loss. These provisions seem to be unreasonable as these make the employer liable even if the sickness is due to an absolute negligence of the employee. This appears to be out of any logical reason that an employee who is grossly negligent himself or herself, but for that the employer is bearing the loss. However, this provision may have socio-political basis so as to enable the employee for his or her subsistence.

Risk distribution between statutory health insurance and an employer

The fundamental reasons of risk distribution among statutory health insurance and the employer are complicated to understand. The provisions for the employer's liability to continue payment in case of an accident which has arisen out of or in the course employment or may be from employment hazards seem to be justified. Different views have been emerged in support of the argument to continue to payment of remuneration in case of sickness of an employee.

Prospect of legal duties outside the continued payment law

Continued payment is a consideration to employees for the work performed

The continued payment in the event of sickness is considered as a consideration for employee's contribution in increasing productivity in the industry. The employee should get a protection in case of unemployment due to sickness as the employee has contributed in the increasing productivity of the industry.[31] This principle is very much evident in the legal provisions. In most of the State Laws and Central Laws including the ESI Act, 1948, one of the prerequisites is that the employee has to work for a number of days for availing the sickness benefit from the employer. Thus, it is a consideration for the employee's past work before his/her sickness for the employer. However, this justification cannot be realistic, because the consideration for the employee's work has already been paid to employee.

[31] Madhurima Lall, *Sakina Qasim Zaidi, Human Resource Management* (1 edn, 2008) 196.

Therefore, justification for continued payment in case of sickness could be a socio-political reason.

Continued payment as welfare of the employee

One of the views to provide sickness benefit is to make provision for the welfare of the employees by the employer. It has its genesis in Article 41 of the Indian Constitution. The Article provides that state shall ensure public assistance in case of sickness. However, this obligation of the employer does not directly derive from the Constitution; rather, it derives from statutory provisions. However, reference to Article 41 can be made to understand the intention of the legislators in enacting such statutory provisions.

Final result

Thus, continued payment to the employee in case of sickness by the employer does not result from the contractual obligation of the employer. This obligation is created by statutes enacted by the legislature. Moreover, this obligation of the employer cannot be contracting out. Therefore, irrespective of contractual provisions, the employer is bound to provide the benefit.

Objectives of the Continued Payment law

Employees' maintenance

The objective of the continued payment law is giving complete income maintenance for the initial period of sickness. In the absence of this, the employee would be entitled to get benefit from the Employees State Insurance Corporation under the ESI Act. However, the amount of benefit under the ESI Act is less than the benefit under the continued payment by the employer.

Respite to the statutory health insurance

In India, the continued payment to the employee by the employer does not act as a respite to the statutory health insurance. On the contrary, the benefits from the statutory health insurance act as a relief to the continued payment by the employer. The provision with respect to this has been provided in the Regulation made under the ESI Act, 1948.[32] However, the parties to the employment contract by their mutual consent cannot do away the right of the employee to get continued payment form the employer. Similar provision is also made under

[32] The Employee's State Insurance (General) Regulations 1950, regulation 97.

the ESI Act, 1948.[33] In India, the legislators have given the benefits from statutory insurance a primacy over the benefits under the continued payment law.

Final result

Thus, from the above analysis it is clear that the contract law principle is not the basis of the risk distribution between the employer and the statutory Insurance Corporation in case of illness of an employee. The reason for employer liability for continued payment in case of sickness of the employee is derived from socio-political grounds. It is also to provide security to the employee for unemployment during sickness. However, the provisions for statutory insurance policy lessen the burden on the employer.

Income maintenance under German Law

To what extent does an employee's income is affected by his or her sickness? To answer this question under German law, two processes must be adopted: At first, the Civil Code's approach with respect to risk distribution in case of loss of income due to sickness of an employee needs to be explored. Later, the extent of modification of distribution of this risk by German labour and social security legislation needs to be ascertained.

German Civil Code and Distribution of Risk of Loss

The German Civil Code distinguishes two contrast areas in case of an employee's non-performance of work due to his or her sickness: Initially, it is paramount to clarify how much the employer's claim for performance will be affected by the employee's sickness. Secondly, the issue is raised by the question whether the employee is entitled to claim payment in the absence of work due to sickness.

Performance claim by the employer

The legal framework with respect to performance claim by the employer in case of sickness of an employee is laid down in Article 275, subsection 1, Civil Code, which provides that such claim shall be excluded if it is impossible to perform the work by the employee or anyone else on behalf of the employee. The performance of work will generally become impossible in the event the employee is incapable to perform his or her work for the reason of illness. Performance of work is, generally, considered as absolute fixed-date obligation which may either set by contractual requirement or by the employer. An employee's failure to work at or within prescribed time will not only result in delay in performance but also impossibility of

[33] The Employee's State Insurance Act 1948, s 61.

performance.[34] Article 275, subsection 1, Civil Code, laid down the legal consequence of such impossibility, which disable the employer to seek for performance of the work; therefore, the employee is discharged from his or her liability to perform the work under the contract or as required by the employer. Hence, the employer has to bear the performance risk in the event the employee is disable to work due to sickness.

Claim for remuneration by the employee

The provisions with respect to the legal consequences of impossibility of performance pertaining to claim for remuneration by the employee are implied, in principle, in Article 326, subsection 1, sentence 1, Civil Code. The Article provides that insofar as the employee is discharged from the work due to impossibility, his or her claim for remuneration becomes void. The effect of this article is that the employee has to bear the risk of remuneration. Therefore, Article 326, subsection 1, sentence 1, Civil Code, has shaped the principle of "no work, no wages", resulted from the contractual mutuality.[35]

Final result

Thus, in the event of sickness of an employee, the Civil Code proscribes the following scheme of risk distribution: The performance risk lies with the employer whereas risk of remuneration has to be borne by the employee.

German labour and social insurance law and distribution of risk of loss

The labour and social insurance law has brought forth a change in the scheme of the sickness risk distribution as provided in the Civil Code in favour of an employee. It is pertinent to mention that the labour and social insurance law does not the change the position of the employer with respect to his or her right to claim for the performance of work, but now, an employee can claim for remuneration or for payment of a compensation. During the first six weeks of sickness of an employee, he or she is usually entitled to continued payment of remuneration from his or her employer. Afterwards, the employee can, to a substantial part, claim payment for sickness from the statutory health insurance. Payment from the statutory accident insurance fund will be provided to an employee if incapacity to work is caused by an

[34] ErfK-*Preis*, 3rd edition 2003, § 611 BGB s 837 - 839; *Gotthardt*, Arbeitsrecht nach der Schuldrechtsreform, 2002, s 75 with further references.

[35] Gegenäußerung der Bundesregierung auf die Stellungnahme des Bundesrates zum Entwurf eines Gesetzes zur Modernisierung des Schuldrechts, BT-Drucks. 14/6857, p. 47 f.

accident to the employee at the workplace.[36] In addition, if an illness of the employee results in an everlasting impact on his or her earning capacity, the employee is entitled to claim pension from the statutory pension scheme.[37] The benefits from statutory pension scheme and statutory accident insurance scheme show, to a greater extent, distinct features. Due to this reason, they are not analysed here in more detailed way. In its place, a detailed analysis has been done with respect to prerequisites of sick pay and continued payment of remuneration.

The employer's responsibility for continued payment of remuneration

According to Article 3, subsection 1, sentence 1, of the Continued Payment of Remuneration Law if an employee does not able to perform his or her work due to sickness, which is not caused by his or her own fault, the employee can claim continued payment from his or her employer. Such a claim remains valid till six-week period from the time the employee is disabled to perform his or her work. An employee does not face the risk of loss of income so far as this provision is applicable to the employee. Consequently, the provision works as an exception to the "no work, no wages" principle.[38]

- According to Article 3, subsection 1, sentence 1, of the Law on the Continued Payment of Remuneration, sickness of the employee is the first prerequisite for the entitlement of continued payment of remuneration, which may mean any irregular mental or physical condition, irrespective of the cause of sickness. Hence the sickness may be due to a road accident, a work accident, or a sports injury.[39]
- Any form of sickness does not qualify for the entitlement to claim continued payment of remuneration. The employee's incapacity to perform his or her work is another prerequisite for a continued payment of remuneration. Such incapacity to perform work is assumed if the employee is disable to perform the work he or she is obliged to do under the employment contract or if the performance of work results in running the risk of deteriorating state of his or her health in the foreseeable future.[40] Therefore, characteristics of the employment requirement of the employee are the yardsticks to decide the employee's incapacity to perform his or her work.

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[36] §§ 45 - 52 and §§ 56 - 62 SGB VII.

[37] § 43 SGB VI.

[38] *Schulte-Mimberg*, in: *Schulin*, Handbuch des Sozialversicherungsrechts, volume 1, Krankenversicherungsrecht (HS-KV), 1994, § 13 sec. 49; *Schmitt*, Entgeltfortzahlungsgesetz, 4th ed. 1999, Einleitung sec. 1; MünchArbR - *Boecken*, 2nd ed. 2000, § 82 sec. 1, § 83 sec. 40.

[39] MünchArbR-*Boecken*, § 83 sec. 25 - 29; *Schmitt*, § 3 sec. 34 - 38.

[40] *BAG* AP Nr. 42 (Blatt 879) and Nr. 52 (Blatt 542) § 616 BGB; *BAG* AP Nr. 62 § 1 LohnFG, sheet I 1; *BAG* AP Nr. 1 § 74 SGB V, sheet II 1.

- Further, any sickness of an employee caused due to the fault of the employee disentitle him or her to claim continued remuneration from the employer. However, a minor negligence on the part of the employee which results in his or her sickness does not *ipso facto* exempt the employer from the liability under continued payment of remuneration law. If an employee's conduct grossly deviates the standard which is expected from a reasonable prudent person in pursuit of his or her own interest with respect to his or her health, the employee is disqualified to claim for continued payment from his or her employer. The conduct of the employee shall not be actual malice, wilful recklessness, or special hazardous thoughtlessness.[41]

Based on the facts and the circumstances of a case the question of whether the employee´s action results in wilful recklessness can be clarified. Illustrations with respect to problematic nature of sports accidents can be drawn looking into few court decisions. The responsibilities for sports injuries can be fixed in three situations. Firstly, the employee may violate the standing sports rules by conduct with gross carelessness and negligence. Secondly, an employee acts culpably if he or she exceeds his or her physical abilities and strengths to a greater degree while engaging in a sport.

Finally, if any dangerous sport is practiced by an employee the Federal Labour Court will assume active negligence on the part of the employee. The last situation involves a sport where even strictly following all the rules and good training do not prevent the risk attached to the sport. However, till date, no sport has been categorised as dangerous sport. Even in the sports like parachuting, hang-gliding, boxing and motorcycle racing the courts have not been able to recognise culpable way of conduct of an employee. The criterion of a dangerous sport shows little relevance considering these liberal judicial decisions. The ground which also raised doubt on this criterion is that a specific sport practice cannot itself draw a conclusion with respect to an employee's misconduct leading to his or her injury. On the other hand, it is relevant to consider the entire circumstances led to the particular sporting accident. Particularly, the skill of the employee in the sport is included.[42]

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[41] Staudinger-*Oetker*, BGB, 2002, § 616 sec. 240 - 251; *Kaiser/Dunkl/Hold/Kleinsorge*, Entgeltfortzahlungs-gesetz, 5th ed. 2000, § 3 sec. 92 - 117; MünchArbR-*Boecken*, § 83 sec. 92 - 122; *Schmitt* § 3 sec. 84 - 118; ErfK-*Dörner*, § 3 EFZG sec. 46 - 63.

[42] Cf. *Houben*, SpuRt 2000, 185; MünchArbR-*Boecken*, § 83 sec. 119 - 121; ErfK-*Dörner*, § 3 EFZG sec. 52.

- When the conditions for continued payment are fulfilled, the employer is bound to pay normal wages to the employee under Article 4, subsection 1 of Law on the Continued Payment of Remuneration. Hence, it is to be considered that the employee is gainfully employed.[43]
- Thus, it may be concluded that, in principle, the initial six weeks of an employee's disability for work, his or her sickness risk is transferred to the employer due to the Continued Payment of Remuneration Law, unless the employee is guilty of his or her gross negligence which resulted in such sickness.

Sickness relief from the statutory health insurance

On expiry of six-week period under continued payment, if the incapacity for work of the employee is continued, the employee can claim illness benefit under the statutory health insurance scheme.[44] As per Article 44, subsection 1, sentence 1, Code of Social Law, volume 5, an employee is entitled to seek illness benefit in the event of he or she is disabled to work due to illness. The continued payment of remuneration along with sickness benefit provide a financial security to a sick employee. However, from the point of essential conditions and legal consequences, these two kinds of income maintenance differ significantly.

- The employees covered by the statutory health insurance are entitled to sickness benefit; whereas, every employer is, in principle, obliged to pay continue payment of remuneration to his or her employee(s). Accordingly, compulsory insurance exempted employees cannot claim benefit under the present head. The employees drawing a monthly income exceeding € 4,950.00 are considered as covered by the statutory health insurance scheme[45]; further, low-income employees, whose income do not exceed € 450.00 per month, also fall in this category.[46]

- Consistently with the "sickness" definition as provided in the Continued Payment of Remuneration Law, an irregular physical or mental condition is described here as the constituent fact of "sickness"; thereby, the reasons of such sickness are again considered irrelevant.

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[43] *Kaiser/Dunkl/Hold/Kleinsorge*, § 4 sec. 7 f.; *Schmitt*, § 4 sec. 19 f.
[44] Cf. § 49 Abs. 1 Nr. 1 SGB V.
[45] § 6 Abs. 1 Nr. 1 and Abs. 6 SGB V.
[46] § 7 Abs. 1 Satz 1 SGB V i. V. m. §§ 8 and 8 a SGB IV.

- According to the Federal Social Court an insured employee shall be considered unable to work in the event he or she does not able to perform his or her current work or to follow an identical type of gainful employment for the state of his or her health or if further work would result in worsening of this state of health.[47]
- As per Article 47, Code of Social Law, volume 5, an employee can claim illness benefit equivalent to the amount of only 70% of his or her earning before he or she fell sick; this provision is distinct from the continued payment of remuneration law. Article 48, Code of Social Law, volume 5 provides that an employee can claim illness benefit for a period of 78-weeks if the employee is incapacitated to work due to one and the same illness.
- The amount of sickness benefit may, under the continued payment of remuneration law, be reduced in the event of an employee's own fault results in his or her sickness. Nevertheless, an employee's gross negligence will not *ipso facto* be a sufficient reason in that case. Further, automatic decrease of entitlement of an employee will not be resulted by operation of law. In contrast, as per Article 52, Code of Social Law, volume 5, the employee's wilfully causing sickness or sickness due to commission of any criminal offence of the employee is the precondition for the reduction of the sickness benefit. In such scenario, the health insurance possesses the discretion to pay sickness benefit in whole or in part.
- Thus, from 7th to 78th week, 70 % of sickness risk of an insured employee has to be borne by the statutory health insurance and the rest 30% to be borne by the employee. However, the employee's share will be 100% in the event the sickness is caused wilfully by the employee. Further, the entire risk of sickness will be borne by the employees who are not covered by the statutory health insurance.

Final result

Analysing the provisions of the civil law and the labour and social insurance law pertaining to the distribution of the sickness risk the following conclusions can be formed: (a) In the initial six weeks of the incapacity of work of an employee due to sickness, the employer has to, in principle, bear the entire sickness risk; (b) subsequently, from the 7th week up to the 78th week the statutory health insurance will bear the 70% of the loss of income due to sickness; (c) the sickness costs are funded by both the employer and the insured employee; (d) basically, the share of health insurance contribution by the employer and the employee is at

[47] *BSGE* 46, 190 (191); 47, 47 (51).

the rate of 50% each;[48](e) the risk of sickness caused by considerable fault of the employee shall be borne by the employee himself or herself; (f) further, during 7th week up to 78th week the insured employee contributes 30% of his or her loss of income, and the employee who are not insured will be responsible for 100% for the loss of income.

Reasons for the distribution of risk of loss

The differentiated legal framework raised the fundamental question that why has the legislature formulated this scheme of distribution of risk of loss?

The Employee's Risk

The reductions of sickness benefit due to an employee's considerable fault do not pose any difficulty. It would be unfair, in cases like these, to impose obligations on the employer or the statutory health insurance to bear the loss of income of an employee.[49] Hence, the reasons for such reduction are comprehensible.

Risk Distribution between Statutory Health Insurance and the Employer

On the contrary, the reasons for the risk distribution between statutory health insurance and the employer are not certainly intelligible. The employer's obligation for the continue payment appears to be justifiable if the illness of the employee is caused by a work accident.[50] Similarly, an employer is responsible for the risk of all exigencies of the employee's life. Therefore, it is quite usual that numerous opinions justify the employer's obligation to continue the payment in case of illness of his or her employee(s). These opinions have been strengthened due to both legal as well as political-economic considerations.

Prospects of legal duties outside the continued payment law

a) Continued payment is a consideration to the employee for the work performed

The relevant literature argues, in part, the continued remuneration is a debt which the employer is required to pay due to the circumstances and the nature of the contract. The employee's working capacity are used by the employer for achieving economic aspirations of his or her own. For this purpose, considering the nature of the situation, the employer is obliged to provide benefits with an objective to protect the employee's survival during his or her illness. The principle of continued payment is not contrary to the principle of "no work,

[48] § 249 Abs. 1 SGB V. Besides that, health insurance funds are allowed to levy additional contributions from the employees, § 242 SGB V.

[49] *Kaiser/Dunkl/Hold/Kleinsorge* (above note 41), § 3 sec. 94; *Schmitt* (above note 38), § 3 sec. 85, 88.

[50] Cf. § 52 Nr. 1 SGB VII.

no wages"; rather, this wage is a reward for the already performed work of the employee and for the future work to be performed by the employee.[51]

It is pertinent to mention that from the legal perspective this view does not seem to be convincing. This is evident in the Civil Code, Article 326, subsection 1, sentence 1, which provides the principle of "no work, no wages". The Continued Payment of Remuneration Law rejects this principle by entitling the employee for the wages during his or her illness. The continued payment, therefore, entails "wage without work" during the period of sickness.[52] Nothing will be changed by this feature of continued wages even when such a period exceeds the period of sickness, or even exceeds the entire period of employment. It has also to be taken into consideration that the breakdown of equivalence principle of contractual obligation resulted from the employee's sickness is also mirrored in the overall responsibilities of the employee and the employer respectively. The continued wage payment cannot be realistically considered as a reward for the work already performed by the employee nor for the total work performance of the employee. The principle of "Mutuality of the Contractual Arrangement" does not support such as interpretation. Consequently, this view does not provide a ground for legal justification with respect to continued payment of remuneration, but least may provide a ground for socio-political justification. Similarly, obligation to continued remuneration due to the nature of the situation cannot be legally acceptable.

b) Continued payment as a welfare of the employee

According to an opinion currently rarely maintained but formerly widely accepted,[53] welfare of the employee is the reason which justified the obligation of the employer to continue payment of wages. However, the opposition to this view is that this obligation—so far as this view still in use at all— signify today such duty to provide financial security as can be driven from Article 242 of the Civil Code. This provision indicates only duties attached to a contract but not an obligation to pay wages as the primary liability of the employer.[54] Hence, the employer's liability to provide for the welfare of the employee cannot be the basis for the continued payment of remuneration.[55]

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[51] *Wiedemann*, Das Arbeitsverhältnis als Austausch- und Gemeinschaftsverhältnis, 1966, S. 15 f.; *von Koppen- fels*, NZS 2002, 241 (245 - 247); *Koller*, Die Risikozurechnung bei Vertragsstörungen in Austauschverträgen, 1979, S. 399 - 401; cf. *Kramer*, Arbeitsvertragliche Verbindlichkeiten neben Lohnzahlung und Dienstleistung, 1975, S. 52 f.; *Schwerdtner*, ZFA 1979, 1 (19 f.).

[52] *von Koppenfels*, NZS 2002, 241 (245 f.).

[53] *BAG* AP Nr. 25, 34, 68 and 72, § 1 LohnFG; *Hueck/Nipperdey*, Lehrbuch des Arbeitsrechts, 1. volume, 7th ed. 1963, p. 329; *Kreßel*, in: FS-*Gitter*, 1995, 491 (500 f.).

[54] MünchArbR-*Blomeyer* (above note 38), § 94 sec. 12 - 16; Staudinger-*Oetker* (above note 41), § 616 sec. 174; ErfK-*Preis* (above note 34), § 611 BGB sec. 760 - 762.

c) Final result

Thus, it may, therefore, be expressed that the continue payment of remuneration obligation of the employer does not arise due to the reasons surrounded in the rigid nature of private law which might have primacy over the Continued Payment of Remuneration Law. On the other hand, the employer's duty for continue payment of remuneration is entirely founded by the Continued Payment of Remuneration Law itself. This raises the question of what was the aim which the legislature wanted to fulfil by such law?

Objectives of the Continued Payment Law

a) Employees Maintenance

In the initial stage of the employee's incapacity for work due to sickness, financial support of the employee is, naturally, the aim of the Continued Payment of Remuneration Law.[56] In absence of an employee's entitlement to continued payment of remuneration, the employee can claim illness benefits from the statutory health insurance system. However, the benefit amount from the health insurance system has always been less than the amount under the Continued Payment of Remuneration Law.

b) Respite to the statutory health insurance fund

The principle of continued payment works as a fiscal respite to the health insurance system. This legal view can be observed in two legal amendments of 1930/31 which are governing the risk distribution between the health insurance and the employer till today.[57] Further, avoidance of the law with respect to the continued payment of remuneration was ended, at least in support of employees.[58] The employment contract can no longer limit or exclude the employee's entitlement to continued payment, which had been previously a usual practice. On the contrary, it was provided that the payments from the employer were to be credited entirely to the accounts of the health insurance when the payment is due.[59] Hence, considering this

[55] *Koller* (above note 51), S. 398 f.; Staudinger-*Oetker* (above note 41), § 616 sec. 174; *von Koppenfels*, NZS 2002, 241 (244 f.).
[56] MünchArbR-*Boecken* (above note 38), § 82 sec. 30 with further references.
[57] *BGHZ* 7, 30 (40, 47); MünchArbR-*Boecken* (above note 38), § 82 sec. 6 - 8, 31 - 34; *Schulte-Mimberg*, in: *Schulin*, HS-KV (above note 38), § 13 sec. 21 - 24; *Schulin*, in: FS-*Kissel*, 1994, 1055 (1062 f.); Staudinger-*Oetker* (above note 41), § 616 sec. 170.
[58] Cf. § 12 EFZG.
[59] Cf. § 49 Abs. 1 Nr. 1 SGB V.

legal provision, it can be concluded that the legislature has given priority to the continued payment of remuneration over the illness benefit. By such legal revolutions the legislature has made a purposeful change of the responsibility from the statutory health insurance to the employer.

c) Final result

From the afore-stated reasons it can be established that the dogmatic principles of labour or private law do not provide the basis of the current sickness risk distribution between the statutory health insurance and the employer. On the other hand, the socio-political objective of the legislature is the exclusive reason for imposing obligation on the employer to continue the payment in case of illness of an employee. The objectives of the legislature are; firstly, to ensure better social security for the employee than the security provided under the illness benefit; secondly, to provide fiscal respite to the statutory health insurance system.

d) Comparison between Indian and German Law

From the analysis of Indian and German law on income maintenance the following similarity and differences can be identified:

- With respect to the principle of "no work, no wage" the position is same in India and Germany. As like the Civil Code of Germany, the contract law in India also makes a contract void in case of an employee is not able to perform the work due to illness. In such as case, the employer cannot claim for performance of work by the employee. The employee also cannot claim remuneration from the employer as his or her claim becomes void. Therefore, there is an absolute similarity in the laws of both the country with respect to the principle of "no work, no wage"

- Like German law, in India also development took place in labour and social security laws which thwarted the principle of "no work, no wage". However, unlike German law, in India, with respect to law on continued remuneration, laws are not uniform across the nation. The employees claim for continued remuneration from employer depends upon the state where the employee is working and also depends upon the law which governs his or her employment. Unlike German Law on the Continued Payment of Remuneration, where the employee is entitled to six weeks continued payment in case of sickness, in India, this benefit is extent to only 8 to 15 days from the date of sickness. However, in both the country, the sickness benefit amount is same, i.e. 100% of the wages which the employee was earning before his or her illness. As far as the cause of sickness is concerned, unlike

Germany, in India an employee's claim for continued payment does not depend on the cause of sickness. Therefore, unlike Germany, the employee in India can claim continued payment of remuneration for sickness even if it is caused due to his or her own negligence.

- Like German Code of Social Law, in India also the Employee's State Insurance Law provides for statutory insurance scheme of employees. The laws of both the countries categories the employees who can seek benefit of the scheme. However, in Germany, the category comprises the employees drawing a monthly income in excess of € 4,950.00 and also the employees with wages not exceeding € 450.00 per month; whereas, in India the category comprises the employees drawing an average monthly income below ₹ 21000.00. The sickness benefit amount under the insurance scheme also same in both the country *i.e.* 70% of the earning of the employee which has normally been paid before he fell sick. However, unlike the German law, the maximum days of sickness benefit in India is 91 days starting from the day when the employee fell sick, and in some case number of days may go up to two years. Unlike German law, the cause of sickness or chance of gross negligence by the employee is not the ground of reduction from the claim of the employee under the Indian Law.
- The structure of distribution of risk between employer and statutory health insurance is different under the German and Indian Law. Unlike German law, in India, the employer is entitled to deduct the benefit which the employee receives from the Employee State Insurance Corporation. Therefore, at the initial stage of sickness, the employer can deduct 70% of the wages of the employee but remaining 30% the employer has to pay, however, in under German law, the employer has to pay full wages for initial six weeks of sickness. Consequently, under German Law, the employer's liability to continued payment is considered as helping to statutory health insurance, whereas, in India, payment under the statutory health insurance is considered as helping to employer's liability to continued payment.
- Like German legal provisions, in India also the employer's liability to continued payment does not result from the dogmatic nature of civil law, rather based on the law for continued payment with the objective to provide income maintenance to the employee. However, unlike German law, in India, the law for continued payment is not for a respite to the statutory insurance corporation. On the contrary, the statutory insurance policy

gives relief to the employer from the continued payment in case of sickness of the employee.

Summary

Income maintenance under Indian Law

- Under the provisions of Indian contract law, risk of performance in the event of an employee's sickness has to be borne the employer; whereas, the risk of remuneration to be borne by the employee. Therefore, "no work, no wages" principle is applicable as per the Indian Contract Law.
- The principle of "no work, no wages" is replaced by the concept of sick leave with wages. Under this principle, the employee is entitled to 8 to 15 days (depending on the state laws) leave with full wages. As a consequence of which, the employee's sickness risk is shifted to the employer. The employee can claim illness benefit even if the illness of the employee is caused due to the employee own gross negligence.
- The sickness risk of the employee who is insured under the Employee's State Insurance Act, 1948 is to be borne by the Employee's State Insurance Corporation up to the amount of 70% of the wages till 91 days from the date of sickness. However, if the employee sickness is due to the disease which falls within the categories of 34 different types of disease, then the employee's sickness risk is to be borne by the Employee's State Insurance Corporation up to the period of two years from the date of sickness with an increase rate of 80% of his wages. Moreover, if the employee's sickness is due to sterilization, then his or her sickness risk is to borne by the Employee's State Insurance Corporation with a rising rate of 100% for 7days/14days for man and women respectively. However, if the employee is not insured under the Employees State Insurance Act, 1948, he or she has to bear the entire risk of remuneration. The employer's liability to pay with respect to sickness benefit to the employee is exempted to the extent the employee receives the assistance from the Employee's State Insurance Corporation.
- The employer's liability to continued payment neither result from the Indian contract law nor as a duty of the employer to make arrangement for the welfare of the employee.
- The employer's liability to continued payment of remuneration in case of sickness is based on the State Laws and Industry Specific Central Legislations. The purpose of the law is to provide for income maintenance.

Income maintenance under German Law

In the event of the employee's sickness, the employer bears – under the provisions of the German Civil Code – the risk of performance; whereas, the risk of remuneration is borne by the employee. Hence, the "no work, no wages" principle is applicable under the German Civil Code.

- This principle is thwarted by the Continued Payment of Remuneration Law. By means of this law, the employee may, therefore, assert a claim for the continued payment of remuneration for the period of the first six weeks of his or her disablement for work. In this respect the employee's sickness risk is shifted to the employer. However, the shift of risk is dropped if the incapacity for work is attributed to the employee's gross negligence.
- During 7th to 78th week, the sickness risk is to be borne by the statutory health insurance to the amount of 70%. During this period, the employee is entitled to be paid sickness benefit to an extent of 70% of his previous wages. If the employee is not a member of the statutory health insurance or has caused the sickness wilfully, he or she has to shoulder the entire risk of remuneration alone.
- The employer's liability for the continued payment does not yet result from the dogmatic nature of civil law and labour law. Neither the continued payment constitutes a consideration for work the employee has previously performed and will still perform in the future. Further, the employer is not obligated to continue the payment by reason of his or her duty to make arrangement for the employee's welfare.
- On the contrary, the employer's obligation to continue the payment is based solely on the provisions of the Law on the Continued Payment of Remuneration. The purpose of this law is not only the employee's income maintenance but also to give financial respite to the statutory health insurance.

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TELEMEDICINE AS A BOON, A DIGITAL TRANSFORMATION OF THE HEALTHCARE SYSTEM IN KARNATAKA: AN ANALYSIS

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"Telemedicine can be a great equaliser in healthcare, ensuring that distance and location no longer dictate the quality of care one receives."

— Dr. Devi Shetty, Founder of Narayana Health

1. Introduction

Every word in the statement famously voiced by the Mahatma of our nation is very true when he states, "Health itself is wealth and it not the piece of gold and silver". Undoubtedly, health is been considered a complex variable, as it encompasses within its ambit the conceptualities of the Right to good food, shelter, clean and hygienic sanitation, an individual's mental, physical, social health, affordability, accessibility availability, adaptability and quality of health care services and medical services and what not. Now, the prime objective of every other state is to cater all these facilities and amenities to its state individuals which promotes them to attain the highest attainable standard of health without being subjugated to any kind of disparities and discrimination based on the element caste, colour, gender, distance, as it is been time and again reiterated by the World Health Organisation that " Health is the comprehensive state of physical, mental and social well-being of an individual and it is not mere diseases. The dogmatic principle of the notable World Health Organisation is also bolstered by several other international health organisations and undoubtedly by the Constitution of India as well.

Now, when a particular state obligates itself to reduce the disparity among its state individuals in the parameters of the "distance" particularly between urban and the sub-urban rural space in the matter of catering healthcare services is concerned, In this contemporary world of the digital era the amalgamation of the technology within the healthcare system places a very fascinating and pivotal role in curbing the discrimination of distance as a whole. This combo of technological advancement within the system of healthcare services has led to the germination of a novel conceptualisation called as "telemedicine or e-medicine. Nevertheless, this evolution within the healthcare sector through technology has amazed mankind. The crux element of telemedicine is to pull and cater medical data over the distance.

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2. Statement of Problem

Undoubtedly health is a complex and composite variable that has to be catered by every state to its state individuals without being subjugated on any terms of discrimination or disparity. To satisfy this objective the state strives hard to be within the parameters of the dogmatic principle of the notable World Health Organization and Universal Health Coverage, A new germination of the novelty within the field of techno medicine has surprised mankind. Nonetheless, the amalgamation of tech with healthcare services meaning Telemedicine has created wonders by expanding its portability, scalability and efficacy to a global reach. But the gap is that the

where the receivers of the healthcare services in the super-speciality hospitals in metropolitan cities can obtain healthcare services imbibing telemedicine networks and services from computer-assisted technologies whereas health clinics in the sub-urban and countryside are unable to access, and afford even the basic quality healthcare services such caesarean section etc. The most regrettable stage of healthcare services is that many of the healthcare receivers are unaware of the conceptualisation of telemedicine and its optimum utilisation in the healthcare system

3. Historical perspective of the Conceptualisation of Telemedicine

It was way back in the year of 1950s when the term Telemedicine was pioneerly used. It is right from that era, that the advancements in technology within the sector of healthcare have made telemedicine more feasible. The term telemedicine comes from the roots of the Greek language, tele meaning "distance"[2] It is learnt through the analysis that the recordings of the initial days of telemedicine can be traced to the beginning of the 20th century when the world witnessed the scenes of the transmission of eco-cardiographs via a telephonic line. Undoubtedly, this turn of events acted as the cradle for today's modern telemedicine. The world

[2]Mason Stoltzfus, Arshdeep Kaur, Avantika Chawla, Vasu Gupta, FNU Anamika and Rohit Jain, 'The role of telemedicine in healthcare: an overview and update' (2023) 35 *The Egyptian Journal of Internal Medicine* 49 https://doi.org/10.1186/s43162-023-00234-z and https://www.researchgate.net/publication/371968687_The_role_of_telemedicine_in_healthcare_an_overview_and_update/citation/download

could witness the promise of development within the digital era when they could access and afford especially emergency medical care just with the telephonic speedy dial of 911 or 101.

Eventually, another event that led to the blossoming of modern telemedicine was when, in the year 1924, a journal magazine was published by the Radio news magazine where on its cover sheet the world witnessed a scene of communication between the doctor and patient in two different ends, and the medium here was through the television and a microphone, this turned out be the future of the public health. Notably, it was in 1959 that the world spotted the remarkable video consultation event when the medical professional at the University of Nebraska implemented a process of interactive telemedicine for a neurological examination. Now, in this contemporary digital era, the utilisation of telemedicine is immeasurable.

To note some, it is been utilised by the National Aeronautics and Space Administration in the realm of disaster management and in the year of 1997, again, it was this renowned space administration that paved the way for private participation within public health through the medium of telemedicine [3]

As far as the Indian scenario is concerned, with the kickstart initiation of the pilot study in reference to the telemedicine is concerned, the Indian Space Research Organisation introduced the wing of technology into the healthcare system through the seed of telemedicine. Coupled with the notable kickstart by the ISRO, the Ministry of Health and Family Welfare in the year 2005 instituted the National Telemedicine Taskforce as well. Along with this initiation, there were various other telemedicine networking and national programmes floated by the Government of India, such as the Integrated Disease Survival Project (IDSP), the National Cancer Network (ONCONET), the National Rural Telemedicine Network, the Digital Medical Library Network, to encourage the medical education through e-learning there were several other initiatives taken by the government of India through the medium of National Medical College

4. Research Objectives.

4.1. To analyse the historical perspective, meaning, categories and the downside of Telemedicine

[3] VG Chellaiyan, AY Nirupama and N Taneja, 'Telemedicine in India: Where do we stand?' (2019) 8(6) *Journal of Family Medicine and Primary Care* 1872https://doi.org/10.4103/jfmpc.jfmpc_264_19

4.2. To analyse the contemporary use of Telemedicine in the global, Indian scenario, and by the State of Karnataka

4.3. To analyse that the Telemedicine in healthcare services is a boon to mankind and not a bane.

5. Research Methodology.

The research is doctrinal and primarily focuses on secondary sources such as statutes, legal frameworks, and scholarly articles about the subject of Telemedicine.

6. Research Scope and Relevance

The universe of the research area is based on the conceptualisation of Health, Healthcare, and the Healthcare system and the right to health, here the author of the article has limited the scope only to the collection of secondary data with a non-empirical study involved in reference to the concept of telemedicine in this digital era of 21st century, The relevance of the study is that it focuses and explains that how telemedicine has been acted as a boon to the present healthcare system rather than a bane.

7. Expected Outcome of the Research

7.1. To analyse various healthcare initiatives launched by the government of Karnataka in uplifting the services of telemedicine and cater its utmost utilisation to its state people.

7.2. To identify the gaps that have arisen in the present healthcare system in imbibing the telemedicine healthcare services within its ambit.

8. What is Tele-Medicine – Meaning and its Definition

8.1. Meaning of Tele-Medicine

Telemedicine, in simple parlance, could be referred to as the unification of the biological and medical data of signals, video graphs and photographs that are transmitted through the unification of wireless communication, which promotes catering healthcare services over distance even to the demography of the remotest places.

This novel germination of Digital health effectiveness and workability is spotted on the 4A's; to be precise in connectivity with the healthcare system concerned they are affordability, accessibility, availability, adaptability and quality of healthcare services and yes telemedicine promotes and caters all these 4A's to its larger crowd on a global reach. Space and time are the crucial bedrock on which the concept of telemedicine is based.[4](Gupta et al.,2014)

8.2. Definition of Telemedicine

As notably defined by the World Health Organisation, "Tele-medicine refers to the prime objective of catering services of healthcare, where distance, space and time has been regarded as the critical factor where all the clinical and healthcare professionals carries the utmost utilisation of the e-technologies in this digital era inter-exchange of the requisite information in regards to the diagnosis, identification of the ailment, prevention and curing of the diseases and ailment with the ideology of the catering of the good health at low cost to all.[5] As per the American Telemedicine Association, telemedicine refers to the natural evolution of healthcare in the digital world[6]

As per the Telemedicine practice guidelines of 2020, laid down by the Medical Council of India and the National Medical Council, telemedicine is the one which necessitates the utilisation of information and communication technology imbibed within the medical field with the prime objective of identification, prevention and treatment and curing of the diseases and ailment and also uplifting the quality of the health services catered by the healthcare providers.

Telemedicine has also been remarkably defined by the National Health Portal of India (NHP)as the remote diagnosis of diseases, treatment, and curation catered to the state individuals using teleconsultations, email, and mobile applications, which falls within the ambit of telehealth.

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[4] Rajani Gupta, RS Gamad and Prashant Bansod, 'Telemedicine: A brief analysis' (2014) 1(1) *Cogent Engineering* 966459, ISSN (Print) 2331-1916 https://doi.org/10.1080/23311916.2014.966459

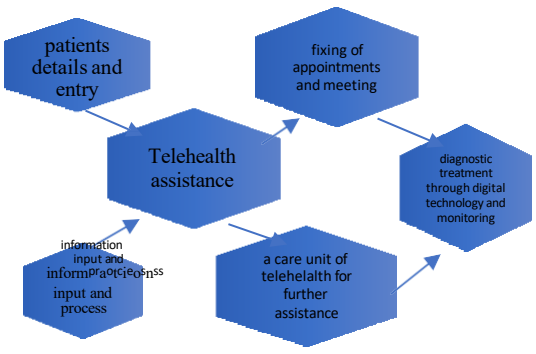
[5] **WHO Global Observatory for eHealth**, *Telemedicine: Opportunities and Developments in Member States: Report on the Second Global Survey on eHealth* (World Health Organization 2010) https://iris.who.int/handle/10665/44497 accessed 14 March 2025

9. Essential requirements that foster the conceptualization of Telemedicine:

Most importantly, one of the radiant features that curate the crux element of telehealth is its feature of portability, expandability to every look and corner of the world, accountability, efficacy, and most crucially, patient privacy and confidentiality shall be protected and well-guarded. Ultimately, the main criteria of telemedicine is to cater to the care of emergency services in both critical and non-critical situations to the needed mankind at the instance. It is these inbuilt features of telemedicine that enable doctors to network in a visual form and talk with their patients, without distance, space, or time being a hindrance. In addition to these features of telemedicine, certain other elements have to be coupled up, such as devices that capture and with-hold bio-medical signals, equipment and systems that facilitate telecommunication, networking lines and signals that facilitate teleconsultation and telecommunication, remote diagnosis, and finally, the crux is the proper display by content-based image retrieval.

The assistance of telehealth can be utilised to the best of its outcome in the arena of echocardiography, ultrasound, endoscopy, and scan reflecting on computed tomography (CT scan), etc. [7]All the features of e-medicine can be accentuated with the coupled-up proper tracking of the digital technology system and smart connectivity and healthcare surveillance. In this way, it saves the time of both the patients and the health service provider.[8]

10. Procedural workflow chart in the treatment of telemedicine



[7] *Supranote3*

[8] Abid Haleem, Mohd Javaid, Ravi Pratap Singh and Rajiv Suman, 'Telemedicine for healthcare: Capabilities, features, barriers, and applications' *Sensors International* https://www.keaipublishing.com/en/journals/sensors-international accessed 14 March 2025

The implementation of the treatment of telemedicine commences with the entry-level of feeding the patient's data and private information, accompanied by the telemedicine supportive healthcare unit, followed by the doctor's assistance to the patients through the medium of teleconsultations and tele-video conferencing. Ultimately, medical professionals and healthcare service providers provide diagnostic treatment for ailments, diseases, injuries, as well as preventive, rehabilitative, and curative services.[9]

11. Telemedicine and its categories:

On a basic note, the system of telemedicine is classified into 5 types they are:

11.1. Synchronous or real-time telemedicine: In this category, the sender and the receiver are online in the process of teleconsultation at the same time interval. henceforth, in this system of real-time telemedicine, there shall occur live transmission of exchange of information between the sender and the receiver.

11.2. Asynchronous form of Telemedicine: This is also well-known as a mechanism of store and forward form of telemedicine. Where the sender records, stores and forwards the information of relevance at his time and place of convenience. Similarly, the receiver on the other end of the same pedestal can open the received data and review it at his or her time and space of convenience.

11.3. Remote category of monitoring of telemedicine: This is an asynchronous form of telemedicine. It is self-explanatory; the process of accessing telemedicine services is catered by the medical professionals to the patients settled in remote, rural and suburban areas

Regarding interactions within the telemedicine system, there are two categories. One involves communication between medical professionals via teleconsultation and videoconferencing, where they exchange vital information. The other involves interactions between medical professionals and the unreachable population on the receiving end, where vital information is also transmitted through teleconsultations and teleconferencing. This facilitates the global operation of telemedicine.

[9] Ibid.

12. The contemporary use of Telemedicine and its application– A longing need of the hour within the healthcare system.

12.1. Technology-based education: In simple parlance, it can also be referred to as "Tele-education", which focuses on and facilitates the aspects of long-distance efficient learning, especially training to medical professionals, nurses and doctors, who can be trained through video teleconferencing, where efficient training, workshops and conferences can be conducted

Another variant dimension of education via technology is tele-proctoring, which aims to tutor and evaluate trainees in surgical trials through distance learning equipped with sophisticated teleconferencing.

12.2. Mobile Health Clinics: yet another riveting feature of Tele-medicine is mobile health clinics, to be precise the computerised Digi- technology used with the terrain of the vehicles which travel through the remotest, rural and sub-urban areas to mainly cater healthcare services to the community people, which on either way be considered as healthcare facilities catering door to door. MHC promotes quick accessibility and affordability of healthcare services, guidance, and teleconsultation by high-level medical professionals and specialists at the fingertips of the state's individuals.

12.3. Teleconsultation and Tele-follow-up: Telemedicine also aims to cater for teleconsultation coupled with tele-follow-up for further preventive, palliative, curative, and rehabilitative services by eminent medical professionals to the patients. This majorly checks and tracks time management and reduces exuberant out-of-pocket charges incurred during transportation and accommodation.

12.4. Tele-home healthcare: Monitoring, proper follow-up and evaluation of the patient's health in remote areas through a system of computer telephonic integration for a stipulated period of twenty-four hours for the crucial monitoring. Tele-home healthcare also facilitates a home teleconsultation of experts and specialists such as telesurgery, tele-physiatry, tele-cardiology and teleophthalmology.

12.5. Other than health, the good use of telemedicine can also be witnessed in the arena of disaster management. However, for this to be effective, the essential requisite is proper satellite connectivity and proper customised services by the telemedicine system, which is appropriate for the region where the disaster has occurred. Some notable and relevant illustrations of telemedicine disaster management are the services of telemedicine by the National Aeronautics

and Space Administration in 1985 and when the earthquake struck in Mexico. Undoubtedly, it was telemedicine disaster management that played a prominent role.[10]

12.6. Telemedicine in abortion procedures: India's Telemedicine Guidelines 2020 does not statutorily express anything about the use of technology in the procedure of abortion. However, in this 21st-century digital era, makes are very prominent recommendations of the arena of abortion within the ambit of telehealth which guarantees and reassures the utmost safe procedures of abortion. This should not be an element of missed opportunity for safe abortion post-pandemic, especially within a country like India. It essential to be aware that during the era of the epidemic, several other operational guidelines were issued by the notable World Health Organisation. To avoid close-ended contact, even in such critical situations, telemedicine played a crucial role in conducting several abortion procedures worldwide. Apart from Telemedicine being utilised within the abortion process, yet another convenience of telemedicine within the procedures of abortion is that it is difficult for mothers who are pregnant, especially in the third trimester, it's difficult for them to locomote all over for the routine check-ups and follows. In that scenario, telemedicine acts as a helping block in conducting and assessing the development of the foetus to a greater extent.

Some of the prominent models recognised under telemedicine within the ambit of the system of healthcare are

12.6.1. Site-to-site model – As the name of the telemedicine model is self-explanatory, where the client's physical existence on the receiver end comes to the clinic which is presumed to be the site, with the presence and the required assistance of the clinical staff obtains the requisite and medical guidance from the healthcare provider on the other end.

12.6.2. Direct-to-client model—In this model of telemedicine, the same process is followed, but with the twist of the client's physical presence seen in her home or her place of convenience. The requisite amount of medical guidance from the medical professional is obtained by the medium of teleconsultation or teleconferencing.[11]

12.7. the optimum utilization of the integration of technology and medicine within India's healthcare system during the COVID era: During the COVID pandemic, humanity suffered

[10] *Supranote at 2*

[11] Sruthi Chandrasekaran, VS Chandrashekar, Suchitra Dalvie and Anand Sinha, 'The case for the use of telehealth for abortion in India' (2021) 29(2) *Reproductive Health Matters* 392 https://www.jstor.org/stable/10.2307/48714669

significant losses, including property and lives. The situation was so severe that even close family, friends, and relatives could not have contact. The challenge was accessing medical treatment, diagnosis, and care from healthcare professionals. In response, one remarkable initiative launched by the Indian government was the Telemedicine Guidelines of 2020. However, this initiative also raised concerns about patient privacy, data security, and limited internet accessibility. Proper and effective use of telemedicine technology has paved the way for equitable and accessible healthcare for all in this digital age of the 21st century.

13. Telemedicine and its downside:

No doubt, Telehealth has escalated the system of healthcare to the next level. It's only through the riveting development of telemedicine that health has become affordable, accessible, available and adaptable quality healthcare services to every state individual moving on a global reach without lying on the bar of any kind of discrimination or disparity among mankind. But every developing end of the amalgamation of tech-health does have a downside on the other side of the coin, there also exists the town side of telemedicine, they are as follows:

13.1. Absence of Physical diagnosis: As it is reiterated time and again, the crux of the conceptualisation of telehealth is based on videoconferencing, teleconsultation which creates a medium for accessible and affordable healthcare services to the patients who are residents of the remotest of areas, but this section of telemedicine do have a downside the where the medical professional like doctors and nurses cannot execute a proper physical diagnosis of ailments, diseases and injury for a better analysis and prescription of curative, palliative services to the required patients. This downside of telemedicine shall also act as a hindrance in curbing the required social connections between the doctor-and-patient relationship, where the same is been time and reiterated in the telemedicine guidelines 2020 laid down by the American code of ethics that doctors cannot compromise on the elements of quality healthcare services at any instances.

13.2. Incorporating the techniques of telemedicine into the system of healthcare can be expensive and time-consuming – Since the sphere of the telemedicine still stage of development within the ambit of the healthcare system, the process demands the health professionals of the medical healthcare centres in the rural and sub-urban areas should have a welcome mindset to adopt for the same with the quint-essential objective of improving the public health, consequences to which the health professional be it the nurses and doctors have

to be trained and equipped to a greater extent for the same and this process is quite a lot of time consuming and expensive as well.

13.3. Connectivity crises in the system of telemedicine: The entire operation of the system of telemedicine is the foundation of the virtual world. It is required that a state network connectivity has to be concretized on both the sender and receiver end, which therefore facilitates a proper exchange of vital information as the need of the hour involved in the interaction between the doctor and the patient. Inefficiency in this connectivity can hamper or lead to a loss in catering and facilitating proper healthcare services to the patients.

13.4. A greater technological divide within telemedicine in the ambit of the healthcare sector: One of the main agenda of telemedicine in the ambit of the proper blend of technology and medicine is to reach every individual existence in every look and corner of the world, but inefficiency and hindrance are been witnessed when the optimum possible development of telemedicine is seen only in the urban areas or in the greater metropolitan cities where there are comparably a proper upgraded healthcare amenities and facilities such better-trained doctors, nurses, para-medical professionals and equipment's than compared to the healthcare centres, sub-centres in the suburban and the rural areas, where incidence are witnessed where these healthcare centres do not even facilities and amenities that would support caesarean operation. To back this pessimistic effect of telemedicine, there are certain narratives by renowned doctors such as Dr. Thaigaranjan Sundararaman, he is also the director of the State Health Resource Centre in the central Indian state of Chhattisgarh, has stated that where there is an uneven distribution of initiatives of information and technology accumulated more in the private and corporate arena of the health sector. This imbalance sustaining within the ambit of the technology amalgamated within the healthcare sector has to be balanced and even out, which consequently promotes equitable, accessible, affordable healthcare services to all [12]

13.5. Other hiccups in the system of telemedicine: hindrances in the technology, poor internet connectivity, workability failures within the equipment and many more are some of the threats that are imposed and hampers the good deed of telemedicine especially within the system of healthcare [13]

[12] Ganapati Mudur, 'The great technological divide' (2004) 328(7443) *British Medical Journal* 788 https://www.jstor.org/stable/41707299

[13] Mason Stoltzfus, Arshdeep Kaur, Avantika Chawla, Vasu Gupta, FNU Anamika and Rohit Jain, 'The role of telemedicine in healthcare: an overview and update' (2023) 35 *The Egyptian Journal of Internal Medicine* 49 https://doi.org/10.1186/s43162-023-00234-z.

14. The Growth of Telemedicine in the Global Scenario, In a Country like India and in the State of Karnataka.

14.1. Telemedicine at the Global Scenario:

Article 12 of the International Covenant on Economic, Social and Cultural Rights aims to cater to and guarantee quality healthcare facilities via the medium of healthcare technologies.

Nonetheless, Article 25 of the Universal Declaration of Human Rights aims in guarantee medical healthcare facilities to all without any individuals subjugated to any kind of disparities.

Nevertheless, In the year 2005, The World Health Assembly of the World Health Organization adopted a resolution WHA58.28 on e-health in order to encourage its state members to cater a long-term programme on e-health to its state people.

On November 2020 the World Health Assembly in its 73rd session stressed and countersigned the concept of global strategy on Digital Health between the years 2020 to 2025. The main goal of this assembly was to digitalise healthcare, ensure the optimum utilisation of telehealth ensuring of benefitting the people to the utmost

The European Union made an immeasurable contribution by recognising the importance of the protection of personal data which also covered telemedicine within its ambit undoubtedly

There are several other non-governmental organisations, such some the World Medical Association have highlighted the crucial importance of telemedicine.

14.2. Telemedicine in Indian Scenario:

The country India encompasses one of the largest populations hitting up to 121 crores to be precise in numbers, achieving equitable, affordable and accessible healthcare services to all state individuals in being on par with the dogmatic principle of the World Health Organisation and the Universal Health Coverage has become a country's greater challenge. To surpass this impediment, there are several other telemedicine initiatives floated by the Republic of India , they are as follows:

HIIPA which is also known as the (Health Insurance Accountability and Portability Act 1996) is a prominent statute that has uphold the benefits of e-health and made telemedicine a convenient form of approach to state individuals as far the healthcare sector is concerned

A pioneering approach towards the system of Telemedicine was first time has been achieved by the Indian Space Research Organisation (ISRO) by launching the Telemedicine Pilot project

in the year of 2001 which was in amalgamation with the Apollo Hospitals of Chennai and rural hospitals of aragonda village within the district of Chittoor. It is these pioneer initiatives launched by the Ministry of Health and Family Welfare, Indian Space Research organisation in amalgamation with Apollo hospital did make an attempt to reach the system of telemedicine within the ambit of healthcare services door to door especially in the rural and the suburban areas.

In order to unite the accessible data relating to the public health, The Government of India, Ministry of Health and Family welfare has set up many projects such as Integrated Disease Surveillance Project (IDSP), National Cancer Network (ONCONET),

National Rural Telemedicine Network, National medical college network, Digital Library Medical Network. Launching telemedicine taskforce at the national level in the year 2005 by the Ministry of the health and family welfare and the most importantly the Telemedicine guidelines 2020 are the pragmatic steps taken by the Indian Government for upgrading the system of healthcare in India.

Narayana Hrudayalaya, Telemedicine enterprises launched by the groups of Apollo Hospitals, Asia Heart Foundation, Escort Heart Institute, Amrita Institute of Medical Science, Aravind eye centres are some of notable healthcare hospitals which runs under the initiatives floated by the state and central government in promoting the technology of telemedicine in India. Of late, The Indian Space Research organization has precisely connected over 45 hospitals in the rural and sub-urban areas and 15 super speciality hospitals including the state of Jammu and Kashmir Andaman and Nicobar and in the regions of Island of Lakshadweep in order to improvise the nodes of telemedicine networking worldwide.

Another riveting health initiatives launched by the Ministry of Health and Family welfare is the National e-health authority which is the amalgamation of National e-health authority and National digital health authority of India which aims in promoting and catering quick accessibility, affordability and quality healthcare services to the state individuals. Again, the said ministry of the Indian Government with the aim of transmitting a safe data of health records of public health, system of electronic health records has been in the year 2013 and the revised version in the year 2016 by the government of India. Telemedicine portal at the National level has also been setup by the Government of India which promotes e-health, e-health education. E-healthcare service deliveries especially through the portal especially to the rural sector.

Yet another fascinating project developed by the Indian Space Research Organization is the Village Resource Centre, notably known as phase VRC. This comprehensive package promotes

telemedicine, tele-education, support systems through online decision-making, and more. To be precise, the Government of India has established almost 500 VRCs.

Arogya Shree is another internet-based mobile clinical network for telemedicine that amalgamates all the healthcare units and promotes the technology of telemedicine. It has been a prominent development within the healthcare sector launched by the government of India.[14]

14.3. Telemedicine services in the state of Karnataka:

The government of Karnataka with the prime objective of bridging the gap between the healthcare services catered by primary healthcare, subcentres situated in the rural areas with that the healthcare treatment catered by the super-speciality hospitals, the Telemedicine network project was launched by the Ministry of Health and Family Welfare, Karnataka government in collaboration with the Indian Space Research Organization in the year 2001. The said project was functional in 2 phases, In the 1st phase, in the year 2008 the service of telemedicine was operational in 12 districts and in the 2nd phase, the telemedicine network project was operational in 25 hospitals within the districts which was in interconnectivity with nodal super speciality hospitals located in cities of Mysore and Bengaluru

Neuroservices imbibing of telemedicine is made operative in some of the notable hospitals like NIMHANS, Lady Curzon Hospital, and the oncology department of Kidwai Memorial Institute of Oncology. Yet another Captivating amenity of Telemedicine services launched by the Government of Karnataka is the E-Sanjeevini Platform which has been floated with the prime objective of catering to cost-effective and free telemedicine services, The said platform comprises 2 major models they are E- Sanjivani OPD which aims in catering teleconsultation services from the medical professionals to their patients within their comfort zone another mode of the said platform creates connectivity between the health and wellness care centre through the hub- and spoke mode where this facilitates tele-consultations, follow-ups and prescription. Namma Clinics is another initiative of telemedicine services floated by the Bruhath Bengaluru Mahana Gara Pallike, in the urban areas of Bengaluru city for the quick accessibility, affordability and quality of healthcare services. The government of Karnataka has also floated the Arogya Bharath Digital Mission, where the patients having health accounts in Ayushmann Bharath (ABDM) with that account id the inpatients residence in rural areas can store their health records and data digitally which promotes the patients to obtain healthcare services tele- consultations.[15]

[14] *Supranote at 2*

Telemedicine healthcare services are also catered to the state people when there is a collaboration of the private and public healthcare sectors such as the collaboration between the government of Karnataka and hospitals like Apollo Telehealth, Narayana Health etc.[16]

15. Literature Review:

In "The role of telemedicine in healthcare: an overview and update article", the author Mason,.et.al (2023) has highlighted the riveting role of telemedicine in the sector of healthcare. Primarily the author also looked into the horizon of the amalgamation of technology within the healthcare system thereby leading to the germination of one of the captivating exponents for the century nonetheless it is telemedicine or telehealth. The paper also narrates the pros and the downsides of telemedicine within the sector of healthcare. The study "Telemedicine: A brief analysis" Gupta. R (2014), reiterates that the prime objective of telemedicine is to become that medium that confirms the 4A's via which the entire healthcare system expands on the affirmative end, which are affordability, accessibility, adaptability, availability and quality healthcare services which include skipped and well-trained medical healthcare professionals, equipped medical instruments and most important stable internet facilities on both ends be it the receiver and sender. This article also picturised the riveting features of telemedicine such as scalability, portability and reachability to every state individual without being touched on any element of discrimination and disparities. The author G. Mudur (2004) in The great technological divide, has expressively expressed his view that there is a disproportionation in the use of the service of telemedicine all over the world he continues to express that there are some super-speciality hospitals and healthcare clinics catering services of inculcate the concept of telemedicine networks and computer- assisted learning in their healthcare services where health-clinics which are situated in the rural and suburban areas are unable to cater facilities even for caesarean section.

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[15] *Supranote at 11*

[16] Malladra, Parameshwarappa,Olickal, Jeby,(2023)Telemedicine Awareness and the Preferred Digital Healthcare Tools: A Community-based Cross-sectional Study from Rural Karnataka, India.Indian Journal of Community Medicine,48, 10.4103/ijcm.ijcm_770_22 , https://www.researchgate.net/publication/376205596_Telemedicine_Awareness_and_the_Preferred_Digital_He althcare_Tools_A_Community-based_Cross-sectional_Study_from_Rural_Karnataka_India/citation/download

This greater technological divide faced by the vulnerable section of society has to be justified appropriately

The author in Telemedicine in India: Where do we Stand? has concentrated his views on the development and the expansion of the Government of Karnataka on the viability and the optimum utilisation of telemedicine networking by catering to its state individuals through the facilities of Namma clinics, an initiation floated by the BBMP, Bengaluru to cater quick accessibility and affordability of healthcare services to its state people. The government of Karnataka has also floated an initiation called Arogya Bharath digital mission with the unique Digi-health card can store their health records as well.

16. Conclusion and Suggestions.

16.1. Conclusion

As this paper reiterates, health is an indispensable molecule in one's life. There are several extraneous determinants such as the lifestyle of one individual's health, The environment in which he lives, and the mental health of the individual all these facets no doubt affects the health of the individual, apart from this it is the state's indispensable duty to protect the health of the individual as per been guaranteed by the Indian constitution and The World Health Organization and several other international perspectives as well. To be in the same parameters the Indian healthcare sector and the healthcare sector of the Government of Karnataka have imbibed a novel concept of Telehealth, and several other initiatives floated by the said government but the hiccup is that when such utilitarian amenity of the healthcare system such e-medicine is not optimally utilised it is because of the lack of the enforcement mechanism if that is addressed properly Telemedicine is a "Boon'' to the Healthcare system and not a "Bane''.

16.2. Suggestions:

One of the major hindrances to the development of telemedicine within the ambit of the healthcare sector is that several other state individuals are unaware of such an amenity, education regarding telemedicine has to be widespread regarding the same to all the sub-urban and the remotest of the area, as one of the main objectives of the telemedicine to ensure affordable and accessible healthcare facility are catered to every individual without being subjugated to any discrimination on the plate of global reach.

Another hindrance to the expansion of the utmost utilization of telemedicine within the ambit of the healthcare sector is a greater technological divide meaning many super-specialty and multi-specialty hospitals are using telemedicine networks and computer-assisted technologies whereas several other primary healthcare clinics and community healthcare clinics situated in the countryside are quite unaware about such facilities, even the requisite health facilities aren't

guarantees to the patients. In such a scenario even enumerable initiatives floated by the said government bolstering telemedicine becomes nugatory.

Finally, but the most crucial is guaranteeing training facilities for the medical professionals and paramedical, to handle the network of telemedicine, and AI-assisted technology such as teleconsultation and teleconferencing thereby promising the end result of benefitting and uplifting the health of the state individuals as promised.

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LEGAL FRAMEWORKS FOR THE PROTECTION OF CRITICAL INFRASTRUCTURE DURING CYBER CONFLICT: TOWARD A DIGITAL GENEVA PROTOCOL

Mr. Raghavendra S Kollurkar*

Introduction: Cyber Conflicts and the Fragility of Critical Infrastructure

In the digital era, the battlefield has expanded beyond land, air, sea, and space to include cyberspace, exposing an unprecedented dimension of civilian vulnerability: the critical infrastructure (CI) that sustains everyday life. Power grids, healthcare systems, telecommunications networks, financial services, and water supply chains once passive enablers of national prosperity have now become deliberate targets in cyber conflicts. The strategic logic of such attacks lies not only in their capacity for immediate operational disruption, but in their broader psychological, economic, and geopolitical reverberations.

In 2015 and 2016, Ukraine experienced coordinated cyberattacks on its power grid, which disrupted electricity to over 230,000 citizens during sub-zero winter temperatures, marking the first documented instance of malware being used to disable a national electricity distribution network during a kinetic military conflict.[2] Widely attributed to Russian state-backed actors, these attacks illustrated the convergence of cyber tools with conventional warfare.[3] Similarly, the Colonial Pipeline ransomware attack in the United States in 2021, carried out by the non-state group Darkside, crippled nearly half of the East Coast's fuel supply and forced emergency declarations.[4] Though lacking formal state involvement, the attack had cascading effects on national security, public trust, and critical economic sectors. Closer to home, in 2022, India's premier public health institution the All-India Institute of Medical Sciences (AIIMS), Delhi suffered a ransomware assault that incapacitated hospital operations for nearly two weeks, severely affecting patient care and data continuity.[5] These incidents underscore a fundamental reality: critical infrastructure is no longer collateral it is the front line. What is particularly alarming is that these attacks occurred in both wartime and peacetime contexts, executed by both state and non-state actors, and across geographies. The result is a threat landscape that is asymmetric, transnational, and legally opaque.

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[2] Kim Zetter, *Inside the Cunning, Unprecedented Hack of Ukraine's Power Grid*, WIRED (Mar. 3, 2016), https://www.wired.com/2016/03/inside-cunning-unprecedented-hack-ukraines-power-grid/.

[3] Michael N. Schmitt, ed., *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* 313–14 (Cambridge Univ. Press 2017).

[4] Cybersecurity & Infrastructure Security Agency (CISA), *Alert (AA21-131A): DarkSide Ransomware: Best Practices for Preventing Business Disruption* (May 11, 2021), https://www.cisa.gov/news-events/alerts/2021/05/11/darkside-ransomware-best-practices-preventing-business-disruption.

Several structural factors exacerbate CI vulnerability. First, a significant portion of CI particularly in liberal democracies is owned and operated by private actors, complicating the enforcement of uniform cybersecurity standards.[6] Second, digital systems are inherently borderless; malware, denial-of-service operations, and data exfiltration can originate in one jurisdiction, traverse through another, and culminate in a third, often within milliseconds.[7] Third, cyberattack attribution remains fraught legally, technologically, and diplomatically. The veil of plausible deniability allows malicious actors to operate with relative impunity, frustrating enforcement under both domestic and international law.[8]

Despite the growing urgency, the current legal architecture remains grossly inadequate. International Humanitarian Law (IHL), primarily codified through the Geneva Conventions and Additional Protocols, was designed for kinetic warfare and only partially accommodates non-physical cyber harms.[9] Principles such as distinction and proportionality offer interpretive starting points, but their application to non-kinetic, infrastructure-targeting cyberattacks is far from settled.[10] Simultaneously, domestic laws tend to emphasize cybercrime prosecution and data protection, offering little clarity on state responses to cyber hostilities targeting CI.[11]

Against this backdrop, an urgent legal inquiry arises: What existing international and domestic legal frameworks govern the protection of critical infrastructure in cyber conflict, and are they

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[5] Press Trust of India, *AIIMS Server Down for Ninth Day, Patient Services Hit*, THE HINDU (Dec. 1, 2022), https://www.thehindu.com/news/national/aiims-server-down-for-ninth-day-patient-services- hit/article66207689.ece.

[6] U.S. Gov't Accountability Off., GAO-21-105263, *Critical Infrastructure Protection: Actions Needed to Address Significant Weaknesses in TSA's Pipeline Security Program Management* (Dec. 2021).

[7] Scott J. Shackelford, *Managing Cyber Attacks in International Law, Business, and Relations: In Search of Cyber Peace* 41–43 (Cambridge Univ. Press 2014).

[8] Kristen Eichensehr, *Cyberattack Attribution as Empowerment and Constraint*, 95 TEX. L. REV. 1439, 1442–45 (2017).

[9] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 52(2), June 8, 1977, 1125 U.N.T.S. 3.

[10] Duncan B. Hollis, *Reframing the Tallinn Manual's Jurisdictional Scope: A Law of Peacetime Cyber-Conflict*, 22 J. CONFLICT & SEC. L. 1, 4 (2017).

[11] Information Technology Act, No. 21 of 2000, INDIA CODE (2000) § 70.

doctrinally and operationally sufficient? This article confronts that inquiry through a comparative, doctrinal, and policy-oriented lens. It begins by analysing the gaps in international humanitarian and cyber law, assesses domestic approaches to CI protection with a focus on India, and examines case studies across jurisdictions. It then proposes a comprehensive legal framework including a proposed "Digital Geneva Protocol" to safeguard essential digital infrastructure in both peacetime and armed conflict. The stakes are not merely regulatory they are existential. In an age where data centres are targets, algorithms can be weaponized, and infrastructure can be crippled without a single shot fired, legal systems must evolve, or risk becoming obsolete guardians of digital civilization.

Conceptual Foundations: What Is "Critical Infrastructure" in Cyber Law?

The concept of critical infrastructure (CI) occupies a foundational space in cyber law, national security policy, and the normative architecture of international humanitarian law (IHL), yet it remains normatively ambiguous. Broadly, CI encompasses systems and assets whether physical or digital—whose incapacitation would substantially impact a state's national security, economic stability, or public health.[12] However, with the increasing digitization of core services and growing cross-border technological dependencies, defining what constitutes "critical" has become a complex and contested endeavour. International bodies have proposed various soft law definitions, differing in both scope and enforceability. The North Atlantic Treaty Organization (NATO), for instance, defines CI as assets essential for societal and state functioning, explicitly including digital infrastructures such as power grids and communications networks.[13] The 2015 consensus report of the United Nations Group of Governmental Experts (UN GGE) underscored the need to protect "critical infrastructure, including critical information infrastructure," particularly where their disruption could endanger international peace and security.[14] Similarly, the International Telecommunication Union (ITU) defines CI as infrastructure indispensable to societal function, whose disruption may result in catastrophic economic and humanitarian fallout.[15]

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[12] Scott J. Shackelford, *supra* note 6, at 85–87.
[13] NATO Cooperative Cyber Def. Ctr. of Excellence, *Cybersecurity: Critical Infrastructure Protection*, https://ccdcoe.org (last visited May 2025).
[14] G.A. Res. 70/174, U.N. Doc. A/70/174 (July 22, 2015).
[15] Int'l Telecomms. Union, *National Cybersecurity Strategy Guide* (2018), https://www.itu.int.

While these definitions reflect a broad normative consensus, they lack binding legal authority. The absence of uniform legal standards permits interpretative divergence, weakening international coordination in cyber conflict mitigation and domestic resilience planning.

National frameworks further illustrate definitional divergence. In India, the National Critical Information Infrastructure Protection Centre (NCIIPC), created under Section 70A of the Information Technology Act, 2000, defines Critical Information Infrastructure (CII) as any system whose failure would negatively affect national security, economic interests, or public health.[16] Key sectors identified include energy, banking, telecommunications, and e-governance. In contrast, the U.S. Cybersecurity and Infrastructure Security Agency (CISA) recognize 16 CI sectors, which include privately operated digital platforms such as cloud services and telecommunications networks demonstrating a broader and more explicit recognition of the private sector's centrality in cyber-CI protection.[17]

Three analytical insights emerge from these comparisons. First, definitions of CI are context-sensitive, reflecting each state's strategic, geopolitical, and economic priorities. Second, the boundary between public and private responsibility is notably porous in the cyber domain, given the heavy reliance on privately managed digital infrastructure. Third, although some jurisdictions differentiate between "critical infrastructure" and "critical information infrastructure," this doctrinal distinction remains inconsistently applied and under-theorized.

The shift from traditional, tangible infrastructure (e.g., bridges, dams) to complex, digital systems has fundamentally transformed the CI paradigm. Modern CI now includes intangible but essential systems such as domain name servers (DNS), cloud computing platforms, and supervisory control and data acquisition (SCADA) systems. These components often span multiple jurisdictions, raising profound legal challenges concerning sovereignty, data localization, and attribution.[18]

The dual-use dilemma where infrastructure serves both civilian and military purposes further complicates CI's legal classification. For example, satellites, undersea cables, and cloud storage networks are used for both commercial transactions and defense communications. This raises the legal question: can dual-use infrastructure be lawfully targeted during conflict? The Tallinn

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[16] Information Technology Act, 2000, § 70A (India).
[17] Cybersecurity & Infrastructure Sec. Agency, *Critical Infrastructure Sectors*, https://www.cisa.gov (last visited May 2025).
[18] Kristin Bergtora Sandvik, *Humanitarian Data and Digital Risk: Towards a Humanitarian Data Governance Framework*, 102 INT'L REV. RED CROSS 129 (2020).

Manual 2.0 suggests that dual-use objects may lose protection if they effectively contribute to military action, provided the principles of distinction, necessity, and proportionality are satisfied.[19] Nonetheless, in practice, assessing such criteria in real time is extraordinarily difficult given the opacity of cyber systems and the technical challenges of attribution.

Ultimately, the legal construction of CI is far more than a semantic exercise. It is the doctrinal fulcrum upon which the legality of cyber operations, the responsibility of states, and the efficacy of humanitarian protections turn. As cyber threats continue to escalate in both scale and sophistication, articulating a harmonized and enforceable legal understanding of CI becomes indispensable to building a credible and resilient international legal framework.

The International Legal Framework: IHL and Cyber Operations

The regulation of cyber operations during armed conflict presents profound doctrinal and normative challenges to the international legal system. International Humanitarian Law (IHL), codified primarily in the 1949 Geneva Conventions and their 1977 Additional Protocols, was designed to shield civilians and civilian objects from the consequences of kinetic warfare. However, the advent of cyber warfare marked by non-kinetic disruptions such as data corruption, infrastructure sabotage, and denial-of-service attacks pushes these traditional frameworks to their interpretive boundaries.[20]

The cornerstone of IHL is the principle of distinction. Article 48 of Additional Protocol I mandates that parties to a conflict "shall at all times distinguish between the civilian population and combatants" and between "civilian objects and military objectives," prohibiting direct attacks against civilians or civilian infrastructure.[21] Civilian objects, defined in negative terms as those not qualifying as military objectives, retain protection unless and until they are used to make an effective contribution to military action.[22] Applied to cyberspace, this implies that a cyber operation disabling a hospital's patient records system without kinetic damage may still constitute an unlawful attack under IHL.

The Tallinn Manual 2.0, though a non-binding academic consensus, serves as the most comprehensive attempt to transpose IHL norms into the cyber domain. It recognizes that cyber

[19] Michael N. Schmitt, ed., *supra* note 2, at 105–110.
[20] *Id.* at 3–10.
[21] Protocol I, *supra* note 8, art. 48.
[22] *Id.* art. 52(2).

operations resulting in physical damage, injury, or functionality loss of equivalent severity may constitute "attacks" under IHL.[23] Furthermore, the Manual affirms the continued relevance of the principles of proportionality which forbids attacks expected to cause excessive civilian harm relative to anticipated military advantage and necessity, which requires that operations be limited to those needed to achieve a legitimate military aim.[24] For instance, disabling a dual-use power station that supplies both military command infrastructure and a children's hospital may violate the proportionality principle.

Despite these interpretative advancements, doctrinal uncertainties persist. First, definitional ambiguities complicate the application of IHL to cyber operations. Terms such as "attack," "military objective," and "civilian object" are rooted in kinetic warfare and require contextual adaptation. Whether non-physical acts such as the deletion of patient records or manipulation of stock exchange algorithms qualify as "attacks" remains contested.[25] While Tallinn Manual experts lean toward a broader interpretation, the absence of widespread state consensus impedes the development of binding custom.[26]

Second, the inherently non-kinetic nature of most cyber operations complicates the triggering of IHL thresholds. Cyber espionage, psychological operations, and software degradation may cause significant societal disruption without leaving visible or tangible destruction. This raises questions about whether such acts activate IHL's protective regime or fall outside its ambit altogether.[27]

Third, and perhaps most critically, there is no binding multilateral treaty that exclusively regulates cyber warfare. Unlike chemical, biological, or nuclear weapons each governed by their own conventions cyber weapons exist in a legal vacuum. States currently rely on a patchwork of customary international law, state practice, and soft law instruments such as the Tallinn Manual.[28] This regulatory fragmentation enables states to exploit legal grey zones, utilize proxy actors, and conduct operations without attribution, undermining accountability.

[23] Schmitt, *supra* note 2, at 100–104.

[24] *Id.* at 115–120.

[25] Sean Watts, *Cyber Attacks and the Use of Force: Back to the Future of Article 2(4)*, 42 YALE J. INT'L L. 10, 19–22 (2016).

[26] Harriet Moynihan, *The Application of International Law to State Cyberattacks: Sovereignty and Non-Intervention*, Chatham House Res. Paper 22–24 (2019).

[27] Kubo Mačák, *From Cyber Norms to Cyber Rules: Re-engaging States on International Law in Cyberspace*, 30 EUR. J. INT'L L. 1123, 1131 (2020).

[28] Martha Finnemore & Duncan B. Hollis, *Constructing Norms for Global Cybersecurity*, 110 AM. J. INT'L L. 425, 432–434 (2016).

State practice is evolving toward the normalization of offensive cyber capabilities. The United States, for instance, has adopted a "defend forward" doctrine via U.S. Cyber Command, which authorizes pre-emptive cyber operations against adversarial infrastructure even in peacetime.[29] While framed as a deterrent posture, such practices blur the line between lawful anticipatory self-defense and unlawful aggression, particularly when dual-use infrastructure or third-party systems are targeted.

The Martens Clause, enshrined in Article 1(2) of Additional Protocol I, provides a residual normative safeguard by affirming that in cases not covered by specific treaty law, civilians and combatants remain protected by the "principles of humanity and the dictates of public conscience."[30] This clause assumes renewed relevance in cyberspace, where legal lacunae are prevalent and moral boundaries are fluid.

In conclusion, while the existing IHL framework anchored in the Geneva Conventions and progressively interpreted through resources like the Tallinn Manual offers a foundational basis for regulating cyber operations, its practical effectiveness remains undermined by definitional vagueness, non-kinetic modalities, absence of binding instruments, and shifting state practice. Without targeted legal reform, civilian critical infrastructure remains precariously exposed in a theatre of warfare that is increasingly digital and indiscriminate.

National Legal Frameworks: A Comparative Legal Analysis

The protection of critical infrastructure (CI) during cyber conflict is shaped profoundly by national legal regimes, which vary significantly in scope, approach, and doctrinal maturity. A comparative assessment of India, the United States, and the European Union reveals divergent models that reflect varied threat perceptions, regulatory philosophies, and governance priorities. This diversity also points toward the pressing need for convergence on certain baseline principles of cyber resilience.

India's legal architecture for CI protection is anchored in the Information Technology Act, 2000, particularly Section 70A, which empowers the government to designate "Critical Information Infrastructure" and criminalize unauthorized access affecting such infrastructure.[31]

[29] U.S. Dep't of Def., *Summary: Department of Defense Cyber Strategy* (2018), https://media.defense.gov/2018/Sep/18/2002041658/-1/-1/1/CYBER_STRATEGY_SUMMARY_FINAL.PDF.
[30] Protocol I, *supra* note 8, art. 1(2).
[31] Information Technology Act, 2000, § 70A (India).

The National Critical Information Infrastructure Protection Centre (NCIIPC), operating under the National Technical Research Organisation, issues sector-specific guidelines and conducts audits across energy, banking, transportation, and other sectors.[32] Complementing this, the Indian Computer Emergency Response Team (CERT-In) functions as the national nodal agency for incident response, issuing binding directions and advisories.[33] However, the Indian regime lacks a formal doctrine of cyberwarfare, a dedicated statute for wartime cyber conduct, and enforceable public-private obligations, leading to doctrinal ambiguity during high-impact cyber incidents.[34]

In contrast, the United States exhibits a robust, multi-tiered legal framework. Presidential Policy Directive 21 (PPD-21) establishes the national policy for enhancing security and resilience of critical infrastructure through public-private collaboration.[35] The Cybersecurity and Infrastructure Security Agency (CISA), created under the CISA Act of 2018, oversees cyber risk management and issues sector-specific performance goals.[36] The United States also operationalizes an explicit offensive cyber posture through U.S. Cyber Command (CYBERCOM), which integrates military cyber capabilities for both defence and counter-offensive operations during armed conflict.[37] Importantly, public-private mandates including data breach notification laws and critical infrastructure standards are more developed and enforceable than in many Global South jurisdictions.[38]

The European Union adopts a supranational, harmonized regulatory strategy cantered on resilience and risk governance. The revised Network and Information Security Directive (NIS2 Directive) imposes mandatory obligations on operators of essential services to adopt cybersecurity measures, report incidents, and ensure supply-chain security.[39] The European Union Agency for Cybersecurity (ENISA) plays a pivotal role in facilitating cross-border coordination, threat intelligence sharing, and harmonized standards.[40] Moreover, the General Data Protection Regulation (GDPR) introduces additional cybersecurity imperatives in critical

[32] Nat'l Critical Info. Infrastructure Prot. Ctr. (NCIIPC), *Guidelines for Protection of Critical Information Infrastructure* (2023), https://nciipc.gov.in.
[33] Indian Computer Emergency Response Team (CERT-In), https://www.cert-in.org.in (last visited May 2025).
[34] Gaurav Gupta, *Legal Framework for Cyberwarfare in India*, 13 INDIAN J.L. & TECH. 45 (2021).
[35] Presidential Policy Directive 21, Critical Infrastructure Security and Resilience (Feb. 12, 2013), https://obamawhitehouse.archives.gov.
[36] Cybersecurity and Infrastructure Security Agency Act of 2018, Pub. L. No. 115-278, 132 Stat. 4168.
[37] U.S. Dep't of Def., *supra* note 28.
[38] Kristen Eichensehr, *Cybersecurity and Data Protection in the United States*, 96 TEX. L. REV. 161 (2017).
[39] Directive (EU) 2022/2555, On Measures for a High Common Level of Cybersecurity Across the Union, 2022 O.J. (L 333) 80.
[40] Eur. Union Agency for Cybersecurity (ENISA), https://www.enisa.europa.eu (last visited May 2025).

sectors, particularly health and finance, where data protection and cyber risk intersect.[41] While the EU does not possess a military cyberwarfare doctrine akin to the U.S., its civilian governance model excels in institutional coordination, risk-based regulation, and emphasis on privacy rights.[42] This comparative legal landscape yields key insights. First, the Indian framework remains fragmented and reactive, requiring doctrinal consolidation and statutory coherence.[43] Second, the U.S. model despite its complexity successfully integrates strategic, operational, and legal dimensions of cyber resilience, including offensive capability.[44] Third, the EU emphasizes harmonization and privacy-integrated cybersecurity, offering a model suited for multilateral governance.[45] The varied national approaches, however, also underscore a collective vulnerability: the absence of universally accepted legal definitions and response doctrines applicable to transnational cyber threats.

Real-world incidents such as the Colonial Pipeline ransomware attack in the U.S.,[46] the AIIMS Delhi cyberattack in India,[47] or healthcare sector breaches across Europe[48] reveal that adversaries exploit regulatory inconsistencies and doctrinal ambiguity. Thus, legal convergence on key issues such as defining "essential digital infrastructure," assigning public-private responsibilities, and establishing wartime cyber norms is not only desirable but urgent. To that end, regional frameworks such as QUAD or BIMSTEC, alongside global treaty initiatives, may serve as platforms to bridge doctrinal divides and promote shared cyber sovereignty.[49]

Challenges in Applying Law During Cyber Conflict

Despite evolving legal and policy instruments aimed at regulating cyberspace, the application of law to cyber conflict particularly in the context of critical infrastructure remains conceptually and operationally challenging.

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[41] Regulation (EU) 2016/679, General Data Protection Regulation, 2016 O.J. (L 119) 1.

[42] Maria Farrell & Dennis Broeders, *The European Cybersecurity Model*, 14 J. CYBER POL'Y 22 (2023).

[43] Prashant Mali, *Cyber Law & Policy in India*, in *CYBERSECURITY REGULATIONS AND POLICY* 123 (2020).

[44] U.S. Gov't Accountability Off., GAO-23-106868, *Cybersecurity: National Strategy, Roles, and Responsibilities Need to Be Better Defined and More Effectively Implemented* (2023).

[45] Katerina Demertzou, *Cybersecurity and Privacy in the EU: An Institutional Approach*, 19 GERMAN L.J. 501 (2018).

[46] Kim Zetter, *The Colonial Pipeline Hack*, WIRED (May 2021), https://www.wired.com.

[47] *AIIMS Delhi Cyberattack: Data Breach and Restoration Timeline*, THE HINDU (Dec. 2022), https://www.thehindu.com.

[48] Eur. Union Agency for Cybersecurity (ENISA), *Threat Landscape for the Health Sector* (2023), https://www.enisa.europa.eu.

[49] K. Bhattacharya, *Towards a QUAD Cybersecurity Framework*, ORF Issue Brief No. 490 (2021), https://www.orfonline.org.

The convergence of anonymity, technological sophistication, and jurisdictional ambiguity renders conventional legal doctrines increasingly inadequate. This section critically examines five interrelated difficulties that continue to undermine the efficacy of international and domestic legal regimes during cyber hostilities. First, the problem of attribution remains the most fundamental barrier to enforcing accountability in cyber conflict. Malicious actors regularly exploit technical tools such as IP spoofing, proxy servers, and anonymizing networks to obfuscate the origin of attacks, undermining efforts to identify perpetrators with sufficient legal certainty.[50] This technical opacity hampers the invocation of state responsibility under customary international law and frustrates the lawful exercise of self-defence under Article 51 of the United Nations Charter.[51] Compounding the challenge is the absence of a universally accepted evidentiary standard for attribution, which results in widely divergent state practices and politicized assessments.[52] Second, there exists persistent uncertainty regarding the threshold at which a cyber operation constitutes an "armed attack." Under *jus ad bellum*, only acts that meet this threshold may lawfully trigger the use of force in self-defence.[53] Yet, cyber operations often produce societal disruption such as disabling power grids or hospitals without inflicting kinetic harm, raising questions as to whether such acts fall within the scope of "force" under international law.[54] The Tallinn Manual 2.0 suggests that cyber operations causing significant physical or functional damage may qualify as armed attacks, but its interpretations are non-binding and have not yet crystallized into customary norms.[55]

Third, the legal system has yet to adapt effectively to the growing role of non-state actors in cyber conflict. Entities such as hacktivists, cyber mercenaries, and transnational ransomware syndicates operate autonomously or semi-autonomously, often in grey areas beyond the reach of international humanitarian law (IHL) or existing accountability regimes.[56] While doctrines of indirect state responsibility permit attribution where state control or complicity can be proven, evidentiary thresholds remain high, and enforcement mechanisms are weak.[57]

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[50] Jeffrey T. Biller, *Attribution and Response in Cyberspace*, 95 TEX. L. REV. 1161, 1165 (2017).
[51] U.N. Charter art. 51.
[52] Michael Schmitt, *The Law of Cyber Armed Conflict*, 97 INT'L REV. RED CROSS 77, 84 (2015).
[53] Marco Roscini, *CYBER OPERATIONS AND THE USE OF FORCE IN INTERNATIONAL LAW* 47–50 (2014).
[54] Kristen Eichensehr, *The Law & Politics of Cyberattack Attribution*, 67 UCLA L. REV. 520, 530 (2020).
[55] Schmitt, *supra* note 2, at 76–80.
[56] Duncan B. Hollis, *An e-SOS for Cyberspace*, 52 HARV. INT'L L.J. 374, 392 (2011).
[57] Talita Dias, *Beyond Attribution: State Responsibility for Cyber Operations*, 25 J. CONFLICT & SEC. L. 153, 160 (2020).

Fourth, the overwhelming majority of critical infrastructure is privately owned and operated, raising difficult questions about responsibility for cybersecurity preparedness and legal compliance.[58] In many jurisdictions, including India and the United States, domestic legal frameworks impose variable levels of obligation on private entities to safeguard digital infrastructure, but enforcement remains uneven.[59] During active hostilities, this public-private fragmentation impedes coordinated legal and operational responses, thereby amplifying systemic vulnerabilities.[60] Fifth, cyber operations often exploit the legal and operational ambiguities of grey-zone conflict, wherein state-sponsored activities cause strategic harm without crossing the traditional thresholds of war.[61] Persistent, low-intensity cyber intrusions such as intellectual property theft, election interference, and economic sabotage fall below the activation level of IHL but cumulatively degrade national security and public trust.[62] These tactics, frequently used by states like North Korea or Iran, evade conventional legal accountability while fostering a continuous state of conflict beneath the formal threshold of war.[63] In sum, the existing legal architecture governing cyber conflict is under severe strain from structural ambiguities and doctrinal inertia. Attribution uncertainty, definitional inconsistencies, regulatory blind spots for non-state actors, privatized infrastructure control, and the rise of grey-zone warfare all illustrate the need for a recalibration of legal norms to better safeguard civilian critical infrastructure in a digitized battlespace.

Case Studies: Law in Action

The real-world application of legal frameworks during cyberattacks on critical infrastructure (CI) underscores the persistent challenges of attribution, doctrinal ambiguity, and institutional readiness. A close analysis of key cases across jurisdictions demonstrates the law's uneven traction in responding to complex, hybrid cyber threats and illustrates the urgent need for harmonized and enforceable norms.

- *Ukraine (2015–2022): Cyberattacks Amid Armed Conflict*

Ukraine exemplifies the fusion of cyber operations with kinetic warfare. The 2015 and 2016 cyberattacks on its power grid attributed to the use of BlackEnergy malware resulted in major blackouts across Kyiv.[64]

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[58] Paul Rosenzweig, *Cybersecurity and Private Sector Responsibilities*, 42 INT'L J. LEGAL INFO. 34, 39 (2014).

[59] NCIIPC, *Guidelines for the Protection of CII* (India 2021); Cybersecurity and Infrastructure Security Agency Act of 2018, Pub. L. No. 115-278, 132 Stat. 4168.

[60] Myriam Dunn Cavelty, *CYBERSECURITY IN THE PRIVATE SECTOR* 98–103 (2008).

[61] David E. Sanger, *THE PERFECT WEAPON: WAR, SABOTAGE, AND FEAR IN THE CYBER AGE* 188–190 (2018).

[62] Joseph Nye, *Deterrence and Dissuasion in Cyberspace*, 62 INT'L SEC. 44, 52 (2017).

[63] James A. Lewis, *Thresholds for Cyberwar*, Ctr. for Strategic & Int'l Stud. (2018).

These attacks, targeting civilian energy systems, arguably violate Article 54 of Additional Protocol I to the Geneva Conventions, which prohibits attacks on objects indispensable to civilian survival.[65] Yet, no individual or state actor has been held legally accountable under any binding international instrument.

During the 2022 full-scale Russian invasion, cyber operations continued in parallel with conventional warfare, complicating the classification of such operations under existing international humanitarian law (IHL).[66] Although the Tallinn Manual 2.0 posits that cyber operations causing expected death, injury, or physical damage may constitute attacks under IHL,[67] there remains no consensus on the application of these principles to non-kinetic or data-centric cyber warfare. The Ukrainian case underscores both the normative fragility and the underenforcement of IHL in cyberspace.

- *United States (Colonial Pipeline, 2021): Peacetime Cyber Conflict*

The ransomware attack on Colonial Pipeline by the criminal group DarkSide disrupted nearly half of the East Coast's fuel supply in May 2021, causing panic buying and economic dislocation.[68] Although a non-state actor perpetrated the attack, its effects mirrored those of a wartime blockade. The incident highlighted the legal and operational tension between public interest and private ownership of critical infrastructure. The U.S. response included Executive Order 14028 on improving the nation's cybersecurity[69] and mandates from the Cybersecurity and Infrastructure Security Agency (CISA) to increase threat intelligence sharing.[70] However, the absence of a formal peacetime cyberwarfare doctrine limited the scope for invoking self-defense under Article 51 of the UN Charter.[71] The case reveals the legal vacuum between domestic criminal law responses and the threshold for international legal engagement in peacetime cyber operations.

- India (AIIMS Delhi, 2022): Health Sector Vulnerability

In November 2022, India's premier medical institution the All-India Institute of Medical Sciences (AIIMS) in Delhi suffered a severe ransomware attack that paralyzed digital health systems for over a week.[72] The attack exposed vulnerabilities in health-sector CI, one of the sectors designated as "critical" under India's National Critical Information Infrastructure Protection Centre (NCIIPC) guidelines.[73]

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[64] Andy Greenberg, *SANDWORM: A NEW ERA OF CYBERWAR AND THE HUNT FOR THE KREMLIN'S MOST DANGEROUS HACKERS* 75–82 (2019).

[65] Protocol I, *supra* note 8, art. 54.
[66] Schmitt, *supra* note 2, at 418–26.
[67] *Id.* at 327–29.
[68] S. Comm. on Homeland Sec., *Cybersecurity Lessons from the Colonial Pipeline Ransomware Attack* (June 2021).

While CERT-In issued advisories under the Information Technology Act, 2000,[74] these lacked binding force and did not trigger coordinated crisis response. Section 70 of the IT Act, which empowers the government to declare and protect critical infrastructure, remains underutilized due to weak enforcement and regulatory fragmentation.[75] The incident highlights the absence of a dedicated health-sector cyber resilience regime and the broader need for comprehensive legislative reform.

- *Brazil (TRE-RS Attack, 2020): Election Infrastructure Under Threat*

In the lead-up to Brazil's 2020 municipal elections, the Superior Electoral Court (TRE-RS) was subjected to a sustained DDoS attack that disrupted vote processing systems and cast doubt on the integrity of the electoral process.[76] Although the attack did not alter vote counts, it triggered significant concerns about political interference, infrastructure vulnerability, and public trust. Brazil's Marco Civil da Internet offers a rights-based digital governance framework but lacks specific provisions addressing cyberattacks on democratic institutions.[77] Furthermore, Brazil does not yet have a centralized agency akin to CISA or ENISA for CI protection. The case illustrates both institutional and normative gaps in dealing with politically motivated cyber threats and underscores the necessity for specialized legal and technical capacity-building.

Comparative Observations

Across these case studies, several common threads emerge:

- Legal accountability remains elusive due to inadequate attribution mechanisms and divergent evidentiary standards.
- The legal threshold for classifying cyber incidents as "armed attacks" or violations of sovereignty remains unsettled, impeding timely and lawful responses.
- Critical infrastructure often resides in private hands, yet regulatory frameworks to mandate and enforce cybersecurity preparedness are fragmented or insufficient.
- International legal instruments, especially IHL and the UN Charter, are poorly adapted to grey-zone tactics and hybrid cyber threats that fall below the traditional threshold of war.

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[69] Exec. Order No. 14,028, 86 Fed. Reg. 26633 (May 17, 2021).
[70] Cybersecurity & Infrastructure Sec. Agency, *Pipeline Cybersecurity Initiative*, https://www.cisa.gov/resources-tools/resources/pipeline-cybersecurity-initiative.
[71] U.N. Charter art. 51.
[72] The Hindu Bureau, *AIIMS Cyberattack: 'All Servers Down, Data May Have Been Breached'*, THE HINDU, Nov. 24, 2022.
[73] NCIIPC, *Critical Information Infrastructure Guidelines*, https://nciipc.gov.in.
[74] Information Technology Act, 2000, § 70A (India).
[75] *Id.* § 70.
[76] Mariana Oliveira, *Ataque Hacker Atinge o TSE no Dia das Eleições*, G1 GLOBO (Nov. 15, 2020).
[77] Marco Civil da Internet, Lei No. 12.965, de 23 de Abril de 2014, D.O.U. de 24.4.2014 (Braz.).

These cases collectively make a compelling case for recalibrating both domestic and international legal instruments. There is a pressing need for legally binding definitions, shared attribution standards, and proactive governance architectures that can withstand the evolving complexity of cyber threats to critical infrastructure in both peacetime and conflict.

7. Toward a Resilient Legal Framework: Doctrinal and Policy Recommendations

As cyber conflict escalates in both frequency and complexity especially against critical infrastructure (CI) the limitations of existing legal paradigms have become starkly evident. The prevailing legal architecture fragmented, state-centric, and rooted in kinetic-era conceptions of warfare remains structurally unprepared for the asymmetrical, transnational, and often invisible nature of cyber threats. This section proposes a forward-looking, multi-tiered legal framework grounded in international humanitarian law (IHL), reinforced by national legislative mandates, and supplemented through regional and global cooperative instruments.

A. Proposing a "Digital Geneva Protocol"

International humanitarian law, despite its centrality in regulating armed conflict, is not fit-for-purpose in the context of cyber warfare. The Geneva Conventions and Additional Protocol I protect civilian objects from attacks, but their applicability to digital infrastructure remains ambiguous unless physical damage occurs.[78] This kinetic threshold creates a doctrinal blind spot for cyberattacks that cause massive civilian disruption without triggering material destruction.

To remedy this lacuna, a "Digital Geneva Protocol" should be adopted either as an annex to Additional Protocol I or as a standalone treaty. This new instrument would:

• Classify essential civilian digital infrastructure (ECDI) including power grids, hospital systems, electoral platforms, and core internet services as protected objects under IHL;

• Recognize data as a civilian object, thereby extending protections to systems whose compromise results in functional, though non-physical, damage;

• Codify due diligence obligations on states to prevent, investigate, and mitigate cyber operations launched from or routed through their territories, especially in relation to neutral states.

While the Tallinn Manual 2.0 offers useful guidance, its non-binding nature limits its normative utility.[79] Elevating its key principles to treaty law would resolve definitional ambiguities and enhance legal enforceability during cyber conflict.

B. National Mandates for Cyber Resilience

Domestic law must serve as the frontline defence for CI resilience. In India, Section 70 of the Information Technology Act, 2000 recognizes "protected systems," but lacks clarity, enforceability, and sector-specific mandates.[80] A refined legal framework should impose mandatory cybersecurity standards for all critical infrastructure operators, irrespective of ownership. A model legislative clause could read: "Every designated critical infrastructure operator shall implement sector-specific cyber resilience frameworks, including real-time anomaly detection, system redundancies, and a mandatory 24-hour incident disclosure to the designated nodal authority, subject to periodic audits."

This mirrors the U.S. Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA), 2022, which mandates timely incident reporting for CI sectors.[81] Further, a national cyber drill mandate would ensure real-world preparedness and foster institutional learning.

C. Defining "Essential Digital Infrastructure" (EDI)

A persistent impediment to effective legal protection is the absence of a harmonized legal definition of essential digital infrastructure (EDI). Without statutory clarity, sectors such as healthcare, digital payments, cloud infrastructure, and internet backbone services remain under protected. Drawing from the EU's NIS2 Directive, EDI should be defined to include systems whose disruption can lead to cascading failures across sectors like national security, public health, and finance.[82] India's National Critical Information Infrastructure Protection Centre (NCIIPC) must move beyond sectoral advisories and embed such a definition in binding legal instruments.

D. Regional Norm-Building and South-South Leadership

In the absence of a global treaty, regional cooperation presents a viable and immediate path to norm development. India, leveraging its strategic positioning within BIMSTEC, QUAD, and IBSA, should spearhead initiatives including:

[78] Protocol I, *supra* note 8, art. 54.
[79] Schmitt, *supra* note 2.
[80] Information Technology Act, 2000, § 70 (India).
[81] Cyber Incident Reporting for Critical Infrastructure Act of 2022, Pub. L. No. 117-103, div. Y, 136 Stat. 49.
[82] Directive (EU) 2022/2555, *supra* note 38.

• A "Cyber Peace Clause": a regional non-aggression pact safeguarding civilian CI during periods of interstate tension;

• Legal interoperability frameworks: harmonizing data protection, response protocols, and security standards across jurisdictions;

• Joint attribution task forces: establishing shared evidentiary thresholds and attribution norms to mitigate politically charged blame games.

These efforts would complement ASEAN's evolving cyber norms and Brazil's digital sovereignty agenda within MERCOSUR, amplifying Global South leadership in norm- setting.[83]

E. Strengthening International Cooperation for Attribution and Intelligence

One of the most formidable challenges in cyber conflict is attribution both in technical and legal terms. The UN Group of Governmental Experts (GGE) and Open-Ended Working Group (OEWG) have emphasized the need for cooperative attribution, but progress remains slow and politically fraught.[84] To operationalize attribution, states should:

• Enter into bilateral or multilateral cyber intelligence-sharing treaties, backed by common standards for evidence admissibility and chain of custody;

• Establish joint evidence repositories and standardized forensic protocols, possibly under the aegis of regional bodies or neutral international platforms;

• Empower INTERPOL, the UN Cybercrime Ad Hoc Committee, and future treaty bodies with adjudicative mandates to validate attribution findings.

Legal recognition of attribution mechanisms is essential to move beyond "naming and shaming" and toward rule-based accountability for cyberattacks on CI.

Conclusion: From Reactive to Resilient

The legal architecture for safeguarding critical infrastructure in cyberspace must evolve from reactive crisis management to proactive governance. A future-ready framework must integrate:

• A Digital Geneva Protocol to shield essential digital infrastructure under IHL;

• Binding national mandates on cyber resilience and incident disclosure;

• A statutory definition of essential digital infrastructure;

• Regional instruments that reflect geopolitical plurality and regional needs;

• Enforceable attribution and intelligence mechanisms to counter impunity.

[83] ASEAN Cybersecurity Cooperation Strategy 2021–2025; Marco Civil da Internet, *supra* note 76.

[84] G.A. Res. 76/135, U.N. Doc. A/76/135 (July 14, 2021).

Without such doctrinal evolution and institutional innovation, the law will remain an analogue shield in a digital battlefield. The time has come to align legal imagination with technological reality.

Conclusion: The Urgency of Legal Evolution

The escalating frequency and sophistication of cyber operations targeting critical infrastructure (CI) have exposed a profound normative vacuum in international law. Despite the existential risks posed to civilian life, economic stability, and national security, the existing legal architecture rooted in kinetic warfare paradigms remains ill-equipped to address the systemic and transnational nature of cyber conflict. This regulatory gap threatens not only physical assets but also the social and economic fabrics that rely on uninterrupted digital continuity, underscoring the urgent need for legal transformation.[85] The absence of binding international norms tailored to cyber conflict, coupled with ambiguous thresholds for armed attacks and attribution, significantly impedes deterrence, lawful response, and post-incident accountability.[86] Moreover, the porous boundary between peacetime cybercrime and wartime cyber hostilities intensifies legal uncertainty and risks disproportionate escalation. In this context, the codification of a "Digital Geneva Protocol" is no longer aspirational but imperative. Such a framework must unambiguously protect essential digital infrastructure, recognize data as a civilian object, and establish enforceable standards for state conduct during cyber hostilities.[87] Simultaneously, states must modernize their domestic cyber laws to mandate resilience standards, define "essential digital infrastructure" with precision, and institutionalize mechanisms for public–private cooperation. In India, for instance, the National Critical Information Infrastructure Protection Centre (NCIIPC) and Section 70 of the Information Technology Act, 2000 offer a starting point, but these instruments require stronger enforcement provisions, mandatory disclosure regimes, and judicially reviewable thresholds for attribution and response.[88] Furthermore, building cyber governance capacity particularly in the Global South is critical to ensuring that emerging legal norms are representative, interoperable, and not merely reflections of Global North priorities. Regional initiatives within frameworks such as BIMSTEC, QUAD, and ASEAN offer fertile ground for developing shared

[85] Schmitt, *supra* note 2.
[86] U.N. Charter art. 51; G.A. Res. 70/174, *supra* note 13.
[87] Protocol I, *supra* note 8, art. 52.
[88] Information Technology Act, 2000, § 70 (India).

attribution standards, joint response protocols, and interoperable resilience benchmarks.[89] Ultimately, the protection of civilian life and the preservation of fundamental rights in the digital era are not optional they are moral and legal imperatives. Just as the Geneva Conventions revolutionized humanitarian law in response to the horrors of industrial-age warfare, so too must the international community reimagine its legal responsibilities in cyberspace. In an era where algorithms can disrupt entire nations, the silence of law is not neutrality it is complicity.[90]

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[89] ASEAN Ministerial Conf. on Cybersecurity, *Joint Statement on Regional Cyber Norms* (2021); Quad Leaders' Joint Statement on Critical and Emerging Technologies (2022).

[90] Geneva Conventions of 12 August 1949; Harold Koh, *International Law in Cyberspace*, 54 HARV. INT'L L.J. ONLINE 1 (2012).

NEED TO COMBAT FAKE AND PAID REVIEWS OF ONLINE SHOPPING: A LEGAL ANALYSIS OF E-COMMERCE AND CONSUMERS' RIGHTS IN DIGITAL SHOPPING

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Introduction

Using a web browser or a mobile app, customers can directly purchase products or services from a vendor via the Internet in the form of online shopping, which is a type of electronic commerce. Customers can use a shopping search engine to identify other vendors or go straight to the retailer's website to find a product of interest. The shopping search engine shows the product's availability and price at several e-retailers. Innovations in technology have had a significant influence on the availability, safety, and quality of goods and services. The definition of 'consumer' as mentioned in Section 2(7) of Consumer Protection Act does not only cover the term consumer, especially mention in explanation "buys any goods and hires or avails any services includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing".[2] E-commerce has given consumers and sellers an increasingly convenient way to conduct business throughout the last ten years.[3] These days, the trend of online shopping is accelerating in consumers whether literate or illiterate. Millions of people purchase things valued at billions of dollars online each year, and the figure keeps rising. The advantages of internet shopping presumably revolve around effectiveness. Customers can save money on the time and gas expenses buying online, retailers of online platform are open 24/7, in contrast to physical storefronts.

In the fast and ever-evolving market of online transactions, reviews and ratings play a great role in influencing consumer behaviour. The prevalence of online transactions has made it standard practice for retail websites to include forums where customers may share their experiences utilising goods and interacting with suppliers. According to surveys, the only source that customers trust more than referrals from friends and family are first-hand accounts of satisfied customers. However, some times, this trust can be a mistake as well. All the consumer reviews might not be authentic and reliable. Many studies and reports have shown that the products purchased based on the reviews of consumers are not always good and same

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[2] The Consumer Protection Act, 2019, sec. 2(7) (b).

[3] "Maroof Bashir, *Consumer Concerns in Online Shopping,* International Journal of Creative Research Thoughts (Dec.12, 2021) https://ijcrt.org/papers/IJCRT21X0018.pdf.

as described. Numerous examples demonstrate how buyers are duped into believing fake and fraudulent evaluations posted by fictitious customers. Despite the fact that every nation has laws protecting consumers, the system is flawed since these regulations do not widely cover transactions that take place online between customers and sellers.

User-generated online reviews have developed into a vital source of knowledge for prospective buyers. In an attempt to enhance the reputation of their products or services or harm the reputation of their rivals, certain retailers try to post or encourage fake reviews on online platforms, given the growing influence of these reviews on consumer purchases.[4]

The development of online purchasing has led to the emergence of new, intricate consumer protection regulations. Given the increasing prevalence of cross-border Internet interactions, the traditional components of consumer protection jurisdiction are challenging to implement in the online environment.[5] Because digital networks and computer technology are intrinsically global, a worldwide approach to consumer protection is necessary as part of an open and predictable legal and self-regulatory framework for electronic commerce. Each nation or jurisdiction faces difficulty in effectively addressing consumer protection issues in the context of electronic commerce due to the global network environment. International consultation and cooperation may be the most effective way to handle these consumer protection challenges because disparate national rules may limit the growth of electronic commerce.[6]

Over the past 20 years, the Committee on Consumer Policy has focused a lot of attention on the protection and empowerment of consumers in e-commerce. The Ottawa Declaration was adopted in 1998 as part of the Ministerial conference "A Borderless World: Realising the Potential of Global Electronic Commerce," which invited the OECD to concentrate on digital consumer protection. In the current day, where buyers depend more and more on online reviews and ratings, fraudulent or deceptive ratings and reviews pose a serious risk to the confidence of buyers. Online marketplaces have the potential to enhance consumer trust by protecting their review systems against abuse. Online marketplaces have the power to improve their rating systems and make reviews more relevant by providing more details for customers about sellers and products, such as return policies and customer complaints. Sharing best practices on how

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[4] J.M. Martínez Otero, *Fake Reviews on Online Platforms: Perspectives from the US, UK and EU Legislations*, 1 *SN SOC. SCI.* 181 (2021), https://doi.org/10.1007/s43545-021-00193-8."

[5] "Karen Alboukrek, *Adapting to a New World of E-Commerce: The Need for Uniform Consumer Protection in the International Electronic Marketplace*, 35 GEO. WASH. INT'L L. REV. 425 (2003)."

[6] "Organisation for Economic Co-operation and Development (OECD), *Recommendation of the OECD Council Concerning Guidelines for Consumer Protection in the Context of Electronic Commerce*, 39 *INT'L LEGAL MATERIALS* 1187 (2000), http://www.jstor.org/stable/20693993.

online marketplaces can reduce the number of fake ratings and reviews on their platforms is something that international organisations and networks should take seriously.[7]

Defining Fake and Paid Reviews: Typologies and Characteristics:

The expansion of commercial websites and customers' rising acceptance of online transactions are driving a rapid growth in internet-based electronic commerce. The World Wide Web is a new marketing channel that is very different from traditional retail models. Online shoppers are limited to the product information provided on the website; unlike traditional retail stores, they are unable to touch or smell the merchandise before making a purchase. Online retailers want to get around this restriction by allowing customers to post reviews of their products online. The information generated by consumers is beneficial for making selections about purchases as it offers a veiled look at items. In contrast to traditional retailers, online sellers often provide consumers with two different kinds of product information. Via its website or other conventional communication channels like marketing, it can provide seller-created product information. It can also provide consumer-created product information by enabling customers to leave comments on its website. Online reviews by customers are a sort of consumer-created content; they are fresh reports from customers who have bought and utilised the product. It contains their ideas, assessments, and experiences. This method of providing user-oriented information is effectively a new type of word-of-mouth marketing.[8]

The prevalence of online transactions has made it standard practice for retail websites to include forums where customers may share their experiences utilising goods and interacting with suppliers. There are also independent websites whose only goal is to compile user reviews. The main purpose of these forums, which are often open to all users for free, is to help customers exchange information. While ratings provide customers with an instant sense of how popular a product is, open-ended textual information provides specific details reflecting each reviewer's experience.[9]

Online reviews are customer opinions or experiences on a good, service, or company. They can be found on the websites and platforms of retailers, booking services, websites of experts, and trusted trader programs that assist customers in choosing a trader. On the other hand, ratings are informal assessments of products and services that are carried out using a scale (for

[7] Burdon, *The Role of Online Marketplaces in Enhancing Consumer Protection*, Going Digital Toolkit Note, https://goingdigital.oecd.org/data/notes/No7_ToolkitNote_ConsumerProtection.pdf."

[8] "Kendall L. Short, *Buy My Vote: Online Reviews for Sale*, 15 VAND. J. ENT. & TECH. L. 441 (2013).

[9] Nwanneka V. Ezechukwu, *Consumer-Generated Reviews: Time for Closer Scrutiny?* 40 LEGAL STUDS. 630 (2020).

instance, stars from 1 to 5), and they are typically provided in conjunction with a written evaluation.[10]

Whether it's a new book or a guided tour of a city, consumers need to feel confident enough to purchase a relatively unknown good or service. In online markets, reputation systems help businesses do this. Online review mechanisms, which are essentially user ratings (usually on a 5-star scale) or written feedback regarding the customer's experience with a particular product, power these systems. Since it comes straight from the customer and is therefore a reliable source of information, the significance and influence of this kind of mechanism have been increasing.[11]

Digital Platforms and Their Vulnerability to Fake Reviews

Online customer evaluations have grown in importance as a source of information to aid consumers in making selections about what to buy as e-commerce has expanded. Nevertheless, the deluge of internet customer evaluations has resulted in information overload, making it challenging for customers to select trustworthy reviews.[12] Customers consult customer reviews extensively when deciding which online goods and services to buy. Because sellers and their marketers are aware of this, some of them give in to the pressure of fabricating bogus customer testimonials.[13]

The primary drawback of online review systems is their unreliability, which is also the primary legal and contractual issue. In this sense, an unreliable review is one that fails to accurately represent the merits and demerits of a product that the customer has purchased. Three legally significant categories of untrustworthy or deceptive reviews can be distinguished: (1) reviews that are blatantly biased; (2) reviews that are fraudulent; and (3) reviews that are absent.

The first category of unreliable reviews is precisely the lack of them. Lack of reviews is caused by users that do not post an online review of the product or service they acquired, describing their own experience with it. The problem with this type of unreliability is that a lack of reviews will lead to a lack of information, inevitably contributing to the problem of information asymmetries and ultimately corrupting the current review system. Unreliability in the second category is related to biased reviews. They happen when a customer submits a review that

[10]Chrysanthos Dellarocas, *Reputation Mechanisms* (June 2005), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.138.6406&rep=rep1&type=pdf.

[11] Verena Schoenmueller, Oded Netzer & Florian Stahl, *The Extreme Distribution of Online Reviews: Prevalence, Drivers and Implications*, 18(10) *COLUMBIA BUS. SCH. RESEARCH PAPER* (2019)."

[12] "Hyunmi Baek, *Helpfulness of Online Consumer Reviews: Readers' Objectives and Review Cues*, 16 *INT'L J. ELEC. COMMERCE* 29 (2012), http://www.jstor.org/stable/41739513.

[13] Justin Malbon, *Taking Fake Online Consumer Reviews Seriously*, 36 J. CONSUMER POL'Y 139 (2013).

doesn't reflect their true opinions due to bias.[14] Because it can be the hardest to identify and, hence, to stop, this kind of unreliability has the greatest potential to do the most damage. Finally, reviews that are not based on actual customer experiences—also known as fake reviews—make up the third type of unreliability. These reviews are typically the result of someone (generally the trader) who wishes to undermine the reputation of another business or promote their own.

The issue with depending too much on customer evaluations is that the businesses have frequently paid someone to create fake ratings, not actual customers. These reviews, sometimes referred to as "*opinion spam*," can promote the business's own product to attract more customers or disparage a rival's goods to turn off prospective buyers. Opinion spam is a concern since it misleads people into believing falsified reviews when deciding how much money to spend. The issue is made worse by the "*feedback loop*" of reviews. People are more likely to choose companies or items with a high number of positive evaluations than those with neutral, negative, or even few positive ratings. This phenomenon is known as the "feedback loop." Positive product or company reviews attract more actual consumers who in turn leave real reviews, which attract even more real customers. As a result, businesses profit by paying for the first reviews—either extremely positive or negative—that they receive from their rivals. On the other hand, businesses that behave morally and abstain from this practice lose out. They either lose out on true positive evaluations from a feedback loop or are the victim of a malevolent campaign of negative reviews, which can drive away clients from even well-established enterprises.[15] Businesses are motivated to maintain favorable reviews since they have the potential to influence sales through consumer generated reviews. That being said, they might purchase phoney reviews or use automated software to place them on various sites (bots). Enforcement instances bring this issue to light. The US Federal Trade Commission (FTC) revealed its first lawsuit in 2019 contesting the use of phony sponsored reviews by a marketer. Amazon reviews of the defendants' weight-loss drug were allegedly created and posted by a third-party website for payment. The product received a 5- star rating on Amazon thanks to these fraudulent reviews. Among other things, the court order that settled the FTC's case mandated that emails explaining the FTC's allegations be sent to

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[14] Madalena Narciso, *Review Mechanisms in Online Marketplaces and Adverse Selection: A Law and Economics Analysis* (Feb. 1, 2017), https://ssrn.com/abstract=2905435."

[15] "Kendall L. Short, *Buy My Vote: Online Reviews for Sale*, 15 VAND. J. ENT. & TECH. L. 441 (2013).

customers who had bought the goods.[16] Similarly, Bell Canada staff members were urged to leave positive reviews of the company's apps on the Google Play Store and iTunes in 2014.[17] There are numerous cases which show that the consumers are being trapped in the fraudulent and false reviews by fake consumers. Though there are consumer protection laws in every country, there are many loopholes in the system as it does not widely cover the online transactions between the retailers and consumers. There are very few rules and regulations that protect consumers from online misleading by fake reviews and ratings. Since we cannot tell whether a review is fake by direct observation, the primary obstacle to objectively detecting review fraud is this. The absence of a uniform criterion for determining what constitutes a fake review further complicates the matter.[18] Therefore, there is a need to frame comprehensive rules and regulations regarding e-commerce websites and to enforce strict punishments for those who engage in such fraudulent activities of writing and allowing to write fake, paid and negative reviews.

The UN Guidelines on Consumer Protection

The United Nations Guidelines for Consumer Protection, also known as the UNGCP *"a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their own economic and social and environmental circumstances, as well as promoting international enforcement cooperation among Member States and encouraging the sharing of experiences in consumer protection."*

The goal of this section is to make the case that, in actuality, consumer protection ought to be viewed as a fundamental component of social and economic policy, with real and significant advantages for both governments and the welfare of their constituents. In this regard, the significance of guidelines must be understood.[19] UN Guidelines are followed by many countries throughout the world, who consider it difficult to frame policies and regulation for

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[16] Nwanneka V. Ezechukwu, *Consumer-Generated Reviews: Time for Closer Scrutiny?* 40 LEGAL STUDS. 630 (2020).

[17] Bell Canada Reaches Agreement with Competition Bureau Over Online Reviews (Oct. 14, 2015), https://competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/news-releases/bell-canada-reaches-agreement-competition-bureau-over-online-reviews."

[18] "Michael Luca, *Fake It till You Make It: Reputation, Competition, and Yelp Review Fraud*, *MANAGEMENT SCIENCE*, http://www.jstor.org/stable/44166532.

[19] David Harland, *Implementing the Principles of the United Nations Guidelines for Consumer Protection*, 54 *J. INDIAN L. INST.* 154 (2012), http://www.jstor.org/stable/43951350."

protection of consumers. In the age of technology, UN Guidelines provide consumers a wide array of options to enforce their rights and be aware of their duties towards manufacturers and retailers. UN Guidelines set out principles for good business practices that ensure clear and timely information to purchasers regarding products.

The Laws of the USA and the UK:

USA: The Federal Trade Commission (FTC) is responsible for enforcing various consumer protection laws including the Consumer Review Fairness Act (CRFA), which gives consumers a right to post honest reviews.[20] Also, FTC published new regulations to forbid false reviews and rejectionists in 2023.

UK: The Consumer Protection from Unfair Trading Regulations prohibits the use of counterfeit comments. The 2024 Digital Markets, Competition and Consumers Bill provides for tougher regulations including banning false and misleading feedbacks, as well as making it compulsory for platforms to adopt measures that would result in the prevention and elimination of fraud.

The Legal Architecture of Consumer Protection in India:

Online reviews from customers have grown to be an essential component of their decision-making processes since they allow customers to express their thoughts and experiences regarding the usefulness and quality of products and services.[21] Online reviews can be viewed as pre-contractual information from a civil law standpoint because they essentially represent the consumers' intent to enter into a contract.[22] Online reviews, however, are frequently fabricated or prejudiced, and they do not accurately reflect the thoughts of all customers. This can harm a company's reputation. Because they mislead consumers and erode their faith in the market, these problems with online reviews undermine consumer protection.

To regulate the E-commerce industry, many legislations for consumer protection have been enacted throughout the world, but they have not been able to provide the rigid solutions for the problem of proliferation of fake reviews. In India, the primary legislation that governs the relationship between consumers and retailers is The Consumers Protection Act, 2019[23]. The purpose of Act is to safeguard the interests of consumers. It creates authority for prompt and

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[20] Bureau of Consumer Protection, Federal Trade Commission, https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection."

[21] Hassan Masum & Mark Tovey, *The Reputation Society: How Online Opinions Are Reshaping the Offline World* 440 (The Information Society Series, The MIT Press 2012).

[22] Madalena Narciso, *Review Mechanisms in Online Marketplaces and Adverse Selection: A Law and Economics Analysis* (Feb. 1, 2017), https://ssrn.com/abstract=2918764.

[23] Consumer Protection Act, No. 35, Act of Parliament, 2019 (India).

efficient administration for this reason. Additionally, it offers a mechanism for resolving disputes and related or incidental concerns involving consumers. The Act became operative on August 9, 2019. It applies to every kind of product and service.

Digitalization has transformed the way consumers conduct online transactions, shifting the mode of shopping from offline to online platforms. In response, the Consumer Protection Act, 2019, marks a positive step toward reform, development, and the enhancement of consumer rights in this digital age. E-commerce is defined as the purchase or selling of products or services under Section 2 (16)[24]. But merely defining does not ensure that the positive steps are being taken to protect the consumers in E-commerce industry. The Act of 2019 though mentions unfair trade practices which has a very wide ambit, yet it does not recognise the problem of fake reviews directly or indirectly.

One of the many comprehensive laws that addresses and fulfils the needs of modern consumerism is the Act of 2019. Nearly all of the Act of 1986's grey areas have been addressed. However, this law needs to be strengthened in order to be implemented effectively to protect the interests of e-consumers. [25]

The Consumer Protection Act, 2019 shields consumers from exploitation by unscrupulous traders. In furtherance of this goal, Bureau of Indian Standards (BIS) approved a voluntary framework in 2022 to protect consumers against false reviews on e-commerce platforms thereby promoting transparency as well as correctness in the gathering and publication of reviews.

Bureau of Indian Standards (BIS) has also notified a framework on **'***Online Consumer Reviews: --Principles and Requirements for their Collection, Moderation and Publication'* on 23rd November 2022 for safeguarding and protecting the consumer interest from fake and deceptive reviews in e-commerce. The standards are voluntary and are applicable to all e-commerce players, they must voluntarily disclose all paid or sponsored review concerned products and services which are offered on their portals. every online platform which publishes consumer reviews. The guiding principles of the standards are integrity, accuracy, privacy, security, transparency, accessibility and responsiveness. Failing to comply the Bureau of India's (BIS) Standards shall be considered an unfair trade practice and lead to legal action under the

[24] Consumer Protection Act, § 2(16), No. 35, Act of Parliament, 2019 (India)."

[25] "Sanjay Aher & Sanjeevkumar Sable, *Regulation of E-Commerce in India under Consumer Protection Act, 2019 : An Overview*, 4 INT'L J.L. MGMT. & HUMAN. 1547 (2021).

provision of the Consumer Protection Act, 2019.[26] The organization is required to develop a written code of practice, communicated and made available to all management and staff, which outlines how the standard and the guiding principles in it will be met and maintained.

These national and international frameworks underscore the significance of consumer protection in the digital economy and the necessity of strong legal frameworks and international collaboration to stop the spread of fraudulent reviews.

Ramifications of Fake Reviews and Violation of Consumers' Rights:

In today's world, the need to protect human rights is paramount. The foundation upon which civil society advances to a more advanced stage of social development is human rights. A contemporary society's top priority at all times is the maintenance and defence of human rights. In order to guarantee justice and individual freedom, additional rights have been added to the expanding list of human rights over time.

The argument that the trend towards enlarging the concept of human rights permits us to include consumer rights within that definition is supported by both substantive and procedural assessments of human rights. Protecting the individual consumer is seen as essential to upholding human dignity in a consumer-oriented culture, particularly when it comes to large businesses, monopolies, cartels, and huge corporate organisations. Therefore, the foundation for acknowledging consumer rights as human rights may be established by widely recognised human rights principles, such as those that place a strong focus on an individual's prosperity, honour, and dignity.[27]

As innovation and technology progress, consumers who are well-informed and well-trained can now perceive marketing not as a tool for manipulation but rather as a tool for protection, aiding them in precisely identifying the corresponding products and services.[28] However, there are some areas which are yet to be explored in a more efficient manner to protect the rights of consumers, and these areas include online and teleshopping. It is need of the hour to aware consumers about the laws relating to online services and strengthening the network of consumer protection by including all the spheres of transmission in the legal sphere. In the 21st century of technological advancements, everything is going digital. Thus, law agencies need to enforce laws and protect human rights in the virtual world.

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[26] "India: Govt. of India Standards for Online Consumer Reviews", available at https://www.warwicklegal.com/news/652/india-govt-of-india-standards-for-online-consumer-reviews, visited on 12 July 2025.

[27] Sinai Deutch, *Are Consumer Rights Human Rights*, 32 OSGOODE HALL L. J. 537 (1994)."

[28] "Ljupka Petrevska & Miroslava Petrevska, *Consumer Rights Protection*, 5 INT'L J. ECON. & L. 91 (2015).

The Undermining of Consumer Autonomy and Informed Decision-Making by Fake Reviews

The ability of a person to make effectively independent decisions is indicated by the concept of autonomy. *"The ruling idea behind the ideal of personal autonomy is that people should make their own lives,*" as Joseph Raz puts it. Making one's own life entails freely confronting both commonplace, everyday decisions and existential ones, such as who to spend one's life with or whether to have children. And addressing them openly entails being given the chance to reflect on and carefully weigh one's alternatives, taking into account one's commitments, values, and wants before making a decision that is acknowledged and supported as being one's own, free from outside influence. In many respects, the governing normative premise of liberal democratic societies is autonomy. We cherish our collective and democratic ability to self-rule because we believe that individuals can and should govern themselves.

However, the introduction of social media and the Internet has completely changed how people make daily decisions, how quickly news spreads, and how society communicates. The digital revolution has brought out new challenges, especially concerning individual liberty, since the impact of outside factors is become more subtle but all-encompassing.[29]

Manipulation in this context becomes even more insidious. To manipulate someone is to subtly sway them, to purposefully change their decision-making process without their knowledge. In the first place, it may cause the target to act towards goals they haven't selected, and in the second place, it may cause them to behave for motives that aren't truly their own. Both of these outcomes compromise the target's autonomy.[30]

Online marketplace providers use many technologies in ways that undermine consumers' autonomy and freedom of choice by influencing their purchasing decisions without the consumers' knowledge.[31] One such tactic use by them is the proliferation of fake and biased reviews and ratings.

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[29] A. Goodrum, *How to Maneuver in the World of Negative Online Reviews, the Important Ethical Considerations for Attorneys, and Changes Needed to Protect the Legal Profession*, 24 *INFO. & COMMC'NS TECH. L.* 164, 164-82 (2015)."

[30] "Daniel Susser, Beate Roessler & Helen F. Nissenbaum, *Technology, Autonomy, and Manipulation*, 8 *INTERNET POL'Y REV. 2* (2019), available at https://ssrn.com/abstract=3420747.

[31] Wolfie Christl, *Corporate Surveillance in Everyday Life: How Companies Collect, Combine, Analyse, Trade, and Use Personal Data on Billions* (2017); Phuong Nguyen & Lisa Solomon, *Consumer Data and the Digital Economy: Emerging Issues in Data Collection, Use and Sharing* 1-62, 11 (2018), available at https://apo.org.au/sites/default/files/resource-files/2018-07/apo-nid241516.pdf.

Fake reviews disrupt the reality that people rely on to make educated judgements by providing inaccurate or misleading information about goods or services, misleading consumers. Customers' capacity to make fully autonomous decisions is undermined when they unintentionally rely on misrepresented information to inform their decisions. Their choices are now influenced by dishonest outside forces and are no longer solely their own.[32] Because of this manipulation, there is a culture of mistrust on online platforms, which makes users wary of all reviews—even those that seem credible. Consumers become less confident in their capacity to rely on unbiased assessments when trust erodes, making them more susceptible to manipulation and control from outside sources.[33] The Companies frequently use fraudulent reviews to gently sway customers' choices and steer them towards particular goods or services. Consumer freedom is curtailed by this subtle manipulation, which leads consumers to make decisions they might not have made with access to truthful and reliable information. In this way, outside parties with vested interests take control of customers' decision-making processes.[34] In the end, fraudulent reviews violate customers' right to informational decision-making by misleading them as well. When consumers lack true information, their perception of the market is distorted, undermining their independence and capacity to make decisions that serve their best interests.[35]

Proposed Solutions and Policy Interventions

Numerous remedies have been put forth to assure fairness in e-commerce in response to the detrimental effects of phoney reviews. Many online marketplaces have implemented traditional manual procedures, such as user verification, review number limitation, pre-moderation of reviews, reporting systems, and IP address tracking. These techniques, however, have time and personnel constraints and are prone to human error. Fake reviews of a high calibre can get past these safeguards. Restrictions and screening of reviews can also have a negative impact on privacy and user experience. In actuality, some techniques for creating fake reviews can evade detection, and the unintentional removal of authentic reviews can erode consumer confidence.[36]

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[32] B. Moliner, *The Impact of Fake Reviews on Consumer Behavior: An Examination of Online Review Manipulation*, 36 J. CONSUMER MKTG. 340, 340-52 (2019).

[33] Michael Luca, *Fake It till You Make It: Reputation, Competition, and Yelp Review Fraud*, 62 *MGMT. SCI.* 3412, 3412-27 (2016).

[34] Dina Mayzlin, Yaniv Dover & Judith Chevalier, *Promotional Reviews: An Empirical Investigation of Online Review Manipulation*, 104 AM. ECON. REV. 2421, 2421-55 (2014)."

[35] "Raffaele Filieri & Fraser McLeay, *E-WOM and Accommodation: An Analysis of the Factors That Influence Travelers' Adoption of Information from Online Reviews*, 53 *J. TRAVEL RES.* 44, 44-57 (2014).

[36] Le Quang Thao, *designing a Deep Learning-Based Application for Detecting Fake Online Reviews*, *ENG'G APPLICATIONS OF ARTIF. INTELLIGENCE*, https://doi.org/10.1016/j.engappai.2024.108708.

So, in order to address the conundrum of fake online reviews in e-commerce, digital tools can prove to be beneficial. In 21st century, as the technology growth is witnessed by everyone, it is realised that Artificial intelligence (AI) and machine learning (ML) are emergent tools for fake review detection.

Experience and analytical observations are the sources of knowledge used in machine learning approaches. These advantages of ML result in a multitude of applications for its techniques.[37] Feature engineering is the process of creating or extracting significant characteristics from text data. There are two approaches to fake review detection studies: one that uses behavioural aspects (spammer reviewer features) and the other that uses linguistic features (review centric features) that are specific to the content of a single review. The application of AI is affecting almost every field. Whether we are aware of it or not, artificial intelligence (AI) is omnipresent. With the help of our smartphones, TVs, electronic devices, electric vehicles, and other, AI is being utilised in a variety of industries, including gaming, entertainment, healthcare, and education. In addition to these sectors, e-commerce is one that is heavily impacted by AI use.[38] Through a variety of cutting-edge methods, artificial intelligence (AI) can considerably contribute to the solution of the fake review problem. Artificial intelligence (AI) can evaluate the sentiment and linguistic aspects of reviews using text analysis and natural language processing (NLP). It may detect inflated positive or negative sentiments as well as strange language patterns that could be signs of fraud. Furthermore, AI can use machine learning algorithms to identify anomalous patterns of behaviour, including several reviews coming from the same IP address or frequent posting rates—both of which are frequently linked to fraudulent reviews. Combining these methods allows AI to efficiently weed out fraudulent reviews, giving customers access to more reliable and accurate information.

Corporate Responsibility and Platform Accountability in Ensuring Review Authenticity:

The growing ubiquity of online review platforms encourages dishonest vendors and service providers to influence customers by manipulating reviews of their goods and services. To advertise products and disparage rivals, dishonest people buy real accounts, create bot farms, and utilise Sybil accounts.[39]

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[37] M. Ennaouri & A. Zellou, *Machine Learning Approaches for Fake Reviews Detection: A Systematic Literature Review*, *J. WEB ENG'G* (July 2023), doi: 10.13052/jwe1540-9589.2254."

[38]"Ambar Srivastava, *The Application & Impact of Artificial Intelligence (AI) on E-Commerce*, *Contemporary Issues in Commerce & Mgmt.* (2021).

[39] H. Paul & A. Nikolaev, *Fake Review Detection on Online E-Commerce Platforms: A Systematic Literature Review*, 35 *DATA MINING & KNOWLEDGE DISCOVERY 1830* (2021).

For businesses and platform providers, there are big stakes involved in preserving consumer confidence and market integrity by guaranteeing the legitimacy of online evaluations. Businesses should use solid methods to authenticate reviews and refrain from manipulative strategies like posting fake reviews or dishonestly rewarding positive feedback in order to uphold ethical marketing standards. This entails keeping an eye out for questionable activity and utilising cutting-edge algorithms to spot dishonest behaviour.[40] Online platforms, on the other hand, are vital in guaranteeing the validity of reviews by means of content moderation and algorithmic detection; they also use machine learning techniques to detect and eliminate fraudulent reviews; and they uphold transparency by providing users with unambiguous reporting options. Regulatory and legal structures are also essential for enforcing laws that prohibit and penalise fake reviews, punishing offenders, and offering channels for consumer recourse. When combined, these actions can foster a reliable review climate that benefits companies and customers alike.

Furthermore, the research community should take a step back, evaluate the strategies investigated thus far to counter fake reviews, and come together to establish new ones in response to the ongoing development of review spamming techniques. Understanding review system architecture and operation is essential to pinpointing the root causes of issues that persistently jeopardise consumer rights as well as to lower the costs associated with submitting truthful reviews, which will ultimately lower information asymmetries. As time goes on, the expenses linked to manipulating and fabricating the systems will increase, discouraging traders and platform operators from participating in unethical behaviour and, consequently, diminishing the financial incentives for unfair business practices.[41]

Suggestions and Recommendations:

Fake reviews are a major problem that poses a serious threat to human rights and consumer protection. The present study has investigated the complex characteristics of fraudulent reviews, emphasizing their detrimental effects on consumer autonomy, distortion of market dynamics, and reduction of trust in digital marketplaces. The study has emphasized the importance of having a strong legal and regulatory framework in order to effectively handle

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[40] Wolfie Christl, *Corporate Surveillance in Everyday Life: How Companies Collect, Combine, Analyze, Trade, and Use Personal Data on Billions* (2017)."

[41] "Pedro Fonseca Barros Ferreira, *Reviews and Endorsements in Online Marketplaces and Consumer Protection*."

the issue, as well as the role that cutting-edge technology like artificial intelligence play in identifying and reducing fraudulent activity.

The steps which are taken by Indian government to combat and control fake and paid online reviews are appreciable and in favor of consumers' interest, besides this some recommendations which will be more fruitful in future are as under:

- Reports should be displayed by the product sellers and service providers, after every month with data details of consumers who have genuinely used the product or availed the services;
- Reviewers should disclose some kind of personal information, like their occupation, identity proofs while giving reviews so that consumers can get to know whether the reviewer is a genuine person and his review is an authentic one or not;
- Change the rating style from star-based rating to a more comprehensive question-based rating technique;
- The ministry of consumer affairs, India should publish a six-monthly bulletin regarding the product reviews of credible, authentic and established independent sources to aware the consumers.
- There must be registration of review author through an email or his/her identity proof. The review author also can confirm his registration by clicking on a link;
- Review Authors should be bars from editing of reviews and to prohibit them from making the discouraging negative reviews for products and services of others;
- The application of AI is affecting almost every field. Whether we are aware of it or not, artificial intelligence (AI) is omnipresent. With the help of our smartphones, TVs, electronic devices, electric vehicles, and other, AI is being utilized in a variety of industries, including gaming, entertainment, healthcare, and education. In addition to these sectors, e-commerce is one that is heavily impacted by AI use.[42]
- The consumer should be taught to learn the methods of using online tools for analyzing fake reviews such as Review Meta and Fake spot.
- Review platforms can also implement Generative Pretrained Transformer (GPT) detectors to identify fake or true reviews created by artificial intelligence models like ChatGPT.
- The proper platform should be available to the consumers to report any review or comment which they consider as false and misleading;

[42]"Ambar Srivastava, *The Application & Impact of Artificial Intelligence (AI) on E-Commerce*, *Contemporary Issues in Commerce & Mgmt.* (2021).

- Those companies, organizations and institutions who are responsible for promoting fake reviews and hire employees for giving negative reviews should be considered guilty and punished for their misleading advertisement and unfair trade practice.
- A violation of the Quality Control Order (QCO) should be considered a violation of fair-trade practices and violation of rights of consumers under the Consumer Protection Act, 2019.
- Furthermore, the research community should take a step back, evaluate the strategies investigated thus far to counter fake reviews, and come together to establish new ones in response to the ongoing development of review spamming techniques. Understanding review system architecture and operation is essential to pinpointing the root causes of issues that persistently jeopardize consumer rights as well as to lower the costs associated with submitting truthful reviews, which will ultimately lower information asymmetries

Conclusion

Fake reviews are a major problem that poses a serious threat to human rights and consumer protection. The present study has investigated the complex characteristics of fraudulent reviews, emphasizing their detrimental effects on consumer autonomy, distortion of market dynamics, and reduction of trust in digital marketplaces. The study has emphasized the importance of having a strong legal and regulatory framework in order to effectively handle the issue, as well as the role that cutting-edge technology like artificial intelligence play in identifying and reducing fraudulent activity.

The study's findings indicate that although international consumer protection standards offer a basis, its execution exhibits significant deficiencies and irregularities, particularly in developing economies such as India. These loopholes worsen the issue of phoney reviews by making customers more susceptible to manipulation and impairing their judgement. Moreover, the consequences for human rights are significant since fake reviews disproportionately affect vulnerable and marginalised groups, aggravating already-existing disparities. The economic consequences encompass the disturbance of equitable market competition and the establishment of deceptive surroundings that adversely affect consumers and enterprises alike. Concerns about ethics also surface, emphasising the moral duties that companies and platforms have to uphold the veracity of reviews and safeguard the interests of customers.

A diversified strategy is needed to address these problems. Important efforts include strengthening the legal and regulatory frameworks, encouraging corporate responsibility, and using technology to identify and stop fraudulent reviews. Additionally, fostering a more open

and equitable online environment requires informing customers about the dangers of phoney evaluations and giving them the tools, they need to successfully navigate digital marketplaces. Subsequent investigations ought to concentrate on enhancing identification technology, assessing the efficacy of regulatory measures, and investigating the wider consequences of fraudulent reviews on international e-commerce. Through persistent efforts to tackle these obstacles, interested parties can strive for a digital marketplace that is fairer and more reliable, guaranteeing the preservation of consumer rights and market integrity.

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GIG ECONOMY AND COMPETITION LAW: INDIAN LEGAL APPROACHES TO PLATFORM WORKERS

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Aditi Jha**

INTRODUCTION

The "gig economy," a phrase used to describe a variety of internet-based models of assigning services to individuals who need them, is built on the wise use of technology and e-communication. In the gig economy, data management uses information technology to boost its productivity.[3] Particularly in urban areas, this economy is particularly relevant in domains like individual transportation (especially important for cities in neglected public transportation regions), temporary residences, housekeeping services (cleaning, care for kids, mobile meals, eldercare, and pet care), and delivery services that either clash with or substitute public postal services. The gig economy is made up of a number of platforms that link workers and customers for the supply of services. Examples of these platforms include Uber, Ola, and Rapido for taxi services; Swiggy and Zomato for food delivery; Amazon, Flipkart, and Blinkit for delivery services, and so on. As more people accept flexible, temporary work through digital platforms, it is growing. An internet platform serves as a link between the service provider and the customer, facilitating gig employment. The individuals who are worked in this large economy are known as Gig worker or platform workers. According to Indian labour legislations, they are not entitled to any protections like paid sick leave or a minimum pay. Collective bargaining would be one way for gig workers to improve their working conditions, given each individual freelance worker has relatively limited negotiating power compared to a platform.

According to a recent approximate by an Indian newspaper, there are currently about 7 million platform workers, and by 2030, that number is predicted to increase to 25 million at an average yearly growth rate of about 12%.[4] The workforce's shifting tastes, the digital revolution, and

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[3] Dagmar Schiek and Andrea Gideon, "Outsmarting the Gig-Economy Through Collective Bargaining– EU Competition Law as a Barrier?" 7 *International Review of Law, Computers and Technology* 1-20 (2018).

[4] Kartik Narayan, "A Budget Solution to India's Skilled Workforce Challenge: Unleash the Gig Contingent", *Economic Times*, Jan. 21, 2024, *available at*: https://economictimes.indiatimes.com/news/economy/policy/a-budget-solution-to-indias-skilled-workforce-challenge-unleash-the-gig-contingent/articleshow/107027315.cms?from=mdr (last visited on June 2, 2024).

the pressing need for flexible and affordable job options have all contributed to the gig economy's explosive growth in recent years. According to a recent Boston Consultancy Group estimate, India is anticipated to have over 90 million gig jobs, which represents 1.25% of total GDP.[5] In 2017, a study was published where it was stated that around 24% of the gig workers in the world come from India.

Characteristics of Gig Economy

The key characteristics or elements which defined Gig economy are:

a. *Flexibility and Autonomy:* The choice of where, when, and how much to labour comes to gig workers. The flexibility gig labour offers to combine employment with other responsibilities like schooling, childcare, or other occupations is one of its main draws. These employees feel autonomous and may customize their employment to fit their interests and skill sets since they have discretion over the kinds of activities they take on.
b. *Task Based and Short-Term Employment:* Jobs in the gig economy are usually task- or project-based as opposed to full-time, permanent employment. Instead of getting a fixed pay, the employees get paid for each job or project they finish. Most employment contracts have a short lifespan, usually lasting for the completion of one job or a sequence of activities.
c. *Digital Platform:* Workers and clients in need of their services are connected through digital platforms or applications, which act as middlemen. These platforms help to efficiently match workers' supply (consumers) with workers' demand (workers). There are some examples of digital platforms like food delivery platforms (Swiggy, Zomato), ride-sharing services platforms (Uber, Ola, and Rapido), freelancing services platforms (Freelancer), and home services platforms (UrbanClap, Blinkit, and Zepto).
d. *Low Entry Barriers:* A broad spectrum of people may apply for several gig economy occupations as they do not require a large initial investment or official qualifications. For instance, a vehicle and a driver's permit are necessary for ride-sharing, while an internet connection and some basic skills may be needed for freelance platforms. Students, retirees, part-timers, and others looking for extra money are among the varied groups drawn to the gig economy.

Gig Economy interconnect with Competition Law

The goal of competition law, often referred to as antitrust law in some places, is to create and preserve fair competition in the market. It seeks to stop businesses from acting in an anti-competitive manner, ensuring that markets function well and that customers have access to a greater range of products and services at reasonable costs. Prohibiting anti-competitive agreements and activities, controlling mergers and acquisitions, and preventing monopolies are

the main goals of competition law. Every nation, including India, which has the Competition Act of 2002, (henceforth, this act will mention as 'abovementioned' Act in whole research paper) has its own legislation pertaining to competition. Prior to this, it was the MRTP Act, 1969, that regulated competition in India. Preventing actions that might harm competition, fostering and maintaining market competition, safeguarding consumer interests, and maintaining trade freedom in India were the primary goals of the Competition Act. The regulatory body in charge of implementing the Act is the Competition Commission of India (CCI)[6], which also has the jurisdiction to control mergers and acquisitions, encourage competition advocacy, and look into instances of anti-competitive behavior. Several significant clauses of the statute include:

- ***a.*** *Section 3*: Prohibits anti-competitive agreements, including cartels and collusive practices.
- ***b.*** *Section 4*: Prohibits abuse of dominant position, such as predatory pricing and exclusionary practices.
- ***c.*** *Sections 5 and 6:* Regulate combinations (mergers and acquisitions) to prevent substantial adverse effects on competition.

As per *Section 2(r)* of the Act defines the relevant market which means that *"the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets."*

The need to define a relevant market is necessary, as it would help in analysing the competition. This includes determining whether digital platforms directly compete with established businesses or if they represent a separate market sector in the gig economy. For example, ride-sharing services provide varied pricing structures and service flexibility, which makes them competitors to traditional taxi services but also creates a new dynamic in the market. Market dominance is determined by examining the market share, network implications, and the capacity to set pricing or eliminate rivals. Organizations in the gig economy that grow significantly in size have the potential to acquire tremendous market dominance, which frequently raises questions about monopolistic activities. The CCI's inquiry into the pricing strategies of Ola and Uber, for instance, raises questions about their possible misuse of market power and their dominating positions in the ride-sharing industry but later on CCI dismisses this claim.[7]

[6] Chapter III and Chapter IV of the Competition Act, 2002 have the details of the CCI like establishment, composition, qualification of members duties, power, functions and so on.

A network effect can be seen when there is a rise in the value of platforms when additional users (consumers and workers) sign up, and this helps digital platforms in the gig economy. Yet it may result in a consolidation of market dominance and thus erect obstacles for the entrance of new rivals.

Objectives

The objectives of this research paper undertaken in the view of the following:

a. Does this gig economy have employment classification for their employees
b. Does gig economy possess challenges for the platform workers.
c. Does this gig economy create any kind of anti-competitive practice in India.
d. Does Covid-19 pandemic have any kind impact on the gig economy.

Methodology

The research conducted in this research paper is of Doctrinal Research Method. This research shall include references from various articles, international conventions, Indian legislation, research papers, law journals, international journals, news lines, published reports, websites, etc. that have been referred to according to the requirements of the research and also shall be duly acknowledged in this paper.

Observations

Here, all the objectives in which the researcher has mentioned above are all in depth were explained.

Employment classification in Gig Economy

The gig economy, which is defined by temporary, flexible, and freelance labour arrangements, marks a dramatic departure from traditional employment models. In the gig economy, workers are often divided into two main categories: independent contractors, sometimes known as freelancers, and employees. Independent contractors are self-employed people who provide assistance to clients on a project or task basis. They are free to determine with whom they work, when they work, and how much they charge. Many labour rules that apply to workers (or employees) do not apply to independent contractors in India, as they are regarded as self-employed. Their clients do not provide them with perks like paid time off, health insurance, or retirement benefits.

[7] PTI, "Competition Commission Rejects Price Fixing Allegations Against Ola, Uber", *Economic Times*, May 07, 2018, *available at*: https://auto.economictimes.indiatimes.com/news/aftermarket/competition-commission- rejects-price-fixing-allegations-against-ola- uber/66532302#:~:text=Fair%20trade%20regulator%20CCI%20on, amount%20to%20collusion%20between%2 0them. (last visited on June 3, 2024).

For Examples, Drivers who work for ride-hailing services such as Ola and Uber are categorized as independent contractors. In addition to choosing their own working hours and car ownership or leasing, they get compensated per ride. Freelancers may find clients for a variety of jobs, including writing, graphic design, programming, and more, on sites like Upwork and Freelancer. These clients want the finished projects to be done within a certain time limit. The choice of project totally depends on the freelancer.

While, Employees often have a set income and working hours, and in addition to potentially receiving a variety of benefits, all they need is an employment contract and, hence, are subject to the employer's supervision. Labour regulations such as the Employees' Provident Fund Act, the Minimum Wages Act, the Payment of Wages Act, and others protect workers or employees in India. Health insurance, paid time off, and provident funds are among the perks to which they are entitled. For instance, large IT firms such as TCS, Infosys, and Wipro have employees in the IT sector who are entitled to perks such as paid time off, health insurance, and provident funds. Regular workers work for start-ups in a variety of capacities, including marketing, development, and administrative support, have employment status, and thus are entitled to all benefits associated with that position.

Gig Economy Create Anti-Competitive Practices

Anti-competitive practices refer to actions taken by businesses or the government that hinder or lessen competition within a market. In the above Act it was mentioned through Anti-competitive agreements which basically are the contracts between businesses in a business transaction that have the potential to reduce competition in a particular market or benefit one group at the expense of another. These kind acts are unlawful under the Act.[8] The word "agreement" here means that those formal documents need to be signed by the parties, as the conduct of the parties can be considered to be an agreement. It may or may not be in written format.[9] The main justification for the broader interpretation of the term "agreement" is the fact that those who participate in unlawful conduct are unable to bind themselves to a formal written contract that would prohibit their actions. A contract or practice can be relating to the production, marketing, transportation, storage, acquisition, or administration of products and services that has the potential to negatively impact the Indian market is prohibited by the *Section 3* of the abovementioned Act. Furthermore, *Section 3(2)* declares that any agreement made in violation of this clause is invalid.

[8] The Competition Act, 2002 (12 of 2003), s.3.

[9] Ibid, s.2(b).

There are two categories into which anti-competitive practices or agreements might be placed. Anti-competitive conduct among rivals at the same supply chain level is subject to horizontal practice or agreement.[10] Price-fixing, price discrimination, cartels, collusions, mergers, and predatory pricing are some examples of it. However, the second type is known as vertical practice or agreement,[11] and it involves imposing restrictions on rival businesses as a result of anti-competitive behavior between them at various supply chain stages, such as supplier-distributor interactions. Exclusive dealing, refusing to deal or sell, maintaining the resale price, and other similar actions are examples of this.

The anti-competitive practices in the Gig economy are:

a. *Collusion and Price Fixing*

Platforms may participate in collusive strategies, such as using algorithms to determine service costs (such as increased pricing structures for ride-sharing), which may alter the dynamics of competition. Customers may pay more as a result of these activities, and service providers may face less competition. For example, Uber's pricing algorithms came under fire from the CCI for possibly engaging in price-fixing, and surge pricing models' lack of transparency.

b. *Abuse of Dominance*

According to the abovementioned statute, a person or organization is considered to be in a dominant position when they are in an authoritative position that permits them to operate freely despite competing challenges in the market sector. They positively impact their competitors, clients, and the state of the market as well. However, the Act forbids such misuse in its entirety. It is implied by this that no company or organization should profit from its dominant position. In order to keep new competitors from competing successfully, dominant platforms may use exclusionary tactics. These tactics include treating certain service providers better than others, using user data to retain market dominance, and imposing unjust terms on employees.

For example, the CCI's probe into the pricing strategies of Swiggy and Zomato, as well as their special treatment of partner eateries, raises questions about anti-competitive activity.[12]

c. *Predatory Pricing*

In order to force a rival business out of the market, a dominating business willfully sets prices that are either far lower than their costs or below their cost. The goal of predatory pricing is to drive away rivals by putting prices below cost, then raising them once the level of competition is lower. Platforms in the gig economy could significantly subsidize services in order to increase market share, which could be detrimental to long-term competition.

[10] *Ibid*, s.3(3).
[11] *Ibid*, s.3(4).

For instance, the CCI has investigated claims of predatory pricing made by ride-sharing companies such as Ola and Uber, where original cheap costs were utilized to draw customers and push out rivals. Also, CCI held in the case that online marketplaces are unable to be challenged for exploiting their "dominant position" since their current market share represents a very small percentage of the total market.[13]

d. *Data Control*

Gig economy platforms gather a ton of information on customer behaviour, preferences, and employee productivity, which can possibly help them in focusing advertising, improving their services, and creating competitive strategies. This could benefit them by erecting the new competitor entry, as these new competitors won't have this insightful data, which could assist them in solidifying their position in the market. For instance, client data is used by Swiggy and Zomato to improve customer satisfaction and efficiency by optimizing delivery routes and providing tailored suggestions.

Challenges in Gig Economy

The gig economy includes a wide variety of occupations that give workers flexibility and freedom while meeting client demand for on-demand services, including delivery staff, drivers for ride-hailing services, home service providers, and freelancing professionals. Earlier, it used to be thought of as a lifestyle choice only for high-earners and consultants, but these days it's a common choice for entry-level employees looking for flexible schedules and a variety of revenue streams, as well as freshmen looking for exposure to launch their careers. Nevertheless, there are still issues that this quickly growing industry must overcome, like:

a. *Issue faced by Accessibility*

Although anyone who is ready to work in the gig economy may take advantage of its many employment opportunities, access to digital technologies and internet services might be a barrier. This is especially true for those who live in remote and rural locations. As a result, the gig economy has become mostly an urban phenomenon. This suggests that platforms that demand personal service could be more accessible to urban men and women as well as to rural men as well as women who are ready to move to an urban area or who regularly travel from their rural place to a town or city.

[12] Gireesh Chandra Prasad and Suneera Tandon, "CCI Orders Probe Against Zomato, Swiggy", *Mint*, Apr. 05, 2022, *available at*: https://www.livemint.com/companies/cci-orders-probe-into-alleged-anti-competitive- practices-of-zomato-swiggy-11649088859560.html (last visited on June 3, 2024).

[13] All India Online Vendors Association ("AIOVA") v. Flipkart India Private Limited (Case No. 20 of 2018).

b. Job and Income Insecurity

In India, like in other areas of the world, platform workers are usually paid on a task-by-task basis and are referred to by the platforms as either "delivery partners" or "independent contractors." The labour laws that include pay, hours worked, job conditions, and the ability to collective bargain are therefore not advantageous to them. In addition, their pay may vary greatly based on how much demand there is for their services. The Fairwork Report 2021[14] notes that, as the majority of workers are not categorized as employees, employment status is a major problem when it comes to working on digital platforms. This may make it simpler for companies to fire delivery partners abruptly because there was no legally binding agreement signed between the platform employer and partners. This results in a lack of labour, economic stability, and a work-based identity for these delivery partners.

c. Occupational Safety and Health Risks

According to studies, there are a number of potential risks to health and safety for workers who use digital platforms, especially for women who work in the app-based delivery and taxi industries. According to ILO global surveys conducted on freelancing platforms, there are a number of health and safety issues at work that affect workers working in the app-based delivery and taxi industries, especially women. Approximately 83% of employees in the app-based taxi industry and 89% in the app-based delivery industry stated they were concerned about their work's safety, frequently in relation to theft, physical assault, and road safety. Within the app-based delivery industry, a notably elevated percentage of participants from Morocco, Mexico, and India (who are primarily male, as there aren't many women working in this field in these nations) reported experiencing harassment or discrimination.[15] In addition, gig workers may experience health problems as a result of their work environment, which includes long hours, little breaks, and constant stress injuries.

a. Skills Mismatch

Online web-based systems exhibit varying degrees of skill mismatch, both vertically and horizontally. According to the report, people with better educational accomplishments are not always able to find job that matches their talents. Numerous participants in a survey stated that their skill set exceeded the requirements for the activities at hand. For example, various digital platform workers stated that they were overqualified for their jobs: Zomato, Superdaily, and Flipkart (100%), Amazon and Swiggy (90%), UrbanClap, Uber, and big basket (approximately 80–85%).[16]

[14] Fairwork, “Fairwork India Ratings 2020: Labour Standards in the Platform Economy” 14 (2020).
[15] ILO, “World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work.” 171 (2021).

b. *Financial Insecurity and Lack of Credit Access*

The unpredictable nature of the gig job causes unstable finances for their employees, who find it difficult to budget for emergencies or long-term expenses. These gig workers have limited options when it comes to investing in their work instruments or handling unanticipated costs because they are unable to get credit facilities through traditional financial institutions, as these so-called institutes only give credit facilities to those who have a steady income source, and these workers do not have a steady source of revenue.

c. *Gender Inequality*

Many times, prejudice and harassment are experienced by female gig workers. When compared to their male colleagues, women frequently earn less money because of discrimination or being directed toward lower-paying jobs. The kinds of employment that women are given or deemed qualified for might be limited by gender stereotypes that they frequently encounter. In the gig economy, ratings and evaluations are essential for getting more work and paying more, but they can be influenced by prejudices from customers and employers. Although women take gig work, they have this constant reminder of balancing both work and home life, which can be a problem for them physically, emotionally, and mentally. Many gig professions, including ride-sharing and delivery services, force women to work late hours in remote or strange locations, increasing their risk of harassment or assault. Certain professions may even put women in danger by requiring them to visit dangerous areas or interact with customers in intimate situations. A lot of platform employees receive little or no instruction on personal safety precautions or how to deal with harassment and abuse. On gig platforms, especially ones that entail a lot of online engagement, like freelancing or remote employment, women are more likely to face online harassment and abuse. Due to the fact that these gig platforms frequently demand the sharing of personal information, there may be a higher chance of cyberstalking and privacy violations. These can be reasons for the majority of women to express their reluctance to participate in the gig economy.

Covid -19 pandemic impact on the Gig Economy

One major factor influencing the shift in the labour market has been the COVID-19 pandemic. Professionals, businesses, and sectors are capitalizing on the increase in gig workers as remote work becomes the norm. In the first six months of the lockdown and beyond, work-from-home (WFH) jobs increased by 115 percent in India.[17] The pandemic has spurred the expansion of the gig economy, but it has also made the insecure aspects of professions that were formerly thought to be appealing visible.

[16] WageIndicator Foundation., "Gig Economy India 2020/2021" 14 (2021).

Gig workers have taken on the burden of the pandemic without the presence of any safeguards, whether it be due to a lack of healthcare insurance, unstable finances, or prolonged employment. Because of this, people are now more aware of how precarious certain jobs are in the gig economy. The International Labour Organization (ILO) reports that there are disparities in pay and poor working conditions. The majority of gig workers on platforms typically make significantly less than the local minimum wage. Since there is little opportunity for collective bargaining for improved pay and working conditions, the benefits easily surpass the negative aspects.[18] Gig workers, who lack job benefits and financial stability, are now on the front lines of the food delivery and taxi industries due to the pandemic. A few platform providers have assumed the duty of offering one-time financial support to particular personnel. Businesses like Zomato and Swiggy have said they would use crowdsourcing to raise money to enhance wages for temporary and part-time employees, while the Urban Company, Flipkart, and Uber have all revealed that they would do the same. On the other hand, it's unclear from India's basic level report, whether the laborers were paid or not. According to a Flourish Ventures report, 83% of gig workers had to utilize their savings, 47% were unable to cover their expenditures without borrowing, and 90% of gig workers had to decrease their revenue since the lockout.[19] Additionally, businesses have disregarded worker health and safety protocols. Platforms prioritize lowering user anxiety over protecting employees' health under the guise of frictionless delivery and social distance.

Conclusion

In India, there are both complicated opportunities and difficulties at the nexus of the gig economy and competition law. Laws and regulations promoting competition while safeguarding platform workers and customers are desperately needed as digital platforms expand to transform the labor market. There is a need for an elaborate plan that takes into account specific characteristics of the gig economy, maintains fair market practices, and offers proper protections for all players. India may promote a more fair and competitive gig economy by tackling these problems with a mix of labour laws, consumer protection laws, and competition laws. Furthermore, the Indian government has already taken initiatives to provide better working conditions and social security to the platform workers of the gig economy, like introducing the Code of Security Act, 2020 (which extends social security benefits to gig and platform workers), the E-SHRAM portal (a database for unorganized workers, including platform workers), launched by the Ministry of Labour and Employment, the NITI Aayog Recommendations, Skill India, and Digital India initiatives, and so many other initiatives taken

by the government.

Recommendations

1. Make certain that written contracts that clearly define the rights, obligations, and pay of platform workers exist. Have a grievance redressal system that is easily accessible and effective, as well as a specialized process for settling conflicts between gig workers and platforms.
2. Establish health and safety requirements unique to the gig economy for gig workers. For instance, safety equipment, health coverage, and access to medical facilities should all be given to delivery staff. Acknowledge the mental health issues that gig workers suffer as a result of their unstable employment and erratic pay. Adopt mental health assistance initiatives, such as stress management courses and counselling services.
3. Make financial services more accessible, such as credit, savings accounts, and insurance plans designed with gig workers' requirements in mind. Financial institutions should be encouraged to provide solutions that accommodate gig workers' erratic revenue patterns. Create a scheme to provide emergency financial support to gig workers who experience unanticipated events, such accidents or medical conditions.
4. Enable gig workers to move their performance and rating information between platforms by implementing data transfer rights. In many contexts, this can support employees in preserving their reputation and negotiating leverage.
5. Ensure that the personal details of the consumer on these digital platforms are safe. No one can misuse their information, and if found guilty, stricter actions should be taken against the perpetrators.

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[17] Press Trust of India, "Covid-19 Pandemic Prompts Workers, Corporates to Adopt Gig Economy", *Business Standard*, Oct. 18, 2020, *available at*: https://www.business-standard.com/article/companies/covid-19-pandemic-prompts-workers-corporates-to-adopt-gig-economy-120101800493_1.html (last visited on June 4, 2024).

[18] Bhaskar Pant and Geetima Das Krishna, "Covid-19 and Gig Workers: Need to Democratize the Gig Economy in India", *Economic Times*, Oct. 09, 2020, *available at*: https://government.economictimes.indiatimes.com/news/economy/covid-19-and-gig-workers-need-to-democratize-the-gig-economy-in-india/78567292 (last visited on June 4, 2024).

[19] Divya J Shekhar, "Why the Code on Social Security, 2020, Misses the Real Issues Gig Workers Face", Forbes India, Oct. 15, 2020, available at: https://www.forbesindia.com/article/take-one-big-story-of-the-day/why-the-code-on-social-security-2020-misses-the-real-issues-gig-workers-face/63457/1 (last visited on June 4, 2024).

CHALLENGING MASCULINE DOMINANCE IN CORPORATE SPACES: AN IN-DEPTH STUDY OF THE GLASS CEILING FACED BY WOMEN

Adv. Puja Banerjee*

Introduction

Organizations that want to offer leadership that lives up to the greatest expectations require a wide mix of viewpoints, skills, backgrounds, approaches, and talent pools. More and more people are realizing that by uniting men and businesses may provide their stakeholders the best solutions to issues and long-term value when they welcome women from a variety of backgrounds and let each individual to share their talents, experiences, and viewpoints. As is common knowledge, independent directors are regarded as guardians of good governance and are one of the cornerstones of an effective corporate governance framework. Stakeholder expectations of independent directors have grown over time. Women offer a distinct and fresh perspective to companies eager to be inclusive, but they also possess certain attributes that might be essential to the survival and success of any organization. Business professionals need to be aware of the amazing challenges and conflicts that women face. In summary, data illustrates the idea of an uneven playing field. When it comes to managerial skills, the paradigm assumes that *"men"* are naturally better. The widespread belief that males are better at acting ethically in organizations is constantly examined, as opposed to the presumption that men and women should have equal opportunities. Women have been joining the workforce in greater numbers since the middle of the 1970s.

For the first time, a sizable percentage of women who are midlife and midcareer employed by companies. These ladies offer a high-achieving2 role model with a wealth of experiences that the larger community dealing with midlife difficulties may draw on. The most popular programs are probably insufficient for these middle-aged women, despite the fact that several organizations have made an effort to address the requirements of working women. Any company that employs these women will benefit from their mature personal lives, extensive professional backgrounds, and eagerness for fresh challenges. Compared to both their male midlife peers and their younger female colleagues, they have notably distinct demands. Their perspectives and approaches have evolved as a result of how they have handled the difficulties of midlife.

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[2] The Wall Street Journal "The Phrase Glass Ceiling stretches back decades"

Styles of Leadership

The one recurrent theme is that real-world problems, including seasoned female managers and leaders, are frequently encountered by studies on women in leadership. Women occasionally leave academic settings, which have been profoundly influenced by a past controlled by men. When it comes to research, males who do gender studies seem to focus on topics of questionable validity. As a result, the way that the world of males is framed already encodes gender-power assumptions, which influences many of the recurrent study topics about women in businesses. A large portion of the study on gender is influenced by this. It has such sway because ideals of masculinity have permeated management to such an extent. Male dominance is the standard. In the early days of management, women aimed to achieve equality by demonstrating their equality with men. It was mainly effective in demonstrating how women could exhibit leadership qualities, work-related motives, and career goals that were comparable to those of males. The truth is that women's leadership styles differ significantly from those of males. In terms of managerial techniques, women are far more collaborative than males. They also listen better and are more receptive to their colleagues. Through the more dominating style of top-down communication, men want to acquire power. Women appear to prefer more involved management approaches than their male counterparts, according to a more recent trend.

Gender Specific

Managers frequently encounter difficulties in addressing the perceived disparities between men and women. Especially aimed at as social groupings. The analyses are compelling, vivid, and frequently helpful. It implies that men tend to be more interested in matters of rank and hierarchy, whereas women are more interested in matters of relationship equality and equal participation. Although it is theoretically possible to argue for balance, this argument is frequently unsatisfactory. Gender[3] issues are a manifestation of power dynamics, particularly when they are acknowledged and taken into consideration. In addition, certain experience domains are risky to investigate because to the persistence of male-as-norm. Menstruation, menopause, and health are topics that are likely to elicit ire and aggravation since they imply that women are weak and maybe insufficient. Around the world, women continue to be concentrated in the riskiest professions, and for all but a small minority, breaking through the "glass ceiling" still seems unattainable. Top occupations seem to be behind impenetrable. Plexiglas barriers for women who also face racial prejudice.

[3] Ryan, Michelle and Alexander Haslam "The Glass Cliff: Evidence that Women are over represented in Precarious Leadership Positions"

According to research and analysis, prejudice is more prevalent in areas where authority is most centralized. The Gender gap widens as one rise in status:

a) 1-3% of senior executive positions in the world's leading businesses are held by women.

b) It is significantly lower for women who additionally encounter racial prejudice.

c) Just 8 nations have a female head of state, while 21 have a female deputy head.

d) Women make up just 13.4% of parliamentarians worldwide and 1% of trade union leaders.

Women in International Level

In recent decades, women have been progressively increasing their representation in lower and middle management and gaining access to a larger range of professional professions. According to data from the International[4] Labor Organization (ILO), women held between 20 and 30 percent of all jobs in nearly half of the 41 countries for which data was available in 1999. Jobs in management, legislation, and senior administration. Between 31 and 39 percent of these positions were held by women in 16 of these nations. In terms of women in management, Central and Eastern European nations like Estonia, Hungary, Latvia, Lithuania, Poland, the Russian Federation, and the Ukraine rank among the top, along with other developed nations like Canada, Ireland, New Zealand, and the United Kingdom.

Under a statistics category that includes administrative personnel, the United States is also included in this league. In a number of emerging nations, including Colombia, Bermuda, the Philippines, Honduras, and Venezuela, the percentage of women in management and administrative roles appears to be rather high. But the majority of working women in these nations have advanced degrees, are equipped for professional careers, and are in high demand for their abilities. Furthermore, the availability of affordable domestic help for household chores and childcare, as well as extended family arrangements, are major sources of support for managerial women in developing nations. According to a recent report by the Mexican government, women accounted for 12% of senior management roles in the public and commercial sectors, including president, director general, and general manager.

This is a reflection of the so-called *"glass walls,"* which are the concentration of female managers in particular industries. In the United States, women are more likely than males to hold executive, managerial, and administrative positions in the service, insurance, real estate, public administration,

[4] Aimee Picchi, it’s not the “glass-ceiling” holding women back at work, Oct 6, 2023

and finance sectors. Of these, 42% of women hold administrative additionally compared to 30% of men, management personnel work in the services industry. We cannot afford to undervalue the talent of women if we want businesses and organizations to stay competitive. Not only is it the moral thing to do, but it's also a wise decision! Education has shown to be an effective means of raising women's status and post-secondary enrolment rates around the globe. There are more women than males enrolled at this level in the Americas, Europe, and other nations. Although there are still gender gaps in education, especially when it comes to career choices, women are gradually entering the professional and technical professions that were once exclusively held by males.

The advancement of gender equality in the workplace has been greatly aided by the International Labor Organization (ILO). They have tackled issues related to equality, including corporate responsibility, safety, equal pay for equal labour, and discrimination. Currently, their objective is gender parity and catalyst to realize their fundamental goal of providing men and women with respectable employment in settings of freedom, fairness, security, and dignity.

The ILO[5] is also well aware of the necessity of having access to a wider variety of labour market data that are gender-neutral. It puts a lot of effort into standardizing the gathering and distribution of comparative employment and job statistics using indicators that are sensitive to gender. Improving women's involvement in management and decision-making is essential to effectively tackling disparities in the labour market. The International Labor Organization plans to maintain its critical role in breaking down the "*glass ceiling"* by collaborating with governments, employers' associations, trade unions, civic society, and the UN family.

The ILO promotes gender parity in the workplace to the highest echelons of international decision-making companies. Remarkably little has been published regarding the relationship between gender and performance in the workplace. According to research, there aren't nearly enough studies on this topic written by women, and there aren't nearly enough significant studies of substance that have been published. Research points to a complicated link between gender and corporate success.

The Evolving landscape of Female Entrepreneurship

It's clear to see now how women are becoming more and more influential in the economic sector. More and more women are pursuing entrepreneurship as a means of achieving their goals of financial independence, autonomy, and pursuing their true passions as society standards change and possibilities

[5] Geneva (ILO News), Employer and Business membership organizations make progress on gender equality but glass ceiling persists

for women rise. There are currently 13.5 to 15.7 million women-owned enterprises in India, directly employing 22 to 27 million people. By 2030, this figure may increase to 31.5 million with the right policies, adding 50–60 million more jobs directly to the economy. From technology and e-commerce to healthcare and steel, these female entrepreneurs are shattering preconceptions, questioning conventional gender norms, and forging their own paths in a variety of industries. Furthermore, compared to their male counterparts, female entrepreneurs in India are launching companies at a quicker pace. A recent study found that the proportion of women in leadership roles in corporate India has increased, perhaps due to the fact that women make more thoughtful judgments than males do. As CEOs, board members, and influential figures in the business, women are tearing down barriers and smashing glass ceilings. The aforementioned pattern denotes an increasing acknowledgement of the leadership abilities of women, emphasizing their crucial roles in organizational triumph, economic expansion, employment generation, ingenuity, and societal influence within India's entrepreneurial milieu.

Continuous Difficulties

Despite signs of improvement, Indian women in the business world continue to encounter several obstacles. Women-owned firms continue to face barriers to finance, expansion into new markets, and growth prospects due to discrimination and gender prejudice. Merely 6% of capital in India is allocated to enterprises that are co-founded or led by women. Women are frequently disproportionately burdened by cultural norms and societal expectations, which makes it challenging for them to strike a balance between their professional obligations and their social and home commitments. In addition, obstacles that hinder female entrepreneurs' progress include restricted access to mentoring, support services, and women-focused networks. Legislators, business executives, and the public at large must work together to address these issues and build an atmosphere that is more welcoming and conducive to the success of female entrepreneurs.

Opportunities in India for Women Entrepreneurs

Notwithstanding obstacles, women's rise in the corporate world is offering a wealth of chances for inclusive growth, social advancement, and economic empowerment. Through the empowerment of women in leadership roles in business and entrepreneurship, India can unleash unrealized potential, foster innovation, and promote employment creation in many industries. It has been shown that

investing in women-owned enterprises has major social and economic benefits. Due to the distinct viewpoints, new abilities, and creative ideas that women in business bring to the table, decision-making processes become more inclusive and varied. Additionally, women are more inclined to spend their profits in their families and communities, which promotes socioeconomic growth overall, thus backing women-led businesses can have a multiplier impact. Moreover, the commercial case for gender diversity and inclusion is becoming increasingly apparent. Businesses that place a high priority on gender equality typically do better than their competitors in terms of innovation, employee happiness, and financial results. Businesses can unleash the full potential of their workforce and build a more resilient and competitive economy by promoting an inclusive and diverse culture.

The rise of women in the Indian business[6] sector represents a significant milestone in the country's journey towards economic development and social progress. By harnessing the talent, creativity and leadership potential of women, the country can unlock new avenues for growth, innovation and prosperity. However, policymakers must enact reforms to address systemic barriers and promote gender equality in the workplace. Businesses must adopt inclusive practices and gender diversities. As we continue on this journey, let us harness the power of women's entrepreneurship and leadership to create a more prosperous, equitable and inclusive India.

The *"invisible—but impenetrable—barrier(s) between women and the executive suite, preventing them from reaching the highest levels of the business world regardless of their accomplishments and merits*" is how the US Department of Labor describes the glass ceiling. These are unconscious bias-influenced judgments and unwritten norms that are frequently imperceptible. There are barriers that prevent women from advancing in their careers, but they are rarely overtly apparent or in the form of rigid company regulations. Women are more likely to have restricted access, fewer opportunities, and poorer remuneration as a result of these hurdles, which keeps them from being promoted or given leadership positions.

Women Empowerment and Glass Ceiling

The glass ceiling and women empowerment are closely connected ideas that emphasize the difficulties women have in their professional advancement, especially when it comes to achieving senior leadership roles. The process of empowering women to take advantage of opportunities, make decisions, and realize their full potential is known as women's empowerment. On the other hand, the

[6] Mahima Jain, "How female entrepreneurs in India succeed despite funding challenges?"

term "glass ceiling" describes the imperceptible barriers that keep women from moving up to the top levels of an organization, even when they are qualified and successful. Many times, the glass ceiling is linked to things like stereotyping, discrimination against women, and uneven access to opportunities and resources. It can take many different forms, including lower compensation for women in comparable jobs to males, less access to senior leadership positions, and a lack of encouragement for women to pursue professional progression.

In order to empower women, these obstacles must be removed by gender equality-promoting policies and practices, such as equal pay for equal labour, flexible work schedules, leadership development and mentoring programs for women, and the establishment of an inclusive and supportive workplace culture. Organizations may gain from having a more diverse and inclusive leadership team by breaking down the glass ceiling and promoting women. This has been demonstrated to enhance decision-making, spur greater creativity, and boost financial performance. Across the globe, one in six women stated that they planned to launch a business soon. About 28% of women said that they intended to launch a business, which was the highest proportion of entrepreneurial intention seen in low-income nations.

According to the research, 10% of female entrepreneurs worldwide were just starting their businesses. Latin America and the Caribbean, as well as low-income nations, have disproportionately high numbers of female entrepreneurs. Across the globe, women make up one in four high-growth entrepreneurs; in North America and low-income nations, this percentage is greater.

The evolving landscape of female entrepreneurship

It's clear to see now how women are becoming more and more influential in the economic sector. More and more women are pursuing entrepreneurship as a means of achieving their goals of financial independence, autonomy, and pursuing their true passions as society standards change and possibilities for women rise. There are currently 13.5 to 15.7 million women-owned enterprises[7] in India, directly employing 22 to 27 million people. By 2030, this figure may increase to 31.5 million with the right policies, adding 50–60 million more jobs directly to the economy. From technology and e-commerce to healthcare and steel, these female entrepreneurs are shattering preconceptions, questioning conventional gender norms, and forging their own paths in a variety of industries.

[7] Ghazal Alagh, “The future is female: The rise of women entrepreneurs in India”

Numerous benefits, such as better economic possibilities, higher autonomy over one's life, increased political engagement, and greater gender equality, can result from women's empowerment. Women who are fully empowered to engage in the economy will have more access to well-paying occupations, which will help them and their families escape poverty. Women who are empowered have greater influence over their life and can make decisions that affect their own health, happiness, and future. This can result in better mental and physical health as well as higher self-esteem and confidence.

As women climb the corporate ladder, they begin to encounter gender inequity more frequently, particularly when it comes to obtaining a board seat. According to data, women make up only 5% of boardroom participants. And they are at our fingers for counting. It is unsettling to discover that despite employers' awareness of the advantages of having a diverse and inclusive workforce—including greater financial returns, employee retention, and creativity, to name a few—there hasn't been much progress made in reducing the gender gap.

While having more women on the board is a good thing, there is still more that needs to be done to close the gender gap in the workforce at all organizational levels. When a woman is worthy, companies should aggressively seek to elevate her into top management roles. This offers the chance to tap into fresh talent and boost productivity and creativity. The business world is facing a decision. The decisions we make now will impact gender equality and an organization's overall effectiveness for many years to come.

Styles of Leadership

The one recurrent theme is that real-world problems, including seasoned female managers and leaders, are frequently encountered by studies on women in leadership. Women occasionally leave academic settings, which have been profoundly influenced by a past controlled by men. When it comes to research, males who do gender studies seem to focus on topics of questionable validity. As a result, the way that the world of males is framed already encodes gender-power assumptions, which influences many of the recurrent study topics about women in businesses. A large portion of the study on gender is influenced by this. Its immense strength stems from the fact that management is now too inundated with macho ideals. *"Think Manager...Think Male,"* someone once remarked.

Male dominance is the standard. In order to achieve equality, women in management initially tried to show that they were just like men. It was mainly effective in demonstrating how women could exhibit leadership qualities, work-related motives, and career goals that were comparable to those of males.

In actuality, women's leadership[8] styles differ significantly from those of their male counterparts. In terms of managerial techniques, women are far more collaborative than males. They also listen better and are more receptive to their colleagues. Through the more dominating style of top-down communication, men want to acquire power. Women appear to prefer more involved management approaches than their male counterparts, according to a more recent trend.

In recent decades, women have been progressively increasing their representation in lower and middle management and gaining access to a larger range of professional professions. According to data from the International Labor Organization (ILO), women held between 20 and 30 percent of all jobs in nearly half of the 41 countries for which data was available in 1999. Between 31 and 39 percent of these positions were held by women in 16 of these nations. In terms of women in management, Central and Eastern European nations like Estonia, Hungary, Latvia, Lithuania, Poland, the Russian Federation, and the Ukraine rank among the top, along with other developed nations like Canada, Ireland, New Zealand, and the United Kingdom. They are not succeeding in rising to the top. The percentage of women in executive roles increased, according to a survey of European banks, with the exception of the board, where the number of women held steady at roughly 5%. Women make up half of the executive directors and one-third of the board of the London Stock Exchange. Women make up 33% of the directors of the Paris Stock Exchange. The nomination of a woman to the presidency of the Central Bank of Finland and the recent appointment of a woman to the head of the London Stock Exchange are two noteworthy exceptions to the rule regarding top posts in recent years. Few senior women appear to be in the so-called elite, which appears to be a major issue hindering women's attempts to achieve success.

Impacts of Increased Female Participation

The increased representation of women in corporate leadership is not just a matter of fairness- it benefits organizations and economies as a whole. Studies by McKinsey[9], the World Economic Forum and others consistently shown that diverse teams lead to better decision-making, greater creativity and higher profitability. Promoting gender equality in the corporate sphere requires a multi-faceted approach. Organizations must commit to equitable hiring, transparent pay structures and fair promotion process. Implementing mentorship and sponsorship programs can help women navigate career advancement more effectively. Embracing policies that support work-life balance, such as

[8] The Times of India, “Female entrepreneurs in India are experiencing an increase in funding opportunities”

[9] McKinsey &Company (New leadership for a new era of thriving organizations)

parental leave and flexible work arrangements are crucial in levelling the working field. At the societal level, encouraging girls and young women to pursue education in diverse fields- including STEM, business and leadership can help in widening the talent pool. Governments and regulatory bodies can play a supportive role through policies and incentives that drive gender diversity in corporate field and leadership position. The integration of more women into corporate roles signifies progress in the broader quest for gender equality. These helps to normalize female leadership, encouraging young girls to pursue ambitious career goals. Furthermore, higher female employment rates contribute to economic growth and the reduction of poverty levels, as families benefit from dual incomes and women's financial independence.

Challenges and the Path Forward

Despite these positive impacts, challenges remain. Persistent biases, unequal pay, lack of mentorship and limited access to networks can hinder women's career advancement. Many organizations are actively working to address these barriers through policies such as flexible work arrangements, leadership development programs and transparent promotion criteria. It is important for companies to not only focus on recruitment but also retention and advancement of female talent. Creating an inclusive environment requires ongoing commitment from all level of leadership. Companies that embrace gender diversity are also more adept at understanding and serving diverse customer bases, leading to enhanced innovation and competitiveness. Despite remarkable achievements in education and professional capability, women remain undermine in top management. According to research from McKinsey & Company, women occupy less than one quarter of C-suite positions globally. One promising strategy is the implementation of flexible working arrangements. The COVID-19 pandemic demonstrated that remote and hybrid work models can increase productivity and provide better work-life balance, which can be particularly beneficial for women. Organizations need to cultivate networks where women are included in informal gatherings and decision-making processes. Closing the gender pay gap is another priority. However, with intentional strategies and a genuine commitment to change, substantial progress is possible.

Corporate Culture

The culture of a corporation has a profound influence on employee experience and productivity. Corporate culture [10]comprises shared values, beliefs and practices that shape interactions with the company. Some corporations are renowned for fostering innovation and flexibility, while others emphasize tradition, strict processes and discipline. In many corporate settings, there is an emphasis on professionalism, punctuality and adherence to company policies. Regular performance evaluations and clearly outlined key performance indicators drive employees to meet and exceed targets. Office

etiquette, dress code and formal communication styles are crucial in contribution to a structured work environment. Time management, problem-solving and conflict resolution skills are indispensable for meeting deliverables and maintaining a positive work environment.

Emotional intelligence- the ability to understand and manage one's own emotions as well as those of others- has become increasingly valued, particularly in leadership roles. Adaptability is equally critical, as business landscapes shift rapidly in response to technological advancements and market changes. Demanding deadlines, extended work hours and high expectations can lead to stress and burnout. The rigid hierarchy might sometimes hinder innovation, as lower-level employees may feel less empowered to voice new ideas. Navigating office politics, adapting to organizational changes and achieving upward mobility are additional hurdles that professionals often encounter. Corporate culture is not static as organizations excel, diversify or face challenges such as mergers, acquisition things change. Cultivating the right culture requires intentional effort, consistent leadership and alignment with strategic objectives.

The Way Forward

We have to first think that we can make faster progress. Over the last three years, the proportion of women holding Fortune 500 executive management positions in the US has more than doubled.5.1% at the moment. Continue to elucidate the significance of gender equality for national wellbeing and economic progress. Until women are equally represented in the business world—in terms of numbers, parity, and spirit—we will never fully recover or be complete. Organizations and businesses will require a harmonious blend of supposedly *"feminine"* and "*masculine"* traits at all levels in order to function effectively. While women have historically faced barriers to occupying top management positions, the tide is turning. Increasingly, companies are recognizing the potential of women leaders and are moving towards organizational models where women hold significant rule-setting and

[10] Erin Meyer, Build a Corporate Culture that works.

Women leaders are found to bring fresh perspectives to strategic conversations, foster inclusive cultures and nurture collaboration. For instance, more young women are pursuing degrees in technical sciences, MBA and Mathematics. The “rule managed by women” within companies generally refers to governance structures, policies and workplace cultures shaped by female leaders. When women take the helm, either as CEOs, board members or senior executives, they are empowered to influence core rules on hiring, corporate values, talent management and organizational priorities. In a number of nations, the proportion of female engineering students enrolled has risen to 19% throughout the past ten years.

Conclusion

In order to realize women's full potential, the labour market's enduring occupational segregation must be addressed. Affirmative action policies and awareness-building initiatives can be used to combat attitudes that discriminate against women. The problem of balancing work and family is a major component in enhancing gender equality in the workforce. Both men and women are calling for more flexible work schedules and supportive work environments. A lot of businesses and organizations are making efforts to guarantee that career and succession planning services, official hiring procedures, and precise job descriptions are provided by human resource management, in order to meet these demands. To improve gender equality in training, recruitment, and promotion at the organizational level, it has been determined that positive action, equal opportunity policies, diversity management, mentoring, and tracking and monitoring of both men's and women's progress are helpful strategies.

The advancement of gender equality in the workplace has been greatly aided by the International Labor Organization (ILO). They have tackled issues related to equality, including corporate responsibility, safety, equal pay for equal labour, and discrimination. Currently, their objective is gender parity and catalyst to realize their fundamental goal of providing men and women with respectable employment in settings of freedom, fairness, security, and dignity. The ILO is also well aware of the necessity of having access to a wider variety of labour market data that are gender-neutral. It puts a lot of effort into standardizing the gathering and distribution of comparative employment and job statistics using indicators that are sensitive to gender.

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REGULATING BIG DATA ANALYTICS IN E-COMMERCE: DATA PRIVACY CHALLENGES UNDER THE UNCITRAL MODEL LAW

Adv. Nihal Raj*

Introduction

The United Nations Commission on International Trade Law (herein after referred as 'UNCITRAL') works towards harmonisation of rules on international business. It aimed at removing the disparities in laws governing international trade.[2] Cross border transactions are significant for any economy to grow and prosper, with countries having their respective national laws that governed their domestic transactions it was important to have a uniformed set of guidelines that govern transactions internationally. Countries around the globe believed in sharing resources and develop cordial and friendly relations through commercial transactions, this not only boosted their respective economies but eliminated any possibilities of any global conflict through military personnel. The general understanding is that no country would like to go into war with a country that is rich in a particular resource and jeopardise its trade benefits. Thereby it can be said that the emergence of UNCITRAL as a governing body was instrumental in ensuring world peace.

Since its inception UNCITRAL has come a long way, wherein there has been paradigm shift from Physical Trade to Digital Trade. With countries making use of digital means and tools to conduct international trade it was important for the laws to also catch up to the rapid changing pace of the digital economy. In 1985 the Commission recognised computer records.[3] Countries that are signatories to the UNCITRAL all reached a consensus with respect to coming up with a Model Law on the use of electronic commerce and contribute to harmonious international economic relations. The UNCITRAL the Model Law on Electronic Commerce (hereinafter referred to as 'MLEC') soon became a bible for all contracting parties to make the necessary amendments to their respective domestic legislations to govern the use of paperless modes of communication and ensure storage and protection of information. MLEC gave validity and enforceability of electronic information. In June 1998 the Commission further expanded the

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[2] United Nations, Https://Www.Un.Org/En (Jun. 2, 2025, 10:45 Am).

[3] Patrick Oliver Ott, Uncitral – United Nations Commission on International Trade Law, In A Concise Encyclopedia of the United Nations 692 (Helmut Volger, 2nd Ed. 2010), https://brill.com/view/book/edcoll/9789047444541/bej.9789004180048.i-962_122.xml.

scope of recognising data messages and electronic information by adopting Article 5 bis which provided for Incorporation by reference wherein it was made poignantly clear that no information shall be denied legal effect.[4]

Significance of UNCITRAL MLEC in Digital Economy

MLEC provides for significant provisions which ensure that countries engage in smooth and flexible digital transactions. For any commercial transaction to take place the contract acts as a foundation. A contract provides for the rights and duties of the parties entering in a transaction. With emergence of the digital age there is seen a shift from hard copy to digital document and digital signature. Article 6 of MLEC also provides that information must be in writing in relation to data message.[5] Article 6 provides that the information is said to be in writing if it is capable of being accessed at any later date.[6] Article 7 speaks on the aspect of signatures, data message containing the signature is acceptable provided that the concerned person verifies that the signature is genuine.[7] A juxtaposed reading of Articles 6 & 7 would reveal that the reliance of hardcopy documents and handwritten signatures are soon to become obsolete, it has been provided that a need for a hardcopy attested document will no longer arise if a digital copy or soft copy of the document with the signature can be accessed and referred to for future purpose.

Article 11 of MLEC provides validity to any offer and acceptance through the exchange of data messages.[8] An offer and acceptance are said to be complete once it reaches the offeree and offeror respectively. With the use of digital forms of communication tools, the time taken to communicate an offer or an acceptance by a party is reduced. The recognition and validity shall be obliged by the parties as well, the same is mandated under Article 12[9] which provides legal effect to information exchanged on a digital platform. MLEC has made E-Commerce possible across nations and this will only grow in the future by encouraging the use of digital modes of communication in trade and transactions. However, forthis growth to see the light of the day the fuel that is needed to run is extremely significant and fragile to handle, and that fuel is Data.

[4] UNCITRAL Model Law on E-Commerce 1996, Article 5 bis.
[5] UNCITRAL Model Law on E-Commerce 1996, Article 6(1).
[6] Ibid.
[7] UNCITRAL Model Law on E-Commerce 1996, Article 7.
[8] UNCITRAL Model Law on E-Commerce 1996, Article 11.
[9] UNCITRAL Model Law on E-Commerce 1996, Article 12.

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Significance of Data and Big Data

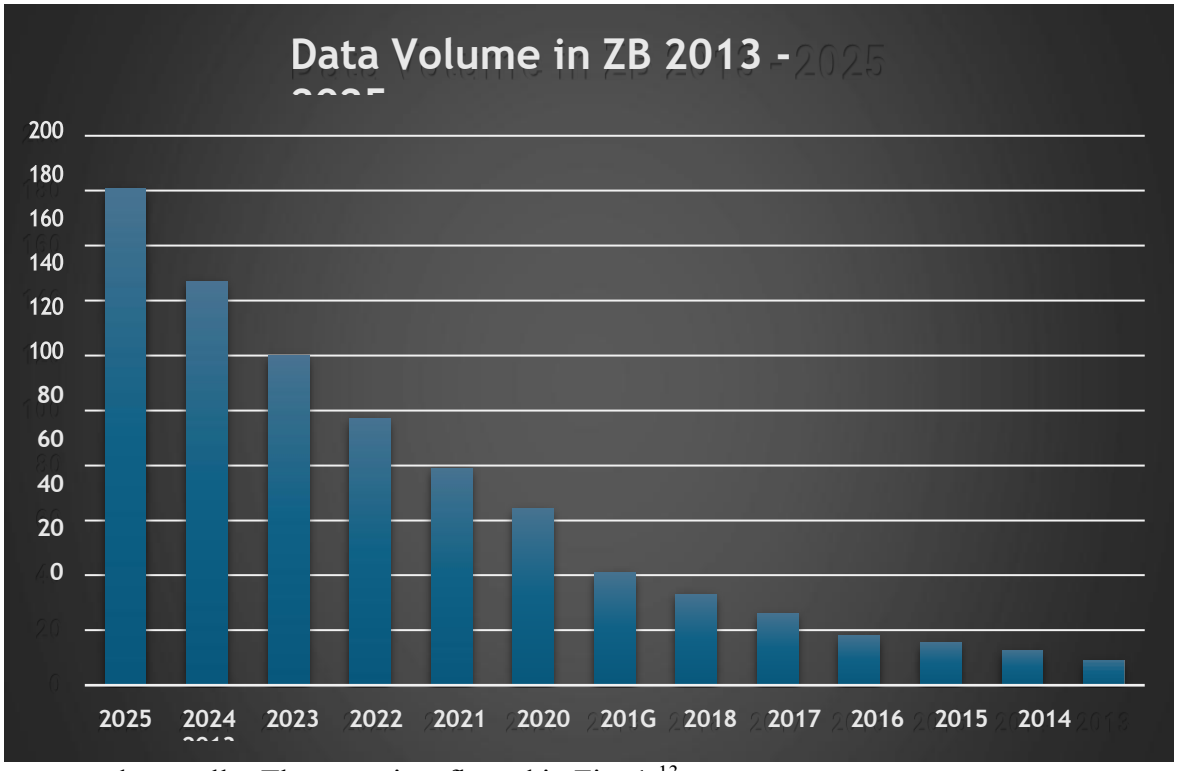
Data is the fuel and the life blood for any international trade to take place in this digital age. With countries seeing a shift from Physical trade to Digital trade apart from the transfer of consignments across borders there is also transfer of data across borders. E-Commerce granting customers access to markets via a digital platform and the same is being done through large amounts of data being exchanged across every second. Large amounts of data are being exchanged across borders when entering a digital trade, these large sets of data is called 'Big Data'. Big Data refers to large datasets that are not able to be captured, stored, managed and analysed by typical software tools.[10] These data sets that are huge not only in size but also in heterogeneity and complexity.[11] Data exchanged across borders, undergoes data analytics processes, which involves using raw data, both structured and unshaped to ameliorate business strategies and product immolations. With the use of Data analytics processes aspects like behaviours and trends are revealed for the benefit of corporations. Data analytics over a period is being used to understand the trends in the market as well as gauge the fluctuations in the consumer purchasing patterns. Leverage of big data provides valuable knowledge which is not only beneficial for organisations and enterprises but also consumers. Big Data is turning out to be a significant asset that many corporations are capitalising on to have a competitive advantage in the industry. With Big Data being essentially used by many corporations it has changed the major essential elements of an organisation for better functioning and achieving competitive results. While the MLEC looks into streamlining the channels and approach by which countries across the nations enter into digital cross borders trade, Big Data is acting as a key resource for corporations for obtaining information across borders, fostering new products that are inspired from the innovations taking place across the world to better cater the domestic markets, this data driven approach being followed by various enterprises this is contributing to the economic development.[12]In 2024 it has been reported that the annual data generation will reach 147 Zettabytes and with such forecast in place Big Data comes in clutch to ensure that large amounts of data is managed,

[10] IBM, https://www.ibm.com/think/topics/big-data (Oct, 4, 2025, 7:30 PM).

[11] Gantz, J., Reinsel, D.: Extracting Value from Chaos, IDC (2011).

[12] Microsoft, Go Bigger with Big Data, MICROSOFT NEWS CENTRE EUROPE (Jun, 2, 2025, 12:45 PM), https://news.microsoft.com/europe/2016/04/20/go-bigger-with-big-data/.

stored, and processed. By 2029 the global Big Data market will have a valuation of 650 Billion USD and that the Analytics as a Service market size will become 69 billion USD by 2028, these figures are a testament that the digital age that is existing today is to stay and have an impactful growth in the coming years. Nations around the world are engaging in developing their digital infrastructure and promoting digital awareness about the use of cloud solutions and technological advancements and this has resulted in increasing the volume of information



generated annually. The same is reflected in Fig. 1.[13]

(Fig. 1)[14]

Large volumes of data being generated every year has majorly influenced businesses growth, as 95% of businesses rely on statistical data to make informed decisions by providing unprecedented opportunities and tools to thrive in the digital era. Companies that specialise in Big Data Analytics are playing an influential role in assisting the organisations to properly analyse large amounts of data available in the digital market and take informed decisions. One such example is Netrivals. Netrivals is a significant player when it comes to providing data driven insights to help brands and retailers build effective pricing and product strategies.

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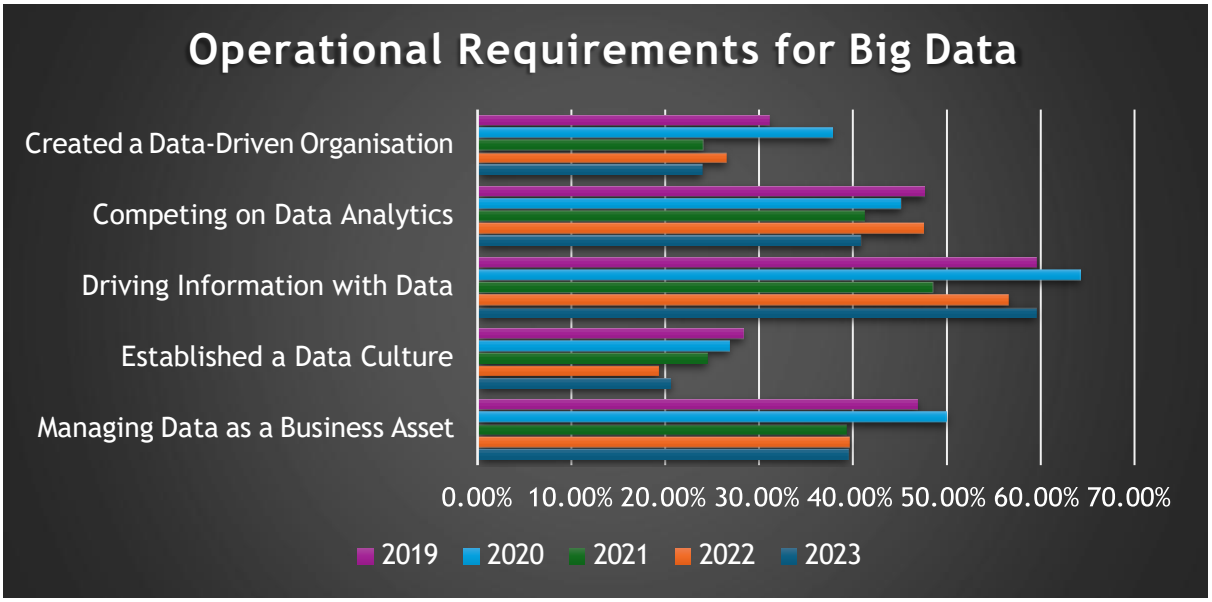
[13] MARKETS AND MARKETS, https://www.marketsandmarkets.com/Market-Reports/analytics-as-a-service- market-159638048.html (last visited Jun. 2, 2025, 2:30 PM).

[14] Edge Delta Team, Data Market Size and Forecast: 11 Insightful Statistics, EDGE DELTA (Jun. 4, 2025, 2:45 PM), https://edgedelta.com/company/blog/data-market-size-and-forecast.

Netrivals data analytics processes can scan over has invested in significant data analytics processes and mechanisms to scan over millions of products and billions of images daily. This large amount of data after being analysed aids organisations and businesses to take better decisions. By allowing companies to compare product prices with competitors' it assesses the market competitiveness.[15]

With significant players like Netrivals are playing an instrumental role for various stakeholders in achieving a competitive advantage, many businesses and organisations are taking leverage of these players. Various organisations are adopting the use of Big Data for various reasons mentioned below in Fig. 2:



(Fig. 2)[16]

Is 'BIG' Data 'BIG' Risk for Data Privacy?

With E-commerce flourishing in the present economy and large amounts of data being generated annually and processed using Big Data analytics to give various businesses and organisations to take meaningful decisions, it is important to note that all this growth is fostered by not considering the aspect of data privacy and security. Large volumes of data being

[15] Adrian Gmelch, Big Data in E-Commerce: Explanation and Use Cases, LENGOW BLOG (May 12, 2025, 1:00 PM), https://blog.lengow.com/price-intelligence/big-data-in-e-commerce-explanation-and-use-cases/.
[16] Edge Delta Team, (n 12).

generated and shared across borders becomes a matter of concern to understand the data that is being shared how is it likely to impact the aspects of privacy and security. Data is the lifeblood of international trade in this digital age. With big multinational and international companies engaged and taking leverage of e-commerce and digital trade some important and confidential data is also shared across borders. With increase in trade, it becomes important to safeguard their confidential information and data that floats overseas. Countries across the globe must have conferences to deliberate upon issues like Data Localization, Cybersecurity and Consumer Protection.[17] In this digital age Data Privacy and Security is a major concern that requires discussion and deliberation. Everything in this world runs on data and internet, with consumers having access to global markets their private information and financial information is also available and are at the disposal of big multinational companies. With fast changing digital economy the countries must develop their digital infrastructure in ways to ensure that data security and privacy is maintained. Countries that invested in developing their digital infrastructure to be on par with changing digital environment and now with inclusion of Big Data Analytics it is more imperative to deliberate about protection and safeguard of data and contemplate on the lines of making necessary amendments to the existing legislations to address issues like cybersecurity and data privacy.[18]

Big Data still being an unchartered territory the use of such techniques is not being appropriately regulated to ensure that privacy and security are upheld. As established Big Data analytics proves to be extremely beneficial for organisations to predict the trends and the behavioural patterns of the consumers based on the constant data sharing that happens. Big Data involves gathering data in an open and unstructured format from the consumers, outputs are being generated to make informed decisions by influencing the decision-making process of the consumers.[19] Big data analysis is being carried out by primarily collecting data from online which is a substantive abuse of privacy. Right to Privacy is a fundament human right recognised globally. The United Nations Special Rapporteur on the Right to Privacy governs with human rights violations and issues.[20] While there is a common notion that big data analysis is being used by business and organisations to understand consumer behaviours and take decisions

[17] Simon Abendin & Pingfang Duan, Global E-Commerce Talks at the WTO: Positions on Selected Issues of the United States, European Union, China, and Japan, 20 WORLD TRADE REVIEW 707-724 (2021).
[18] Mayank Gandhi, Big Data AND Privacy in Digital Market: - A Future Roadmap for Indian Antitrust Authority, 12 NLIU L.R.123-145 (2022).
[19] Mayank Gandhi, (n 16).
[20] Joseph A. Cannataci, Recommendation on the Protection and Use of Health-Related Data, UN Doc. A/ 74/277, December 2019.

accordingly. However, it is these consumers that are generally seen as pawns in the big game of data exchange and data control. The data gathered when consumers are purchasing online platforms are later used to influence their purchasing patterns on the same platform. It involves monitoring and assessing our shopping frequency, capacity and magnitude to predict their future behaviour. An act of monitoring and surveillance of consumers commerce over a particular platform is a clear violation of privacy and security.

There are case studies to substantiate the argument of 'Big Risk' in 'Big Data'.

a. *Facebook's Cambridge Analytica Scandal (2018)*[21]

   Facebook one of the most popular social media networking site was caught in a huge data privacy and security scandal along with Cambridge Analytica. Using Facebook as a medium an application was launched in the guise of taking a psychological test of the users on Facebook and in the process the data from the users were harvested by the firm. This data was used to profile individuals and target their preferences commercially and politically. Roughly the personal data of 87 million people were collected without taking consent towards the profiling of these individuals.[22]

b. *Uber's God View*

   Uber the famous Internet car-ride service showed off as a party trick a service called the God View. This encouraged the behaviour of stalking and surveillance as party of the company's culture. As a result, Uber performed an audit and agreed to pay a penalty of 20,000 USD.[23]

c. *Twitter Targeted Advertising*

   In 2019, Twitter now popularly known as 'X', advertisers had access to user's personal data and carried out targeted advertising. Information like email ids and phone numbers were provided to various vendors.[24]

d. *Amazon Smart Speakers Debate*

   In much more recent times with the extensive use of smart speakers like Google Home and Amazon's flagship speaker Alexa, has sparked a debate with respect to how

[21] Mathias Avocats, Facebook's Social Media Privacy Case: What Is It All About?, MATHIAS AVOCATS, (April 12, 2025, 1:00 PM), https://www.avocats-mathias.com/donnees-personnelles/facebook-social-media-privacy.
[22] Ibid.
[23] Bruce Schneier, Why Uber's "God View" Is Creepy, SCHNEIER ON SECURITY, (April 12, 2025, 1:30 PM), https://www.schneier.com/essays/archives/2014/12/why_ubers_god_view_i.html.
[24] Matomo Core Team, What Is Data Misuse & How to Prevent It? (With Examples), MATOMO (May 11, 2025, 2:30 PM), https://matomo.org/blog/2024/05/data-misuse/.

Amazon has been using Alexa as a tool to collect data and engage in targeted advertising.[25]

Further, the usage of Big Data to exercise limited but significant control over the consumers can be substantiated under two points of arguments:

i. Social Media

With social media being used as an essential tool not only to socialise and build networks but also a great channel for businesses and organisations to promote and advertise about brands, the information gathered from these social media websites is also allowing to analyse and predict the consumers behaviours. Businesses tend to advertise on social media by paying a significant amount of money for the social portal to showcase their brands. A consumer's interaction with the social media portal and precisely an interaction with these advertisements is being analysed through big data analytics to understand and influence the consumers from seeing a particular product repetitively so much so that the product is etched in their brain influencing them to purchase that product the next time they hit the market. Social media platforms like have a massive base of users and having a database to large stores of information which can be processed through big data analytics and get deeper insight about a consumer's thought process which in turn violates their right to privacy and security. [26]

ii. Payment Methods

In the digital age along with trade the payment procedure has also seen a shift from paper currency to digital currency. The advancement in mobile technology is responsible for causing this shift that has prompted retailers and financial institutions to develop new payment services through mobile platforms. Countries like China, India and South American mobile markets have been developing at a rapid pace to provide for digital payments services.[27] The data that can be analysed in the present scenario through Big Data analytics would reveal an understanding about the demographics as to how many users prefer a digital payment method and how many prefer the in-store

[25] Umar Iqbal Et Al., Tracking, Profiling, And Ad Targeting in the Alexa Echo Smart Speaker Ecosystem, *In* PROCEEDINGS OF THE 2023 ACM ON INTERNET MEASUREMENT CONFERENCE 569 (2023).
[26] Li, Yifei, Big Data Analysis in Consumer Behavior: Evidence from Social Media and Mobile Payment. Advances In Economics, Management and Political Sciences, In Proceedings of the 2nd International Conference on Financial Technology and Business Analysis 64. 269-275 (2023).
[27] Ibid.

method of payment. The system of digital payment has been growing exponentially that every small and big payment can be done through a digital mode. The study financial data of the consumers to understand the prevalence of digital mode of payment is also abridging their right to privacy and security.

Big data analytics is very beneficial to understand the nervous system of the society and provides companies an opportunity to tap this nervous system, however, the same must not be done at the cost of abridging their fundamental rights and taking undue advantage of the large amounts of data that is accessible with their consent. To ensure that the odds of achieving business competence and safeguard of rights and interests of the consumers are equally balanced without impacting the effectiveness and efficacy of E-commerce model significant modifications must be brought to existing legal frameworks.

Upgradation of MLEC

To ensure that there is an equilibrium between the pace of E-commerce as well as Data Privacy and security issues is created the Model Law governing E-commerce must receive a major upgrade. MLEC came into existence way back in 1996 at a period when the digital modes of communication were not developed as it is today. Further, the amount of data generated back then were very minimal compared to the amount of data generation that happens in the present day and age. The MLEC must receive some significant amendments to enhance the scope of this Model Law to be more flexible and to be able to keep up with the technology and new ways of doing business. The following are some of the recommendations that are proposed:

a. *A Complete Section on Data Protection*

   MLEC should be amended to include an entire Section dedicated towards data protection. To begin with an amendment to clearly define what amounts to the data that can be collected by companies when entering commercial transactions and contracts. MLEC must clearly define the process by which companies entering into contracts or carrying out the operations under the contracts can collect the data. Upon data collection MLEC shall also dictate terms and conditions with respect to how the data can be used to carry out the obligations under the contract. Finally, MLEC shall also propose measures and safeguards that every company entering e-contracts must incorporate to ensure that the data collected is safe and secured.

b. *Strict Regulations on Data Sharing*

MLEC must also be amended in a way to impose strict regulations on what data can be shared under the contract. MLEC can define the terms and conditions to be incorporated in the e-contracts to clearly distinguish information from confidential information. Further, light must be thrown on the rights of the parties in case of any data breach and the remedies that can be availed by them against the party that is responsible for the breach.

Conclusion

Data is the fuel for the digital economy. Increase in E-commerce has contributed to increase in the development of the economy. With the major data exchange that happens vide executing e-contracts it becomes important to ensure that data i.e. exchanged is protected and secured. With large amounts of data being gathered by companies while carrying out the obligations under the contract, this data has been used by companies in ways that abridge the privacy and security of consumers. MLEC provided for the validation of e-contracts but is unable to keep up with technological advancements to ensure that the confidential and sensitive information that is shared across, remains secured from being used by big corporates to gain leverage in their market. Amendments in MLEC are needed in the direction of data privacy, security and protection. MLEC being the model law has to be expanded to be flexible and technological centric, which will allow the member nations to reform their existing laws to be on par with current ongoing technological advancements.

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THE COST OF EXCLUSIVITY:

HOW SECTION 3(D) RESHAPED PATENT LAW IN INDIA

Mr. Ronaldo Das*

Introduction

Few Indian court cases have conveyed as powerful a message to multinational pharmaceutical companies as *Novartis v. Union of India (2013)*[2]. The central controversy between Novartis and the Indian government focused on Section 3(d) of the Patents Act 1970[3]. It served with significant impact and controversy because it aimed to maintain genuine "innovation" against legal trickery. Novartis attempted to secure a patent for Glivec, i.e. an anti-cancer medication but failed to demonstrate that its modified form warranted fresh protection. The Supreme Court accepted the "enhanced therapeutic efficacy" standard but rejected the application as an evergreening attempt to extend drug monopoly rights by accepting modifications to existing pharmaceutical products.

In contrast to Western patent systems, India's patent law has long been influenced by its distinct economic and public health concerns. India adopted the 1970 Patents Act through the recommendations of the 1959 Ayyangar Committee[4] which omitted pharmaceutical product patents to establish a robust generic drug sector and gain the title "pharmacy of the developing world"[5]. While adding product patents, the Patents (Amendment) Act of 2005 also included Section 3(d) which aims to stop the practice of "evergreening" patents which is one balance adjuster.[6] Evergreening is when a pharmaceutical company makes minor adjustments to an outdated medication to prolong its patent and monopolistic control rights[7].

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[2] *Novartis A G v. Union of India & Ors., (2013) 6 SCC 1*

[3] Indian Patent Act 1970 - Sections, Intellectual Property India, <https://ipindia.gov.in/writereaddata/Portal/ev/sections/ps3.html> accessed 10th March 2025.

[4] N Rajagopala Ayyangar, *Report on the Revision of the Patent Law* (Government of India, 1959) 19-20.

[5] Global Business Reports, 'The World's Pharmacy: India's Generic Drug Industry' (12 February 2020) <https://www.gbreports.com/article/the-worlds-pharmacy-indias-generic-drug-industry> accessed 10th March 2025.

[6] Timothy Vines and Thomas Alured Faunce, 'Freedom of Information Applications as An "Evergreening" Tactic' (2011) *Journal of Law and Medicine* Vol. 19, No. 1, pp. 43-52, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1930019> accessed 10th March 2025.

[7] The Legal School, 'Patent Evergreening: Meaning, Key Industries & Practical Examples!' (2024) <https://thelegalschool.in/blog/evergreening-of-patents> accessed 10th March 2025.

[8] Sohrabji, N., & Maloney, K. (2020). Section 3(d) and Pharmaceutical Patents in India. <https://core.ac.uk/download/350199596.pdf> accessed 10th March 2025.

Section 3(d) prohibits the granting of patents in India for the "mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy...."[8] to stop this problem. The effectiveness criteria in Section 3(d) act as a patent balance adjuster aiming to prevent patient harm caused by monopolistic control over life-saving pharmaceuticals for an extended period.

Novartis manufactures a medication namely Glivec that helps treat chronic myeloid leukaemia. Before the 2005 transition to TRIPS compliance[9], a generic variant of the Alpha form was already being manufactured in India. Even though the new beta version had improved bioavailability, thermodynamic durability and shelf life[10]; the patent office, Madras High Court, and the Supreme Court of India determined it was not therapeutically helpful in treating cancer. One might agree that the enhanced efficacy criteria is ambiguous for two reasons and that Section 3(d) makes it challenging to secure pharmaceutical patents. First of all, what is meant by "efficacy" is not apparent. Secondly, the clarification on What type of information or data will be needed to prove "efficacy" to satisfy Section 3(d) is lacking. As a result, while there is some guidance about parameters that do not result in increased therapeutic efficacy, there is no guidance on which factors do so[11]. Despite being praised as pro-consumer protection, Section 3(d) of the Indian law is criticized for creating ambiguity in patentability requirements which may discourage foreign investment and research and development in the country's pharmaceutical industry[12]. In a nation crucial to manufacturing generic drugs worldwide, the ruling also questions more general issues about medicine affordability, market dynamics and regulatory coherence.

Issues Addressed

Four key legal issues and financial factors about pharmaceutical patenting under Section 3(d) are raised in *Novartis v. Union of India (2013)*. The Supreme Court assessed true innovation by requiring therapeutic benefit that goes beyond minor adjustments. The subsequent part examines how Indian patent laws prevent pharmaceutical companies from modifying their drugs to use evergreening tactics when their patents are being extended. The economic battle between pharmaceutical patents and rights of patients exemplifies a twofold contradiction between patent-influenced foreign investment and profit maximization and access to cheap

[9] Rajdeep and Joyeeta, 'TRIPS and India' <https://rajdeepandjoyeeta.com/trips-and-india/> accessed 10th March 2025.
[10] Novartis AG v Union of India (2013) 6 SCC 1, Supreme Court of India, <https://ladas.com/education-center/indian-supreme-court-decision-novartis-glivec-case/> accessed 10th March 2025.
[11] *Id.*
[12] Maria Victoria Stout, 'Crossing the TRIPS Nondiscrimination Line: How CAFTA Pharmaceutical Patent Provisions Violate TRIPS Article 27.1' (2008) 14 *Boston University Journal of Science and Technology Law* 177, 179-80.

medicines. Last but not least, it examines how India's patent policy may affect international trade whether other countries will follow suit and whether pharmaceutical corporations may deprioritize India in future medication innovations.

The Legal Battle Over Glivec's Patent

One must first comprehend the history of Section 3(d) and how it shaped India's patent system to comprehend Novartis' stance in the Glivec patent dispute completely. Imatinib, the main ingredient of Glivec, was created by Ciba-Geigy scientists under the direction of Nicholas Lydon, Jurg Zimmerman and Elisabeth Buchdunger in the late 1990s[13]. Imatinib and its salts were the subject of the first wave of patent applications submitted in Switzerland in 1992 which expanded to the US, EU and other countries in 1993[14]. However, by 1996 when Ciba-Geigy and Sandoz combined to create Novartis a fresh patent application had been submitted, this time for a beta-crystalline version of Glivec's active component namely imatinib mesylate[15].

However, India was a different story. Because the nation's 1970 Patents Act did not recognize pharmaceutical product patents at the time, domestic producers could create generic versions of life-saving medications[16]. In order to comply with TRIPS, India had to change its patent laws after joining the WTO in 1995. This resulted in the 2005 Patents (Amendment) Act which allowed pharmaceutical product patents for the first time. Sensing this change, Novartis submitted a new application i.e. a "mailbox application" for Glivec's beta-crystalline form in 1998 to obtain patent protection once the modifications were implemented[17]. Exclusive Marketing Rights (EMR) were its only option up to that point and it acquired them in 2003[18]. By limiting the development of generic versions and allowing Novartis to sell Glivec in India

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[13] Elisabeth Buchdunger and Juerg Zimmerman, 'The Story of Gleevec' (Innovation.org) <http://www.innovation.org/index.cfm/Storiesoffnnovation/InnovatorStories/The_Story_of_Gleevec> accessed 11th March 2025.

[14] Espacenet, 'Family List: US5521184 (A) - 1996-05-28' <http://worldwide.espacenet.com/publicationDetails/inpadocPatentFamily?page=0&FT=D&CC=US&locale=en&DB=&NR=5521184A&date=19960528&ND=&KC=A > accessed 11th March 2025.

[15] Lawrence M Fisher, 'Post-Merger Integration: How Novartis Became No. 1' (Strategy+Business, 1 April 1998) <http://www.strategy-business.com/article/16383?gko=28081> accessed 11th March 2025.

[16] Karin Timmermans and Togi Hutadjulu, *The TRIPS Agreement and Pharmaceuticals: Report of an ASEAN Workshop on the TRIPS Agreement and its Impact on Pharmaceuticals* (World Health Organization, 2-4 May 2000) 14, 20-21.

[17] Srividhya Ragavan, 'The Patent Failure of Novartis with Gleevec' (2013) 1 *LAIPLA* 1 <http://www.laipla.net/wp-content/uploads/2013/04/RagavanNovartisNoteApril2.pdf> accessed 11th March 2025.

[18] 'Novartis Gets EMR for Glivec' (The Economic Times, 24 December 2003) <http://articles.economictimes.indiatimes.com/2003-12-24/news/27545132_1-gipap-emr-novartis-india> accessed 12th March 2025.

for a limited time, this temporary exclusivity effectively drove up prices by about a thousand times[19].

Novartis immediately ran against the grain of Indian generic producers who had been manufacturing the generic version of Glivec before 2003[20]. Novartis' patent application was challenged by generic medication firms and patient advocacy organizations using the recently introduced Section 3(d) created to prohibit evergreening[21]. Examining two crucial points is necessary to contextualize Sec: 3(d)'s role in Gleevec's patent denial: (i) how the effectiveness criterion of Sec: 3(d) sets a higher bar than the patent applicants were used to and (ii) details about Gleevec's composition[22]. Understanding Gleevec's chemical structure, reactivity and properties helps us comprehend how the pharmaceutical product's "efficacy" might be connected to determining its patent eligibility under the recently enacted Section 3(d) of the Indian Patent Act[23]. It is crucial to remember that there are structural variations among the different imatinib variants for the patent eligibility examination. The distinction between imatinib's beta crystalline form, imatinib mesylate and free base form is particularly significant[24]. They maintained that the beta-crystalline alteration of Glivec failed to significantly increase treatment effectiveness which is a crucial need under Section 3(d). The Chennai Patent Office concurred and denied the application for several reasons where most notable failure was to meet the enhanced efficacy standard[25].

Novartis was unfazed and decided to fight it in court. In the Madras High Court, it initially filed a writ suit claiming that Section 3(d) was unconstitutional and in violation of India's TRIPS commitments[26]. The Intellectual Property Appellate Board (IPAB) was given the case in 2007. The IPAB rejected Novartis' claim to exclusivity in 2009 when it determined that

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[19] Shamnad Basheer, 'First Mailbox Opposition (Gleevec) Decided in India' (Spicy IP, 11 March 2006) <http://spicyip.com/2006/03/first-mailbox-opposition-gleevec.html> accessed 12th March 2025.
[20] *Id.*
[21] Novartis Case: Background and Update Supreme Court of India to Recommence Hearing, *LAWYERS COLLECTIVE* (6 September 2011) <http://www.lawyerscollective.org/news/archived-news-a-articles/126-novartis-case-background-and-update-supreme-court-of-india-to-recommence-hearing.html> accessed 12th March 2025.
[22] N Lalitha, 'Access to Indian Generic Drugs: Emerging Issues' in Kenneth Shadlen, Samira Guennif, Alenka Guzman and N Lalitha (eds), *Intellectual Property, Pharmaceuticals and Public Health: Access to Developing Countries* (2011) 225, 238–39.
[23] The Patents (Amendment) Act, No 15 of 2005, *India Code* (2005) s 3(d).
[24] *Supra Note 16.*
[25] Novartis AG v Union of India, Misc Petition Nos 1–5 of 2007 in TAII-5/2007/PT/CH and Misc Petition No 33 of 2008 in TA/1/2007/PT/CH and TA/1-5/2007/PT/CH, at 153, 157, 161 (Intellectual Property Appellate Board, 26 June 2009) <http://www.i-mak.org/storage/Gleevec%20IPAB%20decision%2026%20June%202009.pdf> accessed 12th March 2025
[26] Novartis AG v Union of India & Ors [2007] AIR 24759, 4 MLJ 1153 (Madras HC, India)

Glivec satisfied the originality and non-obvious requirements but failed the enhanced efficacy test under Section 3(d)[27].

Using Article 136 of the Indian Constitution[28] which provides special leave for appeals in matters of legal significance as Novartis refused to back down. They took the issue to the Supreme Court of India in 2009. On April 1 of 2013, the Supreme Court issued its historic decision while affirming Novartis' patent rejection following a nearly ten-year legal fight[29]. The court established a precedent for pharmaceutical patent law worldwide by upholding Section 3(d) as a safeguard against patent monopolies.

The end of the Novartis case which lasted for years and addressed issues ranging from constitutional challenges to TRIPS compliance reiterated India's commitment to avoiding evergreening, fostering competition and guaranteeing medicine affordability[30]. Now that Section 3(d) is in the spotlight examining how this clause changed competition law, pharmaceutical patentability and medication availability[31] in India is crucial.

Not All Innovations Are Created Equal: The Section 3(d) Standard

A product must first meet the requirements of invention as stated in Sections 2(1)(j) and 2(1)(ja)[32] in order to be eligible for a patent award under the Indian Patents Act. In order to meet this requirement, the subject matter must be novel which means it cannot have been disclosed or anticipated in any prior art[33]. It must also be industrially applicable guaranteeing that it may be produced or utilized in an industry. Most crucially, the invention must exhibit an innovative step which indicates that it is not evident to a person with the necessary skills in the area and either offers a technological breakthrough above current knowledge or has economic

[27] Novartis IPAB Order, *supra note 24*, at 186.
[28] India Constitution, art 136, amended by The Constitution (Ninety-sixth Amendment) Act 2011.
[29] Novartis AG v Union of India and Others, SLP (Civil) Nos 20539–20549 of 2009, *Lawyers Collective* (23 November 2010) <http://www.lawyerscollective.org/access-to-medicine/atm-current-cases.html> accessed 13th March 2025.
[30] Timeline of Key Events in Novartis's Attack on the Pharmacy of the Developing World, *Doctors Without Borders* <http://www.msf.ie/timeline-key-events-novartiss-attack-pharmacy-developing-world> accessed 13th March 2025.
[31] Sarah Boseley, 'Novartis Denied Cancer Drug Patent in Landmark Indian Case', *The Guardian* (1 April 2013) <http://www.theguardian.com/world/2013/apr/01/novartis-denied-cancer-drug-patent-india> accessed 13th March 2025.
[32] *The Patents Act 1970, ss 2(1)(j) and 2(1)(ja).*
[33] 'Novelty as a Criterion for Patentability', *iPleaders* <https://blog.ipleaders.in/novelty-as-a-criteria-for-patentability/> accessed 13th March 2025.

value[34]. However, meeting the invention criterion by itself does not ensure that a patent will be granted.

Additionally, the technique or product must pass the patentability test which verifies that it is not subject to the Act's statutory exclusions. One such exclusion of Section 3(d) of the Indian Patents Act had already sparked fierce debate even before the Indian Supreme Court's 2013 ruling in *Novartis v. Union of India*. The legislative history of Section 3(d) reveals a deeper ideological conflict between the utilitarian approach to intellectual property in developing countries which places a higher priority on public access to necessary medications than Western-centric maximalist patent protections[35]. India's reputation as the "pharmacy of the developing world" providing inexpensive generic drugs to millions of people[36] and its constitutional commitment to health influenced this clause.

By the late twentieth century, global pharmaceutical firms had established two methods for prolonging market exclusivity in emerging nations. First, trade agreements such as TRIPS established a rigid patent paradigm based on property rights[37]. The second was by promoting the idea that drug accessibility required gradual innovation which gave them the power to set international patentability standards[38]. Because of this, poorer nations were enticed to participate in global commerce leading to unequal bargaining power dynamics and pressure to enact stricter patent rules favouring corporate interests[39]. This contributed to the growth of evergreening a strategy wherein businesses repeatedly get patents for little alterations to an already-approved medication maintaining monopolies and driving up prescription costs[40]. Even slight adjustments such as changing pill colour, formulation or inactive components which also lead to new patent filings allowing corporations to profit while providing minimal therapeutic advantages[41].

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[34] 'Rationale for Inventive Step Requirement in Patent Law', *UOLLB First Class Law Notes* <https://uollb.com/blogs/uol/rationale-for-inventive-step-requirement-in-patent-law> accessed 13th March 2025.
[35] James Boyle, 'Enclosing the Genome: What the Squabbles over Genetic Patents Could Teach Us' in F Scott Kieff (ed), *Perspectives on Properties of the Human Genome Project* (2003) 97, 107–08.
[36] Martin Khor, 'Generics under Threat: Can India Still Supply Cheap Medicines for the World' (2012) 259 *Third World Resurgence* 4, 4–5.
[37] Peter K Yu, 'TRIPS and Its Discontents' (2006) 10 *Marquette Intellectual Property Law Review* 369, 370–79, 383.
[38] *Id.*
[39] Sarah Harding, 'Perpetual Property' (2009) 61 *Florida Law Review* 285, 303–05, 315–16.
[40] Robert Chalmers, 'Evergreen or Deciduous? Australian Trends in Relation to the "Evergreening" of Patents' (2006) 20 *Melbourne University Law Review* 29, 29.
[41] 'A Case Study of How Patents on Two HIV Drugs Could Be Extended for Decades' (2012) 31 *Health Affairs* 2286, 2286–87. <Secondary Patenting of Branded Pharmaceuticals: A Case Study of How Patents on Two HIV Drugs Could Be Extended for Decades – I-MAK> accessed 13th March 2025.

Section 3(d) was created as a legal barrier against erroneous patents to address this evergreening[42]. It expressly prohibits patent protection to "new forms of known substances" unless they show a considerable improvement in efficiency. The section also plugs loopholes by requiring that polymorphs, salts, isomers and derivatives of recognized medications not be classified as unique inventions unless they provide significant therapeutic advances. This additional level of inspection in India's patent legislation guarantees that patents are awarded only for actual breakthroughs rather than allowing firms to monopolize small changes masquerading as innovation[43]. Section 3(d) moves the focus from profit-driven patent piling to actual medical advances ensuring that intellectual property rules benefit innovation and the public interest[44].

In its decision in *Novartis v. Union of India (2013)*, the Supreme Court of India (SC) eliminated Novartis' patent protection claim on Imatinib Mesylate's beta-crystalline form. Novartis argued that the known compound was Imatinib (free base) rather than Imatinib Mesylate while claiming that the original Zimmerman patent (which disclosed Imatinib) did not specifically include its mesylate version[45]. However, the Supreme Court rejected this claim ruling that the Zimmerman patent did disclose Imatinib Mesylate[46]. Furthermore, Novartis' past submissions contradicted its position as it admitted that its innovation was derived from Imatinib Mesylate rather than the free base form. As a result, the Court determined that the "known substance" in dispute was Imatinib Mesylate from which Novartis intended to patent a beta-crystalline version.

Regarding Section 3(d) and the idea of "efficacy", the Court noted that the term is not explicitly defined in the Indian Patents Act. Based on the Oxford Dictionary defines effectiveness as "the ability to produce a desired or intended result."[47] Given that medications are intended to treat diseases, the Supreme Court determined that "therapeutic efficacy" is the appropriate test for determining improved efficacy under Section 3(d)[48]. The Court took a rigorous stance declaring that not all helpful or economically advantageous qualities (such as improved storage or

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[42] *Supra Note 39.*

[43] Shamnad Basheer and Prashant Reddy, 'The "Efficacy" of Indian Patent Law: Ironing Out the Creases in Section 3(d)' (2008) 5 *SCRIPTed* 232, 234 <http://www.law.ed.ac.uk/ahre/script-ed/vol5-2/basheer.pdf> accessed 13th March 2025.

[44] *Id.*

[45] *Supra Note 30.*

[46] *Id.*

[47] The New Oxford Dictionary of English, edn 1998; Novartis AG v Union of India & Ors, para 180, p 90.

[48] Shalini S Lynch, 'Drug Efficacy and Safety', *MSD Manual* <https://www.msdmanuals.com/professional/clinical-pharmacology/concepts-in-phanmacotherapy/drug-efficacy-and-safety> accessed 13th March 2025.

processing) qualified as increases in medicinal effectiveness[49]. Novartis provided expert affidavits asserting that the beta-crystalline form of Imatinib Mesylate demonstrated (i) Improved flow characteristics, (ii) increased thermodynamic stability, (iii) reduced hygroscopicity and (iv) a 30% improvement in bioavailability.

However, the SC determined that the first three qualities were processability and storage enhancements rather than indicators of improved therapeutic efficacy. While the 30% increase in bioavailability had the potential to improve effectiveness, Novartis failed to offer clinical trial data demonstrating that this gain translated into a substantial therapeutic benefit in patients.

The Court decided that Novartis did not fulfil the innovation and patentability criteria under Sections 2(1)(j), 2(1)(ja) and 3(d) of the Indian Patents Act due to a lack of solid evidence i.e. established by research statistics. The decision established a clear precedent against evergreening emphasizing that pharmaceutical patents in India must demonstrate actual medicinal advancements; marketing methods disguised as innovation will not suffice.

The Supreme Court's Interpretation of Section 3(d) – Clarity or Conundrum?

In order to give Section 3(d) a purposeful reading, the Supreme Court (SC) had to delve deeply into parliamentary discussions, legislative intent and the larger policy environment as the Indian Patents Act provides little information on the subject. The pharmaceutical sector and patent authorities needed a better grasp of Section 3(d)'s scope because it is exclusive to India[50]. Despite the SC's efforts to provide some clarification, there are still significant unknowns. According to the Court, "efficacy" in medicines refers exclusively to "therapeutic efficacy".[51]

Additionally, it established a high standard for demonstrating improved efficacy while holding that enhancements in intrinsic pharmacological qualities, processability or storage do not qualify unless they directly increase therapeutic effects. Though the decision clarified what does and does not constitute greater efficacy but it did not address the issue of what does. Although the SC did not specify what type of research evidence would be regarded as sufficient

[49] Shamnad Basheer and Prashant Reddy, 'The "Efficacy" of Indian Patent Law: Ironing Out the Creases in Section 3(d)' (2008) 5(2) *SCRIPTed* 232–266 <https://doi.org/10.2966/scrip.050208.23.2> accessed 13th March 2025.
[50] Janice M Mueller, 'The Tiger Awakens: The Tumultuous Transformation of India's Patent System and the Rise of Indian Pharmaceutical Innovation' (2007) 68 *University of Pittsburgh Law Review* 491, 495, 536–37.
[51] Novartis Supreme Court Decision, *supra note 24*. From the start, the Indian legal system interpreted the notion of efficacy within a narrow spectrum to indicate therapeutic efficacy.

whereas it did imply that an increase in bioavailability may be considered but only if supported by specific study findings.

The significance of determining the appropriate "prior substance" while evaluating the invention's efficacy is another important lesson to be learnt from the decision[52]. This presents a practical difficulty; particularly as pharmaceutical corporations sometimes patent a drug's "freebase" form first only to subsequently determine through costly clinical studies which salt form has the highest therapeutic efficacy[53]. Pharmaceutical businesses are left in a difficult position if Section 3(d) prohibits separate salt form patents, requiring them to rely on the protection of their original free base patent[54]. Legal disputes over infringement result from generic manufacturers' frequent challenges to this claiming that the original patent does not protect a salt version[55]. Although Section 3(d) aimed to prevent evergreening, the SC's strict reading raises questions about whether it inadvertently inhibits true innovation[56]. To ensure that innovation is safeguarded and monopoly extensions are restrained, more legislative and judicial refinement may be necessary in the debate over whether only "commercialized" prior substances should be excluded from patentability unless they demonstrate improved therapeutic efficacy[57].

The fundamental reasoning for Section 3(d) is about what constitutes "efficacy" and who gains and losses from patents. Fundamentally, India's approach to pharmaceutical patenting involves striking a balance between preserving incentives for research and guaranteeing accessible, reasonably priced medications. The stringent definition of "therapeutic efficacy" prevents subsequent patents that only modify already-approved medications[58] but it also begs the unsettling question: What if a proper medical advancement is not protected due to India's policy position[59]? At its most extreme, this strategy emphasizes market domination above

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[52] Jitesh Kumar, 'The Glivec Case: Getting Beyond Efficacy', *Life Sciences Intellectual Property Review* (19 February 2014) <http://www.lifesciencesipreview.com/article/the-glivec-case-getting-beyond-efficacy> accessed 13th March 2025.

[53] **'Guidelines for Examination of Patent Applications in the Field of Pharmaceuticals'**, *Office of the Controller General of Patents, Designs and Trademarks* <https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1_37_1_3-guidelines-for-examination-of-patent-applications-pharmaceutical.pdf> accessed 13th March 2025.

[54] *Id.*

[55] *Supra Note 52.*

[56] Christopher M Holman, Timo Minssen, and Eric M Solovy, 'Patentability Standards for Follow-On Pharmaceutical Innovation' (2021) 37(3) *Biotechnology Law Report* <https://doi.org/10.1089/blr.2018.29073.cmh> accessed 14th March 2025.

[57] *Supra Note 47.*

[58] *Supra Note 48.*

[59] Dorothy Du, 'Novartis AG v. Union of India: "Evergreening," TRIPs, and "Enhanced Efficacy" under Section 3(d)' (2014) 21 J Intell Prop L 223.

innovation[60]. Regardless of its justification, patents lead to monopolies which eventually prevents generic medications from being sold. When secondary patents prevent the production of the sole financially feasible version of a medicine, generic producers are forced to search for alternatives which is a difficult task fraught with regulatory obstacles. Bioequivalence rules can impede reformulating an off-patent medication to avoid a secondary patent while also preventing the development of cost-effective substitutes for years[61]. Isn't it ironic? India's generic medication business focuses on reverse engineering rather than original research and development. Unlike global pharmaceutical giants, many local enterprises cannot research new pharmaceuticals which is why making generic manufacture the only realistic option. If Section 3(d) is implemented too severely, it may prevent even justified advances while producing a contradiction in which big pharma and generics lose while patients are stuck in the middle. The problem ahead is more than simply preventing evergreening; it is also about ensuring that public health-driven patent rules do not backfire by stifling genuine advances in medical effectiveness[62].

Nonetheless, insufficient patent protection[63] for medications may cause issues in the long term. First, other developing countries encouraged by India's free-riding may adopt the same strategy. In the aggregate, a lack of strong patent regimes worldwide may discourage innovation. Second, several interviewees like Gowree Gokhale and Dr Antani, believe a restrictive interpretation of greater efficacy will harm foreign investment in India[64]. Even if they continue to develop, multinational companies will see India as a less appealing trade partner or destination for foreign direct investment (FDI)[65]. A poll of MNCs and Indian pharmaceutical businesses reveals that India's pharmaceutical sector sees a beneficial association between a firm IPR policy and FDI[66]. Thus, Foreign investment to propel India's economy into the 21st century will suffer.

Naturally, Novartis did not take the Supreme Court's ruling kindly. In a carefully written news release, the business expressed dismay while arguing that the decision "discourages innovative

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[60] *Supra Note 7.*
[61] *Supra Note 58.*
[62] *Supra Note 39.*
[63] Edmund W Kitch, 'The Nature and Function of the Patent System' (1977) 20 *Journal of Law & Economics* 265, 276.
[64] *Supra Note 58.*
[65] Rajnish Kumar Rai, 'Effect of the TRIPS-Mandated Intellectual Property Rights on Foreign Direct Investment in Developing Countries: A Case Study of the Indian Pharmaceutical Industry' (2008) 11 Journal of World Intellectual Property 404, 419–20.
[66] *Id.*

drug discovery"[67] and illustrates India's growing disrespect for intellectual property rights which might eventually prevent international investment in pharmaceutical R&D. Novartis India's vice-chairman, Ranjit Shahani, emphasized this point while claiming that India's insufficient patent protection and apparent bias towards indigenous producers would make it an unappealing market for global pharmaceutical companies[68]. Novartis was far from alone in its dissatisfaction. Big Pharma gathered together with Pfizer expressing worries about India's unfriendly innovation climate and the Pharmaceutical Research and Manufacturers of America (PhRMA) labelling the ruling a red signal for intellectual property protection[69]. The overarching concern was evident like if India refused to give secondary patents on incremental therapeutic improvements, then what motivation would global businesses have to propose innovative cures in the Indian market?

While pharmaceutical companies lamented the loss of exclusivity, the healthcare advocacy community celebrated a victory for access to treatment. Médecins Sans Frontières (MSF) welcomed the decision as a lifeline for millions of patients in underdeveloped countries where India's generic sector remains the foundation of inexpensive healthcare[70]. MSF's worldwide president, Dr. Unni Karunakara, called the decision "a huge relief" for patients who rely on low-cost generics[71]. Even the New York Times editorial board said the decision struck an important balance between providing access to inexpensive medications and keeping incentives for genuine pharmaceutical research[72]. This sharp disparity begs the question: Is India's patent system an anomaly which defies corporate pressure or is it creating a precedent that redefines the boundaries of pharmaceutical exclusivity? The verdict made it apparent that incremental innovation alone will not result in patents in India i.e. a message that reverberated well beyond its boundaries. However, it also highlighted an unsettling truth: Although rejecting evergreening may keep medicine prices low, it may also prevent international pharmaceutical

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[67] Krista Mahr, 'The Novartis Decision: Is the Big Win for Indian Pharma Bad News for Investment?' *Time* (1 April 2013) <http://world.time.com/2013/04/01/the-novartis-decision-is-the-big-win-for-indian-pharma-bad-news-for-investment/> accessed 14th March 2025.

[68] Kaustubh Kulkarni and Suchitra Mohanty, 'Novartis Loses Landmark India Cancer Drug Patent Case', *Reuters* (1 April 2013) <http://www.reuters.com/article/2013/04/01/us-india-novartis-patent-idUSBRE93002120130401#f2KRY1J815qbXoVU.97> accessed 14th March 2025.

[69] R Jai Krishna and Jeanne Whalen, 'Novartis Loses Glivec Patent Battle in India', *Wall Street Journal* (1 April 2013) <http://www.wsj.com/articles/SB10001424127887323296504578395672582230106> accessed 14th March 2025.

[70] 'Indian Supreme Court Decision on Novartis Case a Victory for Access to Medicines in Developing Countries', *Medecins Sans Frontieres* (1 April 2013) <http://www.doctorswithoutborders.org/news-stories/press-release/indian-supreme-court-decision-novartis-case-victory-access-medicines> accessed 14th March 2025.

[71] *Id.*

[72] Suhrith Parthasarathy, 'Adverse Reaction: India's Radical Challenge to the Global Patent Regime', *The Caravan* (1 June 2013) <http://www.caravanmagazine.in/reportage/adverse-reaction> accessed 14th March 2025.

companies from prioritizing India for future medical advances. Whether this trade-off benefits indigenous businesses or isolates India from global drug innovation remains a contentious issue with no obvious answer[73].

Conclusion

The *Novartis v. Union of India (2013)* verdict went beyond mere legal adjudication as it became a declaration. The Supreme Court's rejection of Novartis' effort to patent the beta-crystalline form of Imatinib Mesylate affirmed Section 3(d) as a safeguard against evergreening, confirming India's dedication to affordable healthcare and competitive markets. The ruling guaranteed that Indian pharmaceutical patents had to increase therapeutic efficacy while not only change current medications to keep monopolistic control.

Still, the decision raised questions. Pharmaceutical companies criticized the absence of robust intellectual property protection, cautioning that it may discourage international investment and innovation. At the same time, health advocates and generic producers rejoiced over the success of inexpensive medicine. The issue in hand is whether multinational pharmaceutical firms continue to prioritize India for research and development if the country rejects minor improvements?

Section 3(d) fundamentally distinguishes between commercial strategy and significant innovation. With this historic judgment, has the boundary been drawn too rigidly? The decision clarifies that not all changes are worthy of a patent but it does not address the issue of how much improvement is sufficient. This ambiguity presents a more significant dilemma: Can an affordable patent system promote ground-breaking pharmaceutical innovations? Although India's patent system is now a worldwide model, it is unclear if this will encourage other countries or keep India from becoming a leader in medical innovation. There is no doubt that Section 3(d) will continue to influence pharmaceutical patents in India as well as elsewhere and the conflict between exclusivity and access is far from ended.

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[73] *Supra Note 16.*

TRANSNATIONAL FEMINIST LEGAL THEORY: ARE GLOBAL HUMAN RIGHTS MECHANISMS GENDER-BLIND?

Mr. Syed Mehdi Hyder Zaidi *

Introduction

The international human rights framework is routinely held up as a victory of legal and moral advancement — a universal set of principles that are transnational, trans-cultural, and trans-historical. From the United Nations Charter to the Universal Declaration of Human Rights (UDHR), these documents are thought to represent a shared language of justice and human dignity. But beneath the veneer of this universalism is a structural blind spot: the ongoing erasure of gendered experience and power relations that structure the way rights are defined, claimed, and enforced.

Although much progress has been made in establishing rights for women — notably through the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 — international human rights law continues to mirror the structural inequalities of the world in which it was developed. The structure was formulated during a post-World War II environment characterised by Western male elites, liberal individualism, and Cold War geopolitics. Consequently, the language and agenda of international law frequently miss the nuanced realities of women — particularly in the Global South, Indigenous peoples, zones of conflict, and informal economies.

One of the fundamental criticisms raised by transnational feminist legal theorists is that human rights law is not neutral. It reinforces and reflects dominant social hierarchies, such as patriarchy, colonialism, capitalism, and racial stratification. Concerns regarded as at the heart of women's lives — including reproductive rights, violence against women, unpaid care work, and sexual exploitation — have traditionally been regarded as "private" issues or relegated to secondary status compared to more "important" civil and political rights like freedom from torture or freedom of speech.

Furthermore, the threat of formal legal equality has not resulted in meaningful justice. Liberal feminist legal changes, though significant, tend towards inclusion into current patriarchal

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structures instead of attempting to dismantle the structures that generate harm based on gender in the first place. CEDAW, for instance, possesses no robust enforcement component and permits widespread reservations by state parties, nullifying its power to hold perpetrators accountable. At the same time, much of its interpretation does not incorporate intersection with race, class, caste, religion, and geography.

This article contends that the prevailing global human rights frameworks are inherently gender-blind — not through their explicit exclusion of women, but through their use of frameworks that are not attuned to the gendered dynamics of power, harm, and justice. In response to this, we have to go beyond reformist inclusion and embrace a transnational feminist legal praxis that puts women lived realities at its centre, emphasises intersectionality, and calls for institutional change.

The structure of the article is as follows:

- *Section 3* sets out the theory upon which transnational feminist legal theory is based, distinguishing it from conventional legal theory and liberal feminism.
- *Section 4* examines the ways in which gender blindness is realised in the architecture of international human rights law, highlighting the public-private divide, formal equality, and Western legal norms.
- Section 5 illustrates the shortcomings of existing frameworks through case studies of reproductive rights rollbacks, migrant domestic work, and women in post-conflict environments.
- *Section 6* speaks to the more profound structural issues of collegiality, racial capitalism, and epistemic exclusion within global legal institutions.
- *Section 7* offers a vision for a transnational feminist legal framework based on substantive justice and local agency.
- *Section 8* makes specific policy and legal suggestions to render international human rights law more inclusive, accountable, and transformative.
- *Section 9* concludes by asserting that gender justice cannot be realised through legal minimalism. It requires bold structural transformation — not merely of laws, but of the institutions and ideologies that support them.

This essay is not just a critique but a call for action: to rebuild human rights law from the margins in, by the voices and struggles of those who have been marginalized from its construction for so long.

2. Theoretical Framework: What Is Transnational Feminist Legal Theory?

Transnational feminist legal theory emerges as both a critique and a reconstruction of dominant legal thought. It challenges not only the patriarchal foundations of national and international law but also the limitations of liberal feminism, which tends to seek formal inclusion into legal structures without questioning the underlying systems of power that perpetuate inequality.

2.1 Origins and Core Premises

Fundamentally, transnational feminism understands that women's lives are formed not only by gender but by the intersecting operations of race, class, caste, colonialism, religion, sexuality, and geography. Feminists such as Chandra Talpade Mohanty, Ratna Kapur, and Hilary Charles-worth have contended that international law's "universal woman" — and indeed mainstream feminist mobilisation — too often is mode-led after the white, middle-class, Western subject. This disregards the starkly disparate material conditions of women who exist in rural India, occupied Palestine, sub-Saharan Africa, or migrant detention camps in the Global North.

Transnational feminist legal theory extends these lessons by confronting head-on how law — particularly international law — is involved in supporting systems of domination. It rejects the idea of legal neutrality as political. Rather, it perceives law as a site of struggle where particular world-views are validated and others effaced. It draws attention to the way that legal norms move internationally, tending to support global hierarchies in the guise of human rights.

In contrast to liberal feminism, which tends to be preoccupied with equality of opportunity, representation, and access within current institutions, transnational feminism requires that profound structural change be compelled. For instance, it is not sufficient to enable women to vote or stand for office; we have to question why electoral politics itself tends to exclude poor, non-elite women. Criminalising domestic violence is not enough; we need to ask why legal systems do not protect survivors or depend on policing and imprisonment — systems that disproportionately hurt marginalised populations.

2.2 Law as a Site of Power, Not Just Protection

Transnational feminist legal theory understands law not merely as a method for the attainment of justice but also as an institution that generates, governs, and legitimates inequality.

It borrows from critical legal studies, postcolonial thought, and intersectionality (first defined by Kimberly Crenshaw) to illustrate how international legal mechanisms have always served the interests and viewpoints of dominant actors — be these nation-states, corporations, or hegemonic feminist NGOs.

For instance, most human rights agreements concentrate on the state as the main perpetrator of rights violations, not considering how corporations, international institutions, or economic policies at the global level drive gender violence and poverty. In like manner, human rights legislation tends to prioritise civil and political rights (such as freedom of speech) over economic, social, and cultural rights (such as access to education, healthcare, and shelter), which are crucial for the survival and dignity of poor women.

This focus replicates the public-private split, a long-standing aspect of legal systems that excludes the home and family — where so much of women's oppression happens — from the reach of legal intervention. This split makes concerns such as unpaid care work, reproductive coercion, and emotional labor invisible within the law.

2.3 The Transnational Lens

Transnational feminist legal theory is "transnational" not only because it spans borders, but because it rejects hegemonic globalization — the impulse of Western states and international institutions to impose their norms uncritically, regardless of context. It resists the "NGOization" of feminism, wherein activist mass movements are replaced by donor-elite agendas that might be quite irrelevant to the local situation.

It also brings to mind the double bind that women experience in the Global South: on the one hand, they are subject to patriarchal cultural norms; on the other, they tend to be subjected to neocolonial interventions for their "sake," under the guise of "saving" them. Military interventions in Afghanistan were partly framed, for example, on the basis of defending women's rights, even though the long-term destruction those wars wrought on Afghan women's lives is all too well known.

2.4 Legal Pluralism and Local Knowledge

One of the key contributions of transnational feminist legal theory is that it is open to legal pluralism — that justice may not be located in state or international legal systems. It respects

community-based, indigenous, and non-Western forms of justice, such as restorative practices, customary law, and non-formal support networks.

It neither idealises such systems — several of which are patriarchal as well — but posits that legal responses need to be context-specific and grounded in culture, not dictated from above by transnational legal elites. It is particularly crucial in post-war and transitional justice contexts, where local women's organisations have a greater understanding of what victims require than do international NGOs or tribunals.

Transnational feminist legal theory offers a visionary reconceptualization of law and rights. It refutes the notion of one universal legal subject and instead foregrounds the multifaceted, intersectional experiences of women and other subordinated groups. It goes beyond reformist inclusion to call for a real redistribution of power — not just who is covered by law, but who gets to say what the law ought to be. It is not a repudiation of international human rights, but a call to transform it — not top-down, but bottom-up.

3. Gender Blindness in International Human Rights Law

In spite of the claim of universality and inclusivity, international human rights law is still deeply gender-blind in its architecture, execution, and enforcement. This ignorance is not caused by overt exclusion but by an entrenched inability to see how gender constructs perceptions of harm, access to justice, and visions of rights. The consequence is a system that tends to represent, marginalise, or altogether overlook women's realities — especially those living in the Global South and at the multiple intersections of oppressions.

3.1 The Myth of Neutrality

One of the fundamental issues is the assumption of neutrality. Human rights documents such as the UDHR, ICCPR, and even the European Convention on Human Rights were written in the mid-20th century by predominantly male, Western elites. They were constructed in accordance with a legal subject assumed to be a separate, reasonable, rights-holding individual character which in actuality represents the lived reality of privileged men.

This "neutral" term covers up the reality that women may not enjoy equal access to autonomy, resources, or protection as men. It ignores how rights are practiced differently according to gender, and how abuses are felt in terms influenced by power inequities in families, communities, and institutions.

For instance, the right of "security of person" in Article 3 of the UDHR is read almost exclusively in terms of rights against state violence or torture — and not rights against domestic violence, marital rape, or reproductive coercion. These are not merely enforcement gaps; they are a misframing of security for women and gender minorities.

3.2 The Public/Private Divide

One of the persistent aspects of international law is the public/private dichotomy — that law should control the public sphere (state action, political engagement, civil liberties) but not intrude into the private sphere (household, home, culture). This dichotomy has strongly gendered implications, as it is within the private sphere that most serious human rights abuses against women take place.

•Home violence is among the most prevalent forms of gender-based violence in the world but too often reduced to a "private" issue.

•Reproductive coercion — from forced sterilisation to withholding abortion access — too often falls outside legal definitions of torture or inhumane treatment.

•Unpaid care work, largely performed by women, remains invisible in international labor rights frameworks and economic policy discussions.

CEDAW tried to fill this void by stating directly that discrimination may happen both in public and private life. The enforcement of CEDAW is feeble, though. It lacks a binding mechanism for disputes, permits sweeping reservations on the part of member states, and depends on non-binding recommendations too often disregarded.

3.3 Formal Equality vs Substantive Justice

Another type of gender blindness is in the focus on formal equality — treating all the same under the law — and not on substantive equality that takes into consideration unequal beginnings and structural disadvantages.

For example:

- A law that ensures boys and girls have equal access to education will seem just. However, if girls are supposed to be doing household chores, marrying early, or subject to sexual harassment while walking to school, the promise of the law is empty.
- A government may assert that it has equal political rights for women, but has a climate of intimidation, underrepresentation, and violence against women in public life.

Substantive equality obliges states and global institutions to overcome the social and institutional hurdles that impair women from exercising their rights in reality. Such includes interventions such as affirmative action, social protection, gender-sensitive interpretation of the law, and culturally-sensitive strategy implementation.

3.4 Narrow Scope of Rights

International law generally places greater importance on civil and political rights (for instance, freedom of speech, fair trial, religious freedom) than economic, social, and cultural rights (for example, shelter, food, education, health). Even though the latter are equally essential to women's dignity and survival, they are generally disregarded.

Even where economic and social rights are established — as in the International Covenant on Economic, Social and Cultural Rights (ICESCR) — these are frequently regarded as aspirational objectives, unenforceable under law. This legal ranking makes women's material hardships less visible, especially in developing or conflict zones.

Furthermore, gender-specific harms do not necessarily map onto traditional legal concepts. Some examples include:

- Emotional labour and psychological violence.
- Overlaps of environmental degradation with reproductive health.
- Poverty as structural gendered violence.

These experiences are hard to litigate since they do not necessarily satisfy the legal thresholds established for "universal" violations of rights — thresholds constructed based on male-biased definitions of harm and injury.

3.5 *Tokenism and Symbolic Inclusion*

Over the last decade or so, global institutions have increasingly acknowledged gender, typically putting women's rights into official statements and reports. However, this has tended to result in tokenistic inclusion and not genuine structural reform.

- Gender "mainstreaming" schemes are too often under-resourced, short-term, or imposed on communities without input from local feminists.
- Women's involvement in UN peace processes is commonly limited to symbolic roles with minimum decision-making authority.

- Feminist language is appropriated for legitimacy but not used to challenge fundamental policies — for instance, employing "women's empowerment" to legitimise economic liberalisation disadvantageous to working-class women.

It produces a spurious sense of advancement without changing power relations. International human rights law remains gender-blind not because it is entirely blind to women, but because it is working from a paradigm that does not comprehend the gendered nature of power, violence, and inequality. Public/private distinction, focus on formal equality, and selection of some rights over others all make for a system that excludes, misrepresents, or downplays women's experiences. Correcting this requires more than adding women to existing institutions or laws. It demands a fundamental transformation in how we define rights, interpret justice, and structure accountability — one that centres gender, context, and power at every level of legal design.

4. Real-World Impacts of Gender-Blind Legal Systems

Abstract legal critiques are made stronger when coupled with lived experience. Gender-blind international legal frameworks do not just distort reality—they facilitate harm in the real world because they do not protect women where they are most at risk. This section delves into three key areas: reproductive rights reversals, exploitation of migrant domestic workers, and the exclusion of women from peace processes. All three cases illuminate the gaps and contradictions of international human rights law when analysed using a transnational feminist approach.

4.1 *Reproductive Rights and the Global Legal Vacuum*

Reproductive freedom lies at the heart of women's bodily integrity, health, and equality. International human rights law, however, provides no global legal assurance of the abortion right or even comprehensive reproductive services. In contrast to torture, arbitrary imprisonment, or genocide—violations unequivocally enshrined in treaties—reproductive rights hold a problematic, frequently contentious, legal position.

Take the case of Poland, where in 2020 the Constitutional Tribunal prohibited almost all abortions, even where there was a fatal abnormality. The ruling led to large-scale protests, especially among young women, but was supported by the state and permitted to prevail with little challenge from international legal authorities. Although Poland is a signatory to CEDAW and the European Convention on Human Rights, enforcement was either lacking or weak. In the US, the 2022 Dobbs v. Jackson Women's Health Organisation Supreme Court

ruling overruled Roe v. Wade and took away

federal protection of abortion rights, paving the way for states to enact bans. In a matter of months, several states legalized near-total bans, disproportionately hitting poor women, Black and Latina women, and rural women. International organizations decried the rollback but couldn't effectively intervene because of U.S. non-ratification of important treaties such as CEDAW and ICCPR's Optional Protocols.

These instances reveal that the global rule of law has no clear approach to upholding reproductive rights, which tend to be referred to as moral or cultural problems and not as basic human rights. This obscurity allows authoritarian, religious, or nationalist governments to limit access with impunity, unfazed by severe international repercussions.

4.2 Migrant Domestic Workers and the Failure of Labor Protection

All over the world, there are tens of millions of women from the Global South who travel to richer countries to work in private homes as caregivers, cleaners, and nannies. Migrant domestic workers are central to global care economies but are often living and working in exploitative, unregulated circumstances.

Consider the case of South Asian women migrant workers in the Gulf Cooperation Council (GCC) countries. In the kafala system, the legal status of workers is that of the employer, so there is almost no way they can report abuse, change exploitative employment, or pursue the law. Instances of wage theft, excessive work, sexual assault, and even deaths go unaddressed.

Although the International Labour Organisation (ILO) ratified Convention No. 189 in 2011 to safeguard domestic workers, most key receiving countries — including GCC countries — have yet to do so. Even in ratifying countries, enforcement is poor. Domestic work is frequently left outside labor laws or without inspection and complaint systems. In addition, domestic workers are usually alone in private households, so abuses are hard to substantiate.

Internationally, there is no binding convention that specifically safeguards migrant domestic workers, and human rights conventions hardly touch their circumstances at all. These women fall in the gaps — classified as labourers, migrants, and women, but not protected by any of these categories.

This case brings out how legal fragmentation and gender blindness intersect to subject women to structural abuse. Public/private dichotomy protects employers, while the invisibility of informal labor in international economic rights debates makes these women disappear in policy space.

4.3 Women, Peace, and Security: Empty Promises in Post-Conflict Settings

In 2000, the United Nations Security Council adopted Resolution 1325, which recognized the value of women's involvement in peace talks, reconstruction after conflict, and protection from gender-based violence throughout conflict. Although hailed as a breakthrough, its implementation has varied and largely symbolic.

Take Colombia, for instance. Following decades of civil war, the 2016 peace accord between the government and FARC guerrillas had a gender sub-commission — an unusual and enlightened move. But in the subsequent years, most of the gender-focused provisions (for example, land redistribution to women and guarantees for Indigenous activists) were starved of funds or simply disregarded. Ex-combatant women and rural women remain at risk, displaced, and marginalized. In South Sudan, even though mass sexual violence occurred throughout the war and there were official promises to involve women in the peace process, women were starkly underrepresented in the negotiating tables. Peace negotiations centered on power-sharing among male elites, while women's needs — such as justice for survivors and assistance to female-headed households — were brushed aside.

Even within United Nations peace missions, several instances of sexual exploitation and abuse by peacekeepers themselves have been reported — but mechanisms for accountability are lax. The fundamental issue is the way international law relegates women to victim-hood, rather than peace-making agents or decision-takers. Gender is tacked on only as an afterthought, leading to token inclusion or "gender desks" without power. Security dominates at the expense of justice, and legal frameworks do not provide reparations or acknowledgment of gender-specific violations. These case studies show that the gender blindness of international law is not an abstract concept, it has tangible, quantifiable, and devastating effects on women's lives. Reproductive rights are eviscerated without consequence. Labor protections are withheld from migrant domestic workers. Women in areas affected by conflict are promised inclusion but not power. A transnational feminist legal framework would not simply criticize these shortcomings — it would insist on accountability, structural reform, and a fundamental rethink of the way law deals with gendered harm. That process starts with the inclusion of the voices and experiences of those made invisible by the present system.

5. Structural Barriers: Coloniality, Power, and Race

Any principled analysis of international human rights law must come to terms with the fact that its roots are soaked in colonial, racial, and patriarchal power relations. The promise of

"universal" human rights emerged from institutions created and controlled by erstwhile imperial powers. Accordingly, such frameworks tend to reproduce as opposed to subverting the global hierarchies they purport to overcome. For women, especially from the Global South, racialised communities, and Indigenous peoples, these legacies generate a triple invisibility: as women, as postcolonial subjects, and as legal outsiders.

5.1 The Colonial Roots of International Law

Contemporary international law was consolidated in a world stratified between colonizers and the colonized. Organizations such as the League of Nations and subsequently the United Nations were constructed within a geopolitical environment in which European imperial rule dominated much of the world. The very notion of "civilised nations" that in the past operated to influence treaties and membership in global governance organizations disenfranchised colonized peoples from legal subject-hood.

Women in these colonized lands were doubly marginalized — not merely excluded from formal legal involvement, but also from feminist legal movements rooted primarily in Western settings. To this day, international agreements are largely informed by Western legal traditions, which prioritize individual rights, codified law, and centralized administration — with little space for Indigenous legal orders, oral law, or collective justice.

Legal thinker Makau Mutua has countered that international law operates on a "savior-victim-savage" paradigm — presenting Western states as enlightened saviors, postcolonial nations as savage, and indigenous women as helpless victims. This tension works itself out in the approach to gender questions, particularly when Western states invoke feminist ideology to legitimise military intervention, economic sanctions, or policy conditionality in the Third World.

5.2 Race and the Politics of Legal Visibility

Gender justice is impossible without racial justice, but most global human rights mechanisms compartmentalise race and gender into autonomous categories. This yields a body of law that does not recognise intersectional oppression, how race, gender, class, and collegiality interact to produce individuals' experiences.

For instance:

- Black and Indigenous women are disproportionately affected by sexual violence, criminalisation within legal regimes, or preventable death — but such trends are infrequently addressed as structural legal concerns.

- Muslim women in Europe and North America are subjected to discriminatory law that prohibits religious dress under the pretext of secularism and gender equality. Their liberty is offered up on the cultural assimilation altar.
- In Latin America, Afro-descendant women are disproportionately represented in low-income employment and underrepresented in political and legal systems, but hardly ever involved in regional human rights mechanisms.

Although there has been some advance, e.g., the Durban Declaration on racism (2001) — structures to combat structural racism in global law are weak, disorganised, and subject to challenge by influential states.

CEDAW and other international treaties seldom use an intersectional perspective, so they do not account for how gender-based discrimination manifests differently for radicalised women. They end up with a one-size-fits-all approach that dismisses the most marginalised women by prioritising relatively privileged groups' experiences.

5.3 Whose Knowledge Counts? Epistemic Injustice in Law

Transnational feminist legal scholars contend that epistemic injustice is favouring certain types of knowledge over others is a central impediment to gender justice. International law privileges:

- Written codes over oral customary law.
- Professional legal expertise over experience.
- Global NGO discourse over local feminist practice.

This establishes a hierarchy of legitimacy, as norms constructed in Geneva or New York are given more legitimacy than locally embedded, grassroots responses to injury. It creates the 'others' of outsiders who have more objective, distant and reasonable solutions to a problem.

For example, most Indigenous cultures have restorative justice systems that prioritise accountability, healing, and community restoration — but these are repeatedly ignored as "informal" or "non-binding" by international law. Likewise, migrant worker associations have set up mutual aid networks, legal defence initiatives, and transnational solidarity groups — but seldom have seats at the table for treaty negotiations or UN meetings.

This marginalisation is not coincidental. It mirrors the politics of expertise, in which knowledge production is controlled by powerful academic, legal, and policy institutions with minimal representation from the most disadvantaged communities affected by injustice.

5.4 The NGO-Industrial Complex and Donor Dependency

Most feminist groups in the Global South are funded by international donors, which distorts priorities in favour of donor-specified targets and global agendas. Rather than struggling for land rights, economic independence, or environmental justice, grassroots groups are compelled to work on issues that are more "fundable," such as microcredit, entrepreneurship development, or gender training workshops.

This NGO-ization of feminism demo politicises gender justice by rendering it a technical, deliverables-oriented project. It also replicates colonial hierarchies under which Western organisations serve as gatekeepers of resources, legitimacy, and knowledge of the law.

Even international efforts that seek to empower women — such as UN Women or the gender initiatives of the World Bank — tend to exist within neoliberal models of development, which centre on economic inclusion rather than structural transformation. What is left is a system in which women are called to "lean in" and "empower" themselves without challenging the institutions that extract their labor, regulate their bodies, or withhold land and citizenship from them.

Collegiality, racial discrimination, and epistemic injustice are not outside international human rights law — they are embedded in its structure. In neglecting the histories of empire, the nature of racial capitalism, and legal pluralism, the system as it stands sanctions structural violence in the name of neutrality and forwardness.

A transnational feminist legal paradigm must start by engaging with these foundations. It must insist on a redistribution of power not only in who enjoys the benefits of law, but in who determines what law is. Only then can we even start to construct a legal order that is genuinely just, equitable, and rooted in the lived experiences of all women — not only those who already occupy the table.

6. A Transnational Feminist Legal Approach: What Needs to Change

In order to meet the structural failures discussed thus far, we need to look beyond piecemeal reform and envision a fundamentally different basis for international human rights law — one that priorities power, context, and justice over formal equality alone. A transnational feminist approach to law provides exactly this framework. It is not "adding women" to current systems or making gender checklists. It is about reframing the very assumptions that structure global legal norms, institutions, and strategies.

6.1 Reframe What Counts as a Right

The first and most fundamental change is to reframe what we know as human rights. Classical approaches focus on civil and political rights, like freedom of speech, due process, or freedom from torture. These rights are vital but insufficient in many instances to account for the everyday challenges of women — especially those concerning economics, body autonomy, care labor, or structural exclusion.

A transnational feminist legal perspective contends that:

- Reproductive rights are not cultural or voluntary—rather, they are core to bodily autonomy and integrity.
- Unpaid care labor is neither a private imposition but a fundamental economic contribution that should be valued and redistributed.
- Environmental justice, access to clean water, land, and air are not separate from women's rights, especially for rural and Indigenous communities.

This strategy requires the legal codification of rights previously regarded as "secondary," "soft," or "non-justiciable." Economic, social, and cultural rights should be given equal enforceability and contextually interpreted based on gender.

6.2 *From Formal Equality to Structural Justice*

Although legal equality is required, it is not enough. A transnational feminist legal strategy emphasises substantive equality — results, access, and everyday lives, rather than legal guarantees.

For instance:

- A country may allow women to vote or run for office, but if they face online abuse, economic hardship, and patriarchal gatekeeping, their political participation remains a legal fiction.
- Labor laws may grant equal pay, but if women are overrepresented in informal or precarious sectors, equality on paper means little in practice.

Laws and policies have to be sensitive to intersectionality — how more than one axis of oppression (e.g., gender, race, class, caste, disability, citizenship) constrains women's access to justice. Transnational feminist legal approaches require each law or policy to be questioned through this filter in order not to recreate harm.

6.3 Redistribute Power in Global Institutions

International legal institutions — from UN agencies to human rights tribunals — continue to be disproportionately influenced by dominant states, elite legal experts, and Global North viewpoints. A transnational feminist framework demands a redistribution of power in four senses:

1. Representation: Provide women of marginalised groups — not merely elites — with a presence at the table of legal decision-making institutions.
2. Localisation: Transfer resources and decision-making authority to local peace movements, community-based legal clinics, and Indigenous justice systems.
3. Accountability: Establish stronger mechanisms for ensuring international actors — peacekeepers, aid agencies, and multinational corporations — are held responsible for gender-based harm.
4. Transparency: Make closed treaty processes, monitoring bodies, and dispute settlement mechanisms available to public scrutiny by civil society.

Most importantly, this involves shifting away from top-down, donor-led development paradigms that impose policy about gender from above. Feminist legislation needs to be rooted in the needs and realities of those who suffer injustice directly.

6.4 Embrace Legal Pluralism

Western models of law tend to assume that justice will be achieved only through state courts, laws, and official treaties. But transnational feminism understands that other communities depend on plural or alternative legal systems — customary law, religious courts, restorative justice proceedings, or feminist community tribunals, for example.

Instead of deeming these systems "inferior," a transnational feminist legal strategy calls for:

- Assessing them based on outcomes (justice, healing, equity) instead of format.
- Reforming them where patriarchal, but preserving their cultural legitimacy and local ownership.
- Recognising that pluralism does not mean relativism: all systems must meet core principles of gender justice, but how that looks will vary across contexts.

For example, feminist organisations in South Africa have worked within traditional courts to push for recognition of women’s inheritance rights, while Indigenous women in Canada have revived clan-based justice models to respond to gender violence.

This pluralism extends access to justice and prevents one-size-fits-all, top-down legal standards that commonly don't work on the ground.

6.5 Shift from Criminalisation to Community-Based Accountability

A lot of the international human rights and gender justice agenda has centred around criminal law — prosecuting rapists, sending traffickers to jail, piling on more penalties for gender-based violence. While this has symbolic and deterrent power, it also carries with it a carceral mind-set that can do damage to marginalised communities.

Transnational feminist legal scholars contend that:

- Survivors usually do not desire incarceration — they desire safety, reparations, recognition, and healing.
- Criminal justice systems tend to be inaccessible, re-traumatising, or actively anti-feminist to women, particularly poor, migrant, and racialised women.
- Carceral feminism can expand the power of the state without tearing down the social conditions for violence.

Rather, emphasis should be placed on community-led models of justice, survivor-centred responses, economic support systems, and root cause-based transformative approaches — not mere individual punishment.

A transnational feminist legal approach reimagines law as not only a regulation tool, but as a vehicle for collective freedom. It emphasises:

- Local agency over global prescription,
- Structural transformation over token incorporation,
- Lived experience over abstract legality,
- And substance over form.

It acknowledges that laws aren't merely texts but technologies of power — and that to change them will involve changing the institutions, values, and worldviews that underpin them.

7. Recommendations

Establishing a gender-fair international legal system does not just demand criticism but also established routes for transformation. A transnational feminist legal approach demands that reform must be structural, intersectional, and rooted in local knowledge. This section presents concrete legal, institutional, and strategic recommendations to re-engineer international human rights law and its practice to reflect the realities and rights of all women genuinely.

7.1 Strengthen and Broaden the Jurisdiction of International Legal Instruments

Existing treaties such as CEDAW, ICESCR, and the ICCPR need to be updated, clarified, and applied to current gender realities.

Revise CEDAW:

- Eliminate or limit the use of reservations that permit states to exclude themselves from key obligations.
- Include binding enforcement mechanisms, for instance, a fortified Optional Protocol with investigative and penal powers.
- Enforce intersectional reporting and state responsibility on grounds of race, class, caste, and disability — not solely on sex or gender.

Codify Reproductive Rights:

- Strive towards a new international law or legal agreement on reproductive rights encompassing safe abortion, contraception, maternal health, and safeguarding from reproductive violence.
- Enshrine reproductive autonomy as a non-derivable right, not a cultural discretion or religious exemption issue.
- Strengthen jurisprudence in international courts and UN treaty bodies on economic justice, such as informal labor protections, land and housing rights, and unpaid care work.

7.2 Rebuild Global Legal Institutions with Equity at the Centre

Institutions of power in international institutions need to be rebalanced to ensure that marginalised voices are heard in leadership and agenda-setting.

Democratise UN Bodies and Human Rights Councils:

- Institutionally embed rotational seats for grassroots feminist networks, Indigenous organisations, and community legal advocates.
- Implement quotas and geographic balance in the appointment of judges, commissioners, rapporteurs, and technical experts in UN institutions and treaty monitoring bodies.

Fund Grassroots Legal Organising:

- Establish a Global Feminist Legal Fund, which is autonomously controlled from state funders, to grant direct funding for grassroots legal activism, documentation, litigation, and education initiatives.
- Make all large-scale international legal projects (e.g., peace-building, anti-trafficking,

humanitarian intervention) allocate core funds to women's organisations based in affected areas.

Decolonize Legal Norm Development:

- Necessitate regional consultative processes — particularly within the Global South — prior to negotiating new treaties or conventions.
- Institutionalize pre-legislative feedback loops at the community level within treaty negotiation and revising processes.

7.3 Restructure Access to Justice Mechanisms

Too many women and gender-diverse people are unable to access international legal institutions because of language, cost, geography, or citizenship barriers.

Make Mechanisms Accessible:

- Render treaties, decisions, and complaint mechanisms into local languages and disseminate via accessible media (community radio, mobile applications, legal literacy training workshops).
- Permit group petitions and anonymous complaints before treaty bodies to safeguard those in perilous or oppressive situations.
- Expand jurisdiction over non-state actors, such as multinationals or international peacekeeping forces, which frequently act with impunity.

Make Feminist Legal Clinics part of the system:

- Institutionalise and fund transnational feminist legal aid networks linking local cases to regional or international legal tactics.
- Educate community paralegals in international human rights principles to increase below-level access.

7.4 *Redesign Justice Outside the Criminal Legal System*

While punishment and prosecution are sometimes viewed as the gold standard of responsibility, transnational feminism priorities repair, prevention, and survivor leadership.

Endorse Transformative Justice Models:

- Invest in non-carceral gender-based violence responses, such as community accountability mechanisms, reparations initiatives, and mental health care.

- De-prioritise militarised interventions (such as police training or anti-trafficking operations) for survivor-entered, trauma-sensitive practices.

Broaden Legal Definitions:

- Revise global definitions of torture, exploitation, and harm to include psychological violence, economic compulsion, and reproductive control.
- Identify environmental degradation and climate displacement as gendered legal harms disproportionately experienced by Indigenous and rural women.

7.5 Reorient Knowledge and Expertise

Legal transformation needs to be guided by the people who reside at the crossroads of gender, race, poverty, and dispossession.

Decentralise Legal Scholarship:

- Encourage South-to-South feminist legal dialogue, short-circuiting Global North think tanks and universities as the only repositories of knowledge.
- Invite journals, UN agencies, and international tribunals to reference grassroots reports, oral evidence, and legal doctrine of the community alongside scholarly research.

Institutionalise Feminist Monitoring

- Establish autonomous feminist observatories to monitor compliance with treaties, gendered actions against the law, and the effects of international legal actions.
- Integrate feminist impact assessments at all levels of international policymaking — from the law of refugees to climate agreements to internet governance.

The evolution of global human rights law needs far more than piecemeal reforms. It needs a revolution in how we think about law, justice, harm, and accountability. Transnational feminist legal strategies provide both the ethical clarity and the strategic tools to make that revolution real.

These suggestions are not dreamy-eyed — they reflect decades of feminist mobilisation, legal creativity, and political activism. What is required now is political will, institutional courage, and collective action to implement them.

Conclusion

International human rights law, as it stands today, does not provide justice for many of those it purports to serve — particularly women, girls, and gender-diverse people at the edges of world power. That this is so is not an accident. It is structural. Founded on foundations constructed by patriarchy, colonialism, and economic disparities, the global human rights paradigm remains continues to reproduce and reflect the very hierarchies against which it was designed to struggle.

Throughout this text, we have discussed how the gender blindness of the system surfaces in both theory and practice. The legal subject envisioned by foundational treaties such as the UDHR or ICCPR is by default male — independent, propertied, and placed in the public sphere. By contrast, the conditions of many women's lives are defined by domestic labor, reproductive authority, and radicalised violence — none of which are substantively central to the design of international law. The case studies we examined — from the rollback of abortion rights in the United States and Poland, to the erasure of migrant domestic workers in labor agreements, to the exclusion of women from peace processes — are not random anomalies. They are signs of a deeper design flaw: that laws which are gender-neutral will yield gender-equal results, even in heavily unequal systems. Transnational feminist legal theory meets this shortcoming on its head. It challenges not only the substance of international law but also its epistemological presumptions — around who gets to speak to justice, whose harms are significant, and whose knowledge is relevant. Transnational feminism does not even aspire to get inside existing legal institutions; instead, it demands that they change. It presses us to begin at the edges — at those whose voices have long been silenced, discounted, or drowned out — and construct legal systems that speak their experiences, demands, and visions of justice.

This is not a remote intellectual exercise. It is a political, legal, and ethical necessity. The violations women suffer — state violence, displacement, forced sterilisation, economic precariousness, environmental destruction, and intimate partner violence — are not ancillary or "soft" human rights issues. They are key. And yet they are still under-prioritised in international legal agendas, which persist in putting state security, trade, and elite diplomatic deal-making ahead of structural gender equality.

We also discussed how international law is not only informed by gender, but by intersecting systems of power — race, class, caste, sexuality, citizenship, and colonial history. Intersectionality cannot be an afterthought or buzzword as long as these intersections remain disavowed, human rights law will continue to shortchange the most vulnerable.

Intersectionality needs to be the basis for how we conceptualise, interpret, and implement legal protections internationally.

The proposals set out in the above are ambitious and feasible. They call on us to:

1. Widen our concept of what is a right, such as reproductive rights, unpaid work, and ecological justice.
2. Move away from punitive models of law toward transformative, survivor-led models.
3. Democratise international institutions so power is shared, not concentrated.
4. Accept legal pluralism and local knowledge as authentic sources of legal creativity.

Enacting these reforms is more than just institutional reform. It takes a cultural and philosophical transformation in the way that we conceptualise law and justice. It involves rejecting the view that Western legal traditions are complete and provide all the solutions. It involves transcending legal minimalism — the perception that tiny technical tinkering will repair core injustice. And it involves embracing the fact that discomfort, disruption, and deconstruction are sometimes the necessary steps to actual change.

A genuinely just global system of law will not arise on the fringes of what currently exists. It will have to be co-built from scratch, with feminists, Indigenous peoples, migrant workers, LGBTQ+ organisers, and all those who have so long been cast as objects of law instead of co-creators of it.

In a very real sense, transnational feminist legal theory is not a critique alone — it is a plan for a different legal future. One that is responsible. One that is open. One that is constructed not on the hypothetical universality of rights, but on the real universality of strife, resistance, and human dignity.

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FROM VOLUNTARY PRINCIPLES TO ENFORCEABLE STANDARDS: UNDERSTANDING SOFT AND HARD LAW IN INTERNATIONAL SRI REGULATION

*Kanika Arora**

*Aishwarya B Patil***

1. Introduction

SRI is a worldwide marvel. With the global extent of business itself, social financial backers often put resources into organisations with global tasks. As worldwide speculation items and opportunities have extended, so have global SRI items. The positions of social financial backers are developing throughout developed and developing nations[3]. In 2006, the United Nations Environment Program dispatched its Principles for Responsible Investment (PRI), which provides a framework for financial backers to integrate environmental, social, and governance (ESG) factors into investment decisions. PRI has more than 1,500 signatories overseeing more than US$60 trillion of resources.

The Global Sustainable Investment Alliance (GSIA) is a coordinated effort of enrolment based economical venture associations all throughout the planet including the European Sustainable Investment Forum (Eurosif), UK Sustainable Investment and Finance Association (UKSIF), the Responsible Investment Association Australasia (RIAA), Responsible Investment Association (RIA Canada), the Forum for Sustainable and Responsible Investment (US SIF), Dutch Association of Investors for Sustainable Development (VBDO) and Japan Sustainable Investment Forum. The GSIA's central goal is to extend the effect and perceivability of economic venture associations at the global level[4].

The Global Sustainable Investment Review 2018, the fourth version of this biennial report, continues to be the only report ordering results from the market investigations of provincial sustainable investment groups from Europe, the United States, Japan, Canada, and Australia and New Zealand[5]. It gives a preview of economic putting resources into these business sectors at the beginning of 2018 by drawing on the top-down provincial and public reports from GSIA

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[3] Camilleri, M.A., "*Measuring the corporate managers' attitudes towards ISO's social responsibility standard", Total Quality Management & Business Excellence*, pp. 1-13, available at: www.tandfonline. com/doi/full/10.1080/14783363.2017.1413344

[4] Camilleri, M.A., *"The integrated reporting of financial, social and sustainability capitals: a critical review and appraisal*", International Journal of Sustainable Society, Vol. 9 No. 4, pp. 311 -326,

[5] Diouf, D. and Boiral, O., *"The quality of sustainability reports and impression management: a stakeholder perspective",* Accounting, Auditing & Accountability Journal, Vol. 30 No. 3, pp. 643-667.

individuals: Eurosif, Japan Sustainable Investment Forum (JSIF), Responsible Investment Association Australasia, RIA Canada and US SIF. This report likewise remembers information for the African feasible contributing business sector, from the African Investing for Impact Barometer, and in Latin America from the Principles for Responsible Investment[6].

The 2018 report shows that internationally, practical putting resources in the five significant business sectors remained at US$30.7 trillion at the beginning of 2018, a 34% expansion in two years. From 2016 to 2018, the fastest-growing district has been Japan, trailed by Australia/New Zealand and Canada[7]. These were additionally the three quickest developing locales in the past two-year time frame. The three biggest locales, dependent on the estimation of their possible contributing resources, were Europe, the United States and Japan. A 2020 worldwide investigation from Morningstar demonstrates that resources in reasonable assets came to almost $1.7 trillion. Net streams into U.S. practical assets outperformed $51 billion[8].

2. Existing Soft Laws Governing SRI

SRI, social venture, practical socially cognizant, "green" or ethical investing, is any speculation methodology which tries to think about both monetary return and social/ecological great to achieve social change viewed as sure by defenders. Socially capable speculations frequently comprise a little level of complete assets invested by enterprises and are filled with deterrents. As of late, it has additionally gotten known as "sustainable investing" or "responsible investing"[9].

There is likewise a subset of SRI known as "impact investing", committed to the cognizant making of social effect through speculation. As a rule, SRIbackers support corporate practices that they accept advance natural stewardship, shopper assurance, basic freedoms, and racial or sex variety[10]. Some SRIs try not to put resources into organizations saw to have negative social impacts like liquor, tobacco, cheap food, betting, erotic entertainment, weapons, petroleum derivative creation or the military. The zones of concern perceived by the SRI experts are here

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[6] Majoch, A.A., Hoepner, A.G. and Hebb, T., *"Sources of stakeholder salience in the responsible investment movement: why do investors sign the principles for responsible investment?",* Journal of Business Ethics, Vol. 140 No. 4, pp. 723-741.

[7] Brooks, C. and Oikonomou, I., *"The effects of environmental, social and governance disclosures and performance on firm value: a review of the literature in accounting and finance"*, The British Accounting Review, Vol. 50 No. 1, pp. 1-15.

[8] *Supra* 2.

[9] Pereira, P., Cortez, M.C. and Silva, F.,. *SRIand the performance of Eurozone corporate bond portfolios.* Corporate Social Responsibility and Environmental Management, 26(6), pp.1407-1422.

[10] Fritz, T.M. and von Schnurbein, G.. *Beyond socially responsible investing: Effects of mission-driven portfolio selection*. *Sustainability*, *11*(23), p.6812.

and there summed up under the heading of ESG issues: climate, social equity, and corporate administration.

SRI is one of a few related ideas and approaches that impact and, from time to time, administer how resource supervisors invest portfolios. The expression "socially responsible investing" occasionally barely alludes to practices that try to keep away from hurt by evaluating organizations for ESG chances prior to choosing whether they ought to be remembered for a venture portfolio. In any case, the term is additionally utilized more comprehensively to incorporate more proactive practices, for example, sway contributing/investing, investor backing and local area contributing[11].

As per financial backer Amy Domini, investor promotion and local area contributing are mainstays of socially responsible investing, while at the same time doing just negative screening is insufficient. Some evaluating organisations centre explicitly around ESG hazard appraisals as they can be an "important instrument for resource directors". These appraisal firms assess organisations and undertakings on a few risk factors and ordinarily assign a total score to each organisation or venture being evaluated. The organisations distribute reports of their ESG hazard discoveries[12].

The sources of socially capable contributing may trace all the way back to the Religious Society of Friends (Quakers). In 1758, the Quaker Philadelphia Yearly Meeting disallowed individuals from taking part in the slave exchange purchasing or selling people. Quite possibly the most lucid early adopter of SRI was John Wesley (1703-1791), one of the organizers of Methodism. Wesley's message "The Use of Money" laid out his essential precepts of social contributing for example not to hurt your neighbor through your strategic approaches and to evade ventures like tanning and synthetic creation, which can hurt the wellbeing of laborers. The absolute most popular utilizations of socially dependable contributing were strictly inspired. Financial backers would maintain a strategic distance from "wicked" organizations, for example, those related with items like firearms, alcohol, and tobacco[13] [14]).

The cutting-edge period of SRIadvanced during the political environment of the 1960s. During this time, socially concerned financial backers progressively looked to address fairness for

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[11] Trinks, P.J. and Scholtens, B., *"The opportunity cost of negative screening in socially responsible investing",* Journal of Business Ethics, Vol. 140 No. 2, pp. 193-208.

[12] Bansal, R., Wu, D.A. and Yaron, A.. *Is SRI a luxury good?*. Available at *SSRN 3259209.*

[13] Maretick, M., *"Women rule: why the future of social, sustainable and impact investing is in female hands",* TriplePundit, available at: www.triplepundit.com/2015/04/womenrule-future-social-sustainableimpact-investing-female-hands/#

[14] GRI, "Linking GRI standards and the EU directive on non-financial and diversity disclosure", available at: www.globalreporting.org/standards/resource-download-center/linking-gri-standards-andeuropean-directive-on-non-financial-and-diversity-disclosure/

ladies, social equality, and work issues. Monetary advancement projects began or oversaw by Dr. Martin Luther King, similar to the Montgomery transport blacklist and the Operation Breadbasket Project in Chicago, set up the starting model for socially capable contributing endeavours[15]. Ruler consolidated continuous exchange with blacklists and direct activity focusing on explicit enterprises. Worries about the Vietnam War were joined by some friendly financial backers.

Numerous individuals living during the time recollect an image in June 1972 of a bare nine-year-old girl, Phan Thị Kim Phúc, running towards a photographic artist shouting, her back consuming from the napalm dropped on her town. That photo diverted shock against Dow Chemical, the maker of napalm, and provoked fights with the nation over Dow Chemical and different organizations benefiting from the Vietnam War[16]. During the 1950s and 1960s, worker's organizations conveyed multi-business annuity store monies for focused ventures. For instance, the United Mine Workers store put resources into clinical offices, and the International Ladies' Garment Workers' Union (ILGWU) and International Brotherhood of Electrical Workers (IBEW) financed association assembled lodging projects. Worker's organizations additionally tried to use benefits stocks for investor activism on intermediary battles and investor goals[17].

In 1978, SRI endeavours by annuity reserves were prodded by The North Will Rise Again: Pensions, Politics, and Power during the 1980s and the resulting putting together endeavours of creators Jeremy Rifkin and Randy Barber. By 1980, official up-and-comers Jimmy Carter, Ronald Reagan and Jerry Brown pushed some sort of friendly direction for benefits speculations. SRI had a significant job in finishing the politically-sanctioned racial segregation government in South Africa. Worldwide resistance to politically-sanctioned racial segregation fortified after the 1960 Sharpeville slaughter[18]. In 1971, Reverend Leon Sullivan (at the time a load up part for General Motors) drafted a set of accepted rules for rehearsing business in South Africa which got known as the Sullivan Principles. Nonetheless, reports archiving the use of the Sullivan Principles said that US organizations were making an effort not to diminish segregation in South Africa. Because of these reports and mounting political pressing factor,

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[15] Global Footprint Network, *"Do we fit on the planet?"*, available at: www.footprintnetwork.org/en/index.php/GFN/page/world_footprint/

[16] Camilleri, M.A., *"The circular economy's closed loop and product service systems for sustainable development: a review and appraisal",* Sustainable Development, Vol. 27 No. 3, pp. 530-536, (2019).

[17] Fritz, T.M. and von Schnurbein, G., *"Beyond socially responsible investing: effects of MissionDriven portfolio selection",* Sustainability, Vol. 11 No. 23, pp. 6812-6827.

[18] Trinks, A., Scholtens, B., Mulder, M. and Dam, L., *"Fossil fuel divestment and portfolio performance",* Ecological Economics, Vol. 146, pp. 740-748.

urban communities, states, universities, religious gatherings and annuity assets all through the US started stripping from organizations working in South Africa[19].

In 1976, the United Nations forced an obligatory arms ban against South Africa. From the 1970s to the mid-1990s, enormous establishments dodged interest in South Africa under politically sanctioned racial segregation. The ensuing negative progression of venture in the long run constrained a gathering of organizations, addressing 75% of South African managers, to draft a contract requiring a finish to politically sanctioned racial segregation[20]. Although the SRI initiatives did not end apartheid, they focused on applying international pressure to the South African business sector. The mid and late 1990s saw the ascent of SRI's attention on an assorted scope of different issues, including tobacco stocks, shared asset intermediary divulgence, and other assorted core interests. Since the last part of the 1990s, SRI has gotten progressively characterized to advance naturally economical turn of events[21] (Epstein, 2018).

Numerous financial backers consider the impacts of global climate change a huge business and investment risk. CERES was established in 1989 by Joan Bavaria and Dennis Hayes, facilitator of the primary Earth Day, as an organization for financial backers, natural associations, and other public vested parties keen on working with organizations to address ecological concerns. In 1989, agents from the SRI business accumulated at the main SRI in the Rockies Conference to trade thoughts and gain force for new activities[22]. The name has since changed to The SRI Conference which meets yearly at Green Building ensured foundations and has pulled in more than 550 people yearly since 2006. This gathering is created by First Affirmative Financial Network, a venture warning firm that works with guides across country giving portfolios had practical experience in maintainable and dependable contributing[23].

The main offer side financier on the planet to offer SRI research was the Brazilian bank Unibanco. The assistance was dispatched in January 2001 by Unibanco SRI expert Christopher Wells from the São Paulo base camp of the bank. It was focused at SRI assets in Europe and the US, despite the fact that it was shipped off non-SRI finances both all through Brazil. The examination was about ecological and social issues (however not administration issues) with

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[19] Oikonomou, I., Platanakis, E. and Sutcliffe, C., *"Socially responsible investment portfolios: does the optimization process matter?",* The British Accounting Review, Vol. 50 No. 4, pp. 379-401

[20] Joliet, R. and Titova, Y., *"Equity SRI funds vacillate between ethics and money: an analysis of the funds' stock holding decisions"*, Journal of Banking & Finance, Vol. 97, pp. 70-86,

[21] Epstein, M.J., *Making Sustainability Work: Best Practices in Managing and Measuring Corporate Social*, Environmental and Economic Impacts, Routledge, Oxford, (2018).

[22] Brooks, C. and Oikonomou, I., *"The effects of environmental, social and governance disclosures and performance on firm value: a review of the literature in accounting and finance",* The British Accounting Review, Vol. 50 No. 1, pp. 1-15, (2018).

[23] *Supra* 16.

respect to organizations recorded in Brazil. It was sent free of charge to Unibanco's customers[24]. The help went on until mid-2002. Drawing on the business' experience utilizing divestment as an apparatus against politically sanctioned racial segregation, the Sudan Divestment Task Force was set up in 2006 considering the decimation happening in the Darfur locale of the Sudan. Backing from the US government followed with the Sudan Accountability and Divestment Act of 2007[25].

Even more as of late, some friendly financial backers have looked to address the privileges of native people groups all throughout the planet who are influenced by the strategic approaches of different organizations. In 2007[26], SRI in the Rockies Conference held an uncommon pre-gathering explicitly to address the worries of native people groups. Solid working conditions, reasonable wages, item wellbeing, and equivalent freedom business likewise remain feature worries for some friendly financial backers. During the 2010s, a few supports created sex focal point contributing procedures to advance working environment value and general government assistance of ladies and young ladies[27].

Investing strategies of SRI include different components:

1) *Community venture*: By putting straightforwardly in an organization, as opposed to buying stock, a financial backer can make a more prominent social effect: cash spent buying stock in the optional market gathers to the stock's past proprietor and may not create social great, while cash put resources into a local area foundation is given something to do[28]. For instance, cash put resources into a Community Development Financial Institution might be utilized by that organization to mitigate neediness or disparity, spread admittance to funding to under-served networks, support monetary turn of events or green business, or make other social products. In 1984, Trillium Asset Management's originator, Joan Bavaria, welcomed Chuck Matthei of the Institute for Community Economics (ICE), an association that assists networks with making and supporting land trusts, to a gathering of US SIF. Almost certainly, this was the first run

[24] Sparkes, R., *"A historical perspective on the growth of socially responsible investment",* Responsible Investment, Routledge, Oxford, pp. 39-54, (2017).
[25] Riedl, A. and Smeets, P., *"Why do investors hold socially responsible mutual funds?",* The Journal of Finance, Vol. 72 No. 6, pp. 2505-2550, (2017).
[26] Paul, K., *"The effect of business cycle, market return and momentum on financial performance of SRImutual funds"*, Social Responsibility Journal, Vol. 13 No. 3, pp. 513-528, (2017).
[27] Majoch, A.A., Hoepner, A.G. and Hebb, T., *"Sources of stakeholder salience in the responsible investment movement: why do investors sign the principles for responsible investment?",* Journal of Business Ethics, Vol. 140 No. 4, pp. 723-741, (2017).
[28] Almandoz, J. *''Founding teams as carriers of competing logics: When institutional forces predict banks' risk exposure.''* Administrative Science Quarterly, 59: 442–473, (2014).

through a not-for-profit association with an advanced asset that would meet straightforwardly with SRI directors. Trillium customers started putting resources into ICE sometime thereafter[29].

2) *Investing in capital business sectors:* Social financial backers utilize a few techniques to augment monetary return and endeavor to augment social greatness. These systems try to make change by moving the expense of capital down for practical firms and up for the non-feasible ones. The advocates contend that admittance to capital is the thing that drives the future course of advancement. A developing number of rating offices gathers both crude information and the ESG conduct of firms just as totals this information in records. Following quite a long while of development the rating office industry has as of late been dependent upon a union stage that has diminished the quantity of beginning through consolidations and acquisitions. Putting resources into capital business sectors likewise has different alternative ways as recorded below[30].

a) *ESG joining*: ESG combination is perhaps the most well-known mindful venture techniques and involves the integration of environmental, social and governance ("ESG") standards into the principal examination of value speculations. As per the non-profit Investor Responsibility Research Centre foundation (IRRCi), ways to deal with ESG coordination shift extraordinarily among resource administrators, depending on: Management: Who is liable for ESG integration within the organisation? Examination: What ESG models and factors are being considered in the investigation? Application: How are the ESG models being applied practically speaking?

b) *Negative screening*: Negative screening prohibits certain protections from venture thought dependent on friendly or natural measures. For instance, numerous socially dependable financial backers screen out tobacco organization ventures. The longest-running SRI record, the Domini 400, presently the MSCI KLD 400, was begun in May 1990. It has kept on performing seriously with normal annualized absolute returns of 9.51% through December 2009 contrasted and 8.66% for the S&P 500. Regardless of this noteworthy development, it has for some time been ordinarily seen that SRI brings more modest returns than unlimited contributing/investments. Purported "sin stocks", including purveyors of tobacco, liquor, betting and guard project workers, were prohibited from portfolios on good or moral grounds. What's more, closing out whole ventures' harms execution, the pundits said[31].

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[29] Marquis, C., M. W. Toffel, and Y. Zhou *''Scrutiny, norms, and selective disclosure: A global study of greenwashing.''* Organization Science, 27: 483–504, (2016).

[30] Battilana, J., and M. Lee *''Advancing research on hybrid organizing—Insights from the study of social enterprises.''* Academy of Management Annals, 8: 397–441, (2014).

[31] Besharov, M. L., and W. K. Smith *''Multiple logics in organizations: Explaining their varied nature and implications.''* Academy of Management Review, 39: 364–381, (2014).

c) *Divestment:* Divesting is the demonstration of eliminating stocks from a portfolio dependent on essentially moral, non-monetary issues with certain business exercises of an organization. As of late, CalSTRS (California State Teachers' Retirement System) declared the evacuation of more than $237 million in tobacco property from its speculation portfolio following a half year of monetary investigation and thoughts (GSI-Alliance, 2015).

d) *Shareholder activism*: Shareholder activism endeavors endeavor to decidedly impact corporate conduct. These endeavors incorporate starting discussions with corporate administration on issues of concern and submitting and casting a ballot intermediary goal. These exercises are embraced with the conviction that social financial backers, working agreeably, can guide the executives on a course that will improve monetary execution over the long run and upgrade the prosperity of the investors, clients, representatives, merchants, and networks[32]. Late developments have likewise been accounted for of "financial backer relations activism", in which financial backer relations firms help gatherings of investor activists in a coordinated push for change inside an organization; this is done normally by utilizing their improved information on the enterprise, its administration (frequently by means of direct connections), and the protections laws overall. Flexible investments are likewise significant dissident financial backers; while some seek after SRI objectives, numerous essentially are trying to boost store returns. Benefits plans subject to ERISA are to some degree more obliged in their capacity to participate in investor activism or the utilization of plan resources for advance public strategy positions; any consumption of plan resources should be pointed toward upgrading members' retirement pay.

e) *Shareholder commitment*: A less vocal subtype of investor activism, investor commitment requires broad observing of the non-monetary presentation of all portfolio organizations. In investor commitment exchanges, financial backers get helpful input on the best way to improve ESG issues inside their range of authority[33].

f) *Positive investing*: Positive investing is the new age of socially capable contributing. It includes making interests in exercises and organizations accepted to have a positive social effect. Positive contributing recommended a wide redoing of the business' approach for driving change through speculations. This speculation approach permits financial backers to emphatically communicate their qualities on corporate conduct issues like social equity and the

[32] Davis, G. F., and S. Kim *''Financialization of the economy.''* Annual Review of Sociology, 41: 203–221, (2015).

[33] Lee, M.-D. P., and M. Lounsbury *''Filtering institutional logics: Community logic variation and differential responses to the institutional complexity of toxic waste.''* Organization Science, 26: 847–866, (2015).

climate through stock choice without forfeiting portfolio broadening or long haul execution. Positive screening pushes the possibility of supportability, not simply in the tight natural or helpful sense, yet in addition in the feeling of an organization's drawn out potential to contend and succeed[34]. In 2015, Morgan Stanley directed a survey of 10,000 assets and closed "solid supportability" speculations beat feeble manageability ventures, handling the possibility of a compromise between sure effect and monetary return. while the Global Impact Investing Network's 2015 report on benchmarks and returns in sway putting resources into private value and investment store market-rate or market-beating returns were regular in sway ventures[35].

g) *Impact investing*: Impact investing is the elective venture (for example private value) way to deal with Positive investing. In 2014, the UK's administration of the G8 made a Social Impact Investment Task Force which delivered a progression of reports that characterized sway contributing as "those that deliberately target explicit social goals alongside a monetary return and measure the accomplishment of both"[36]. Impact investing underwrites organizations that conceivably give social or natural effect at a scale that absolutely charitable intercessions typically can't reach. This capital might be in the scope of structures including private value, obligation, working capital credit extensions, and advance certifications. Models in ongoing business for many years remember numerous speculations for microfinance, local area improvement account, and clean innovation. Affecting putting has its underlying foundations in the funding local area, and a financial backer will regularly take dynamic job tutoring or driving the development of the organization or start-up[37].

3. Existing Hard Laws Governing SRI

There is significant heterogeneity in wordings, definitions, procedures, and practices[38], yet in wide terms, SRI is a crossbreed type of investing that fuses non-monetary concerns like natural, good, and friendly into venture choices. This type of investing encapsulates institutional intricacy: the presence of contending partners[39] and conflicting remedies from numerous

[34] Haans, R. F. J., C. Pieters, and Z. He *''Thinking about U: Theorizing and testing U- and inverted U-shaped relationships in strategy research.''* Strategic Management Journal, 37: 1177–1195, (2015).
[35] *Supra* 31.
[36] Smets, M., P. Jarzabkowski, G. T. Burke, and P. Spee *''Reinsurance trading in Lloyd's of London: Balancing conflicting-yetcomplementary logics in practice.''* Academy of Management Journal, 58: 932–970, (2015).
[37] Giamporcaro, S., and J.-P. Gond *''Calculability as politics in the construction of markets: The case of socially responsible investment in France.''* Organization Studies, 37: 465–495, (2016).
[38] Guille´ n, M. F., and L. Capron *''State capacity, minority shareholder protections, and stock market development.''* Administrative Science Quarterly, 61: 125–160, (2016).
[39] Marquis, C., M. W. Toffel, and Y. Zhou *''Scrutiny, norms, and selective disclosure: A global study of greenwashing.''* Organization Science, 27: 483–504, (2016).

rationales (Little, 2016). The institutional sources of SRI mirror this intricacy. The foundations of current SRI had solid strict underpinnings, especially in Christianity, since Christian places of worship "played a spearheading job in the advancement of SRI worldwide". In the U.S., SRI started with John Wesley, one of the organizers of the Methodist development in the eighteenth century, who went against putting resources into wicked exercises, for example, the slave exchange, the arms exchange, and liquor (Guille' , and Capron 2016, 61, pp. 125-160.).

The principal current SRI shared asset on the planet, the PAX World Balanced Fund, was set up in 1971 by United Methodist clergymen worried about benefiting from the Vietnam War. As the market offered "no choices at that point", those pastors activated and made, with the assistance of monetary experts, a specialty area for retail financial backers that pulled in temples, good cause, enrichments, nongovernmental associations (NGOs), and socially cognizant people. Along these lines strict rationale is significant in this space[40]. As SRI moved past specialty market fragments, it extended from simply avoiding certain areas to upholding for socially capable works, including reasonable representative pay and advantages and, all the more comprehensively, common liberties. Therefore, worker's organizations addressing laborers' privileges were at the bleeding edge of the SRI development[41].

The primary SRI legitimate case in the U.S., Cowan v. Scargill, was brought to court in 1984 by trustees of the mineworkers' annuity store. SRI pulled in more interest during the 1990s, when sweatshop embarrassments emitted at public partnerships, driving unionized specialists to move their annuity store resources from those associations. Laborer and worker's guilds assumed a part in the dissemination of SRI rehearses on account of their administration job in many benefits reserves, which are progressively predominant in capital business sectors. States began to impact the improvement of SRI when SRI started to involve a critical part of all speculation resources. A crucial point in time with worldwide repercussions came in 1997 when the Labor government in the UK established SRI exposure prerequisites for annuity resources. France, Germany, Sweden, Belgium, Norway, Austria, and Italy immediately took action accordingly[42]. The selection of SRI strategies in 2004 by the Norwegian Sovereign Wealth Fund was additionally significant, as it brought about some prominent choices like its

[40] Micelotta, E., M. Lounsbury, and R. Greenwood *''Pathways of institutional change: An integrative review and research agenda.''* Journal of Management, 43: 1885–1910, (2017).
[41] Giamporcaro, S., and J.-P. Gond *''Calculability as politics in the construction of markets: The case of socially responsible investment in France.''* Organization Studies, 37: 465–495, (2016).
[42] Vitols, S. *''European pension funds and socially responsible investment.''* Transfer: European Review of Labour and Research, 17: 29–41, (2011).

2008 divestment from Walmart[43]. Notwithstanding its social objectives and aspiration, SRI is a monetary venture practice and hence profoundly established in the monetary rationale; that rationale is predominant and focal in the development of a SRI store[44].

A solid segment of SRI is that monetary return is significant. Truth be told, "One of the key elements recognizing SRI from beneficent giving is worry for monetary returns". Logue[45] (2009) expressed that "done inaccurately some of the time underlines feeling great over bringing in cash. That is disastrous (in light of the fact that SRI) isn't independent from acceptable investing." The significance of both social and monetary objectives features the intricacy encompassing this crossover speculation practice. The fundamental worry with SRI is that the social objectives critical to SRI organizers are not seen as authentic with regards to the worldwide monetary rationale in which SRI is implanted.

Because of the worldwide dispersion of reasonableness in the public eye's administration, the utilitarian, materialistic culture of the monetary rationale has capably influenced country states and has all around recommended self-intrigued and benefit augmenting standards, qualities, and practices. Be that as it may, even though it has a worldwide and developing reach[46], the monetary rationale has saturated every country's institutional texture to an alternate profundity. The more prominent commonness of the monetary rationale in a nation builds the likelihood that monetary qualities, standards, and closures will be underestimated and externalized as target realities, in the monetary field as well as in the public eye all the more extensively. The monetary rationale is so predominant in the U.S. that it is normal for individuals to allude to instruction as putting resources into human resources and to companionship as building social capital: different circles of individual life have progressively gotten perceived in monetary terms and subsequently as likely articles for securitization.

In that sort of society, it isn't amazing that even the estimation of such friendly associations as charitable emergency clinics[47] would be estimated as far as monetary objectives. Prevailing rationales predominant in the public eye in this way seem to apply a gravitational draw on different rationales, adjusting their directions. Elective rationales may oppose this

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[43] Vasudeva, G. *''Weaving together the normative and regulative roles of government: How the Norwegian sovereign wealth fund's responsible conduct is shaping firms' crossborder investments.''* Organization Science, 24: 1662–1682, (2013).

[44] Besharov, M. L., and W. K. Smith 2014 ''Multiple logics in organizations: Explaining their varied nature and implications.'' Academy of Management Review, 39: 364–381.

[45] Logue, A. A. C. 2009 SRIfor Dummies. Hoboken, NJ: Wiley.

[46] Davis, G. F., and S. Kim 2015 ''Financialization of the economy.'' Annual Review of Sociology, 41: 203–221.

[47] Brickley, J. A., and R. L. Van Horn *''Managerial incentives in nonprofit organizations: Evidence from hospitals.''* Journal of Law and Economics, 45: 227–249, (2002).

colonization[48] or discover complementarities with the predominant ones at the degree of practices[49]. Under what conditions can predominant and elective rationales be integral, remaining parts, and open inquiry.

4. Conclusion

SRI is an investing strategy that aims to generate both social change and financial returns for an investor. Socially responsible investments can include companies making a positive, sustainable, or social impact, such as a solar energy company, and exclude those making a negative impact.

SRI tends to go by many names, including values-based investing, sustainable investing and ethical investing. The abbreviation “SRI” has also come to stand for sustainable, responsible and impact investing. Some SRI practices use a framework of environmental, social and governance factors to guide their investing. This is generally referred to as ESG investing.

Investors interested in SRI don’t just select investments by the typical metrics, performance, expenses and the like, but also by whether a company’s revenue sources and business practices align with their values. And since everyone has different values, how investors define SRI will vary from person to person. If you’re passionate about the environment, your portfolio will likely have investments in green energy sources such as wind and solar companies. If you care about supporting the advancement of women, people of colour and other marginalised groups, you may have some mutual funds that invest in women-run companies or hold stock in Black-owned businesses. And since SRI is as much about the investments you don’t choose as the ones you do, you may choose to divest from a company if you learn that it mistreats LGBTQ employees.

The SRI records serve as a "seal of endorsement or approval" for the mindful organisations that need to demonstrate their positive impact venture certifications to their partners. Presently, there are numerous variables that might be adding to the development of SRI: First, one of the main components for the multiplication of SRI is access to data. The present financial backers are progressively utilising advancements, including cell phones and their connected applications, to stay up to date on the latest improvements in business and society. Certain applications illuminate financial backers on the most recent developments in the financial

[48] Marquis, C., M. W. Toffel, and Y. Zhou *‘‘Scrutiny, norms, and selective disclosure: A global study of greenwashing.’’* Organization Science, 27: 483–504, (2016).

[49] Smets, M., P. Jarzabkowski, G. T. Burke, and P. Spee *‘‘Reinsurance trading in Lloyd’s of London: Balancing conflicting-yetcomplementary logics in practice.’’* Academy of Management Journal, 58: 932–970, (2015).

sectors, continuously. Regardless, the SRI project workers are giving a lot better information than at any other time.

Therefore, all financial backers can make educated choices that depend on evidence and analysis. Financial backers and investors use “non-monetary data” to assist them with making speculation choices. This "extra-monetary data" remembers ESG exposures for non-monetary issues.[50] These wellsprings of data will empower numerous organisations and undertakings to provide details regarding their mindful and sustainable practices.[51]. Businesses can utilise incorporated disclosures, where they provide subtleties on their financial as well as non-financial data to support potential investors and experts, among other stakeholders.

During the previous many years, an expanded uniformity in the developed economies has prompted SRI's productive development. The present financial backers are progressively expanding their range of financial products. A developing collection of proof recommends that numerous financial backers don't really need to forfeit execution when they put resources into socially responsible or environmentally sustainable assets. An important writing audit denied the dispute that social screening could bring about corporate underperformance.[52] Financial backers have understood that key corporate obligations are consistent with flourishing[53].

Thus, the wide scope of serious socially responsible investment choices has brought about different, even portfolios. In the USA and in other western economies, top-performing SRI assets can be found on the whole significant resource classes. An ever-increasing number of financial backers are understanding that they can enhance their portfolios while supporting socially and environmentally conscious causes. Fourth, there are financial supports for the presence of shared assets in differentiated portfolios. Although SRI reserves are evaluated better than expected entertainers regardless of which positioning interaction one likes to utilise[54], other writings propose that there are circumstances where the positive or negative screens neither add nor obliterate the monetary items' portfolio esteem[55]. This matter can bring

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[50] Brooks, C. and Oikonomou, I. (2018), “The effects of environmental, social and governance disclosures and performance on firm value: a review of the literature in accounting and finance”, The British Accounting Review, Vol. 50 No. 1, pp. 1-15.

[51] Diouf, D. and Boiral, O. (2017), “The quality of sustainability reports and impression management: a stakeholder perspective”, Accounting, Auditing & Accountability Journal, Vol. 30 No. 3, pp. 643-667

[52] Trinks, A., Scholtens, B., Mulder, M. and Dam, L. (2018), “*Fossil fuel divestment and portfolio performance*”, *Ecological Economics*, Vol. 146, pp. 740-748.

[53] Porter, M.E. and Kramer, M.R., *“The big idea: creating shared value”, Harvard Business Review*, Vol. 89 No. 1, pp. 1-12, (2011).

[54] Scalet, S. and Kelly, T.F., *“CSR rating agencies: what is their global impact?”*, Journal of Business Ethics, Vol. 94 No. 1, pp. 69-88, (2010).

[55] Auer, B.R., *“Do socially responsible investment policies add or destroy European stock portfolio value?”*, Journal of Business Ethics, Vol. 135 No. 2, pp. 381-397, (2016).

about blended ventures where there are SRI items that are promoted with other financial portfolios.

At present, the monetary business is seeing a buyer-driven wonder as there is a flood of demand for social ventures. This paper referenced various associations that have created lists to quantify the authoritative practices and their commendable practices. Regularly, their measurements depend on positive or negative screens that are utilised to characterise socially responsible and economic ventures[56]. Notwithstanding, regardless of these turns of events, the decent financial backers are still putting their portfolio in various enterprises. Accordingly, they might be putting their cash into dubious organisations. Maybe, later, there could be elective screening strategies notwithstanding the surviving inclusionary and exclusionary approaches.

A few enterprises are energetically unveiling their coordinated disclosure of financial and nonfinancial execution, as partners, including financial backers, request a more serious level of responsibility and transparency from them.[57] Thus, a developing number of firms are perceiving the business case for coordinated reasoning that consolidates financial and vital corporate mindful practices, which focus on being responsible towards society and the environment while making money.

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[56] Leite, P. and Cortez, M.C., *"Performance of European socially responsible funds during market crises: evidence from France"*, International Review of Financial Analysis, Vol. 40, pp. 132-141, (2015).

[57] *Supra* 49.

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