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Editor:

Prof. M. Afzal Wani

Pro Vice Chancellor and Dean, School of Law

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EDITORIAL

The IILM Law Journal is completing its two years of regular publication by the IILM School of Law which is a constituent part of the IILM University, Greater Noida (India). The vision of the school is: "To valiantly ascend as a globally acclaimed and competitive law school to groom legal eagles with velour, dexterity, skill and competence to become good, successful, innovative, adaptable and productive law professionals and performers, with fine humane alertness to cause for commitment to justice, fairness and good conscience in the contemporary fast altering world of cut throat competition, at home and abroad!" Our mission is, in compliance with the requirements of the National Education Policy 2020, as: Making available a holistic, integrated, enjoyable, and engaging learning with all-inclusive and wide-ranging curriculum, through effective pedagogy, to empower students all the way through to success, distinguished by firm foundational understanding and appropriate flexibility in course choices… Creation of an environment of envisioning the niceties of the field of law, to engage students in the activities of experiential learning and social outreach for preparedness as socially and nationally sensitive contributors and supporters to the society and the system of law and governance. Engagement of students with high quality professionals in litigation, governance and corporate sectors for their emergence as proficient, competent, and well statured knowledgeable academics, community leaders, judges, bureaucrats, diplomats and national representatives. We have adopted an advanced career and culture-oriented programming for students in the Indian tradition and the national legal system, with necessary technological know-how, to promote in them the potential of working for their individual achievements, along with a spirit of empowering Nyaya Bandhu (Pro Bono Legal Services).

The journal aims at engaging interested scholars with opportunity to contribute to the literary strength of emerging Indian Jurisprudence with minor and major noticeable writing on legal issues, preferably with interdisciplinary orientations. Also the purpose is to encourage younger scholars to make their academic goals flourish in the emerging world of creativity and innovation.

This issue of the journal carries contributions from some young enthusiastic members of the Indian Legal Fraternity, which we appreciate with expectation of a consequential more interest generation in legal writings. The focus of the authors is on significant issues: (a) The Evolution of New Criminal Laws: Just a Break from the Past or a Vision for Future Friendly? (b) An Examination of India's Medical Termination of Pregnancy Act in Practical and Ethical Dimensions; (c) Divergent paths, Shared Goals: Examining Green Federalism in India and Australia; (d) International Criminal Law: Human Rights Violation; (e) Fathers Too Matter Too: Exploring the Impact of Paternity Leave Policies; (f) Navigating the Domestic Legal Framework: India's Implementation of BIT Awards; (g) Risk Management in the Era of Cyber Security: Navigating Evolving; Threats and Strategies in the Financial Sector, With a Focus on Insurance and Regulatory Frameworks; (h) Abortion in India- An Analysis of Current Practices and The Role of Healthcare System; (i) Power of Courts to remove the

Elected Representative: The Enigma of an Elected Chief Minister; and (j) Expediting Justice at Panchayat-Level: Assessing the Challenges and Potential of Gram Nyayalayas. We are grateful to contributors for their efforts.

It is acknowledged that the unconditional support of the management and the authorities of the University for Innovative academic-ventures has been the main cause for the launch and continuation of this journal. The editors expect a warm response from the scholars, across law and other disciplines, in the form of contributions on issues of concern to promote an expectedly vibrant research culture in tune with national and global human aspirations.

Prof. M. Afzal Wani

Editor

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THE EVOLUTION OF NEW CRIMINAL LAWS: JUST A BREAK FROM THE PAST OR A VISION FOR FUTURE

Dr. Pooja *

Dr. Jasdeep Singh**

Introduction

The Indian Parliament passed three new criminal laws aimed at modernizing the country's criminal justice system. Despite unanimous approval from both the Lok and Rajya Sabhas, controversy arose regarding the names of the laws. The priority given to Sanskritized Hindi in the titles offended non-Hindi speakers, raising questions about whether the central government unofficially regards Hindi as the official language of the land. *Moreover*, the names are unfamiliar to and difficult to pronounce for more than half of the population including many legal practitioners. This makes it unacceptable to many, despite the contents of the laws being in English. The critics have regarded the changes in the title as unnecessary and violative of Article 348[1] of the Indian Constitution. The article states that all acts passed by Parliament or State Legislatures must be in English, despite the title being in Hindi, which contradicts the embargo. The response is to only have the title in Sanskrit, with the rest of the text in English. The name change also alters the purpose of these laws, shifting the focus from punishment to justice. This shows a reformative approach to the Indian criminal justice system. To analyze these changes, it is crucial to understand the history of British-era laws and their associated problems, as well as the need and vision of the new laws.

History of the British-Era Laws

Law reform in India has been ongoing for over 300 years. The British took over India, introducing diversified laws for different provinces, which led to conflicts and difficulties in administration. The Charter Act of 1833 consolidated legislative power under the Governor-General in Council, establishing a Law Commission to investigate the legal framework and judicial system across British territories. Law Commissions were established in 1834, 1853, 1861, and 1879, with the first two operating within India and the second and third conducting proceedings in England. Notably, none of the Commissioners were Indian, and English law

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[1] Art. 348 of the Constitution of India 1949.

served as the reference point.[2]. Under the direction of the Government's orders dated June 15, 1835, the Indian Law Commission, comprising T. B. *Macaulay, J. M. Macleod, G. W. Anderson,* and *F. Millett* as Commissioners, presented the (Draft) Penal Code to the Governor-General in Council on May 2, 1837. The problem with these Commissioners was that they struggled to adequately address the Indian customs, traditions, laws, and institutions. They even opposed modifications proposed by the Government of India to the Draft Bills they had prepared. However, since the substantive civil law and the law of procedure were dark and confused, the immediate enactment of the code was delayed until 1860. *Additionally*, the illness of two members, threw the work on *Lord Macaulay* and this draft of I.P.C[3] was mainly the work of Lord Macaulay. Thus, the draft code became law in 1860 and continued as the Indian Penal Code[4] till date. *Apart* from the Penal Code, the first law commission drafted the Limitation Law in 1842[5], and a Scheme of Pleadings and Procedure in 1848. *Thereafter*, the other three law commissions contributed a great deal to enrich the Indian Statute Book with a large variety of legislation on the pattern of the then-prevailing English Laws adapted to Indian conditions[6]. Notable among these legislations are the Indian Code of Civil Procedure[7], the Indian Contract Act[8], the Indian Evidence Act, the Transfer of Property Act, and [9]others, all stemming from the efforts of the initial four Law Commissions. Similarly, the origin of the Code of Criminal Procedure[10] dates back to the British colonial period, with the first *CrPC* being introduced in 1861. *Initially* modeled after the British legal framework, its suitability for the Indian context was questioned, leading to numerous amendments over time to address its inadequacies. In 1973, the current *CrPC* came into effect, replacing the preceding version from 1898. The development of this new code took into account the suggestions put forth by both the Law Commission and the *Sarkaria Commission*[11], with the primary objective to streamline the criminal trial process and guarantee equitable and expeditious justice for the accused. *Thus,*

[2] According to The Ministry of Home Affairs .
[3] The Indian Penal Code ,1860
[4] *ibid*
[5] The Limitation Law, 1859
[6] 'Early Beginnings, *available on* :-https://lawcommissionofindia.nic.in/about-department/early- Beginnings (last visited on 12 Apr 2024).
[7] The Code of Civil Procedure, 1908
[8] The Indian Contract Act, 1872
[9] The Transfer of Property Act, 1882
[10] The Code of Criminal Procedure 1973
[11] '*Understanding the CrPC: A Comprehensive Guide to Criminal Procedure Code' available on* https://fastercapital.com/content/Understanding-the-CrPC--A-Comprehensive-Guide-to-Criminal-Procedure-Code.html#History-and-evolution-of-the-CrPC (last visited on 17 May 2024).

the historical development of both the *IPC* and the *CrPC* reflects the colonial legacy of British rule. No doubt that these laws were a result of their effort to create a unified legal system for a diverse nation, the laws are now outdated and regressive.

Problems with the Pre-Existing Legislature

The *IPC, CrPC,* and other colonial-era laws were implemented not just to unify India's legal system but also to aid the British in achieving their real motive of conquering the subcontinent. The British wanted to exploit India's resources and Indian people to maximize their profits, for which they tried and executed everything possible. The laws were drafted in a manner that the colonial rulers could suppress any revolt that arose against them. *Thus* the laws were biased in the favor of the government and went against the interests of the common man. This problem persisted in Independent India to date, since the IPC criminalized draconian laws such as sedition. Additionally, even after more than 75 years of independence, there are more than 400 mentions of the term '*British Crown'* in these laws, which symbolize colonial slavery. Such terms as the '*empire*', and the *'crown'* depict that India hasn't yet been able to free itself from colonial bondage. These laws are also not gender-neutral and have complicated structures. Setting aside all these technical issues in the laws, a major setback that can't be ignored is that these laws are more than a century old. A lot has changed in the world since then - socially, economically, and technologically. Many new crimes have evolved, which couldn't have been perceived within the ambit of the old laws. These new-age crimes include cybercrimes such as hacking, phishing, and online fraud, along with traditionally accepted crimes such as torture against homosexuals. *Moreover,* society has also changed in the sense that certain practices that were earlier considered illegal are no longer considered to be crimes. All these societal changes further accentuate the need to bring new laws.

The Bharatiya Nyaya Sanhita

Just like the IPC, the BNS defines the crimes and prescribes punishments for them. It also contains measures to protect victims of crimes and ensure the speedy trial of cases. The BNS will consist of 358 sections, with modifications made to 175 sections, the addition of 8 new sections, and the repeal of 22 sections. Provision for Sedition which is now repealed under

BNS [12]. It penalized any person whose acts brought into hatred or contempt, or excited disaffection towards the Government established by law in India. The *BNS* now penalizes the following:

(i) Inciting secession, armed rebellion, or subversive activities;

(ii) Promoting separatist sentiments;

(iii) Endangering the sovereignty or unity and integrity of India[13]. This change is essential as it now clearly defines the acts that come under the ambit of penalization and not just loosely criminalize criticism against the government. An official said the new law would be known as '*deshdroh'* (treason) and not '*rajdroh*', which referred to the British crown. On the contrary, some critics say that this provision is just another way of putting up the law of sedition, and hence no major change has occurred. Whether or not there is a difference between these laws depends upon the functioning and the usage of these laws, and not merely the text. It can, thus, be believed that this change in provisions is subject to the implementation and nothing definite can be predicted right now.

Addition of 'Community Service' as a Punishment

The BNS introduces community service as a punishment for petty offenses like theft of property, attempting suicide, appearing in public intoxicated, and making defamatory statements. This move aims to make the Indian Law System more reformative and citizen-friendly. However, the BNS lacks specificity on the nature of community service or its administration. New crimes have been added, including organized crime, terrorism, and murder or grievous hurt by a group on certain grounds. The BNS retains many crimes listed in the IPC, but does not specify how it will be administered.

Provision for Organized Crime[14]

The Bureau of National Statistics (BNS) defines organized crime as any unlawful activity harming society, including kidnapping, extortion, contract killing, land grabbing, financial scams, human trafficking, and cybercrime. The maximum punishment is death or life imprisonment. Some states already have specialized laws to address organized crimes, but adding organized crime as an offense in the BNS addresses a gap. However, this may result in

[12] Section 124A of IPC, which outlined Sedition as an offence, now has been repealed under BNS.
[13] Sec. 152 of BNS.
[14] Sec.111 of BNS.

duplication of laws in states with such provisions. The BNS also fails to define and explain the scope of cybercrimes, potentially leading to confusion and excluding many acts from the purview of cybercrimes.

Provision for Terrorism

Currently, acts of terrorism are covered under the Unlawful Activities (Prevention) Act, 1967[15] (UAPA). Now, the BNS also adds terrorism as an offence [16]and uses the same definition as in the *UAPA*. However, this definition of terrorism is very broad. The classification of public order disturbance as a terrorist act encompasses various offenses, including armed insurrection, warfare, rioting, mob violence, and intimidation of the general public. Amendments are needed to clarify this classification and prevent mere protests from being classified as terrorist acts under the *BNS*.

Provision for Mob Lynching

The *BNS* classifies murder or grievous harm inflicted by five or more individuals on specific grounds, such as race, caste, sex, language, or personal belief, as an offence[17]. The penalty for such a murder ranges from a minimum of seven years imprisonment to life imprisonment or the death penalty. *Though*, it is an essential step to protect the vulnerable groups concerning the recent incidents of mob lynching, it lacks a few important points. The Bill specifies identity markers such as caste and language but does not specify religion[18], which may be an important determinant of mass-scale violence and riots. *Moreover*, this offence carries the same intent and consequences as murder, which is already addressed in the *IPC*. The minimum penalty for murder committed by a group on specific grounds is less severe than standard murder, which is death or life imprisonment, a discrepancy that needs to be addressed.

Exceptions for people with 'Mental Illnesses

The IPC[19] specified that any act committed by a person of unsound mind is not to be considered an offence. The British National Standards (BNS) has replaced the term 'unsound mind' with' *mental illness'*, as defined by the Mental Healthcare Act, 2017. Mental illness is a significant disorder that impairs the ability to recognize reality, excluding mental retardation or incomplete

[15] The Unlawful Activities (Prevention) Act, 1967
[16] Sec.113 of BNS
[17] Sec.117 of BNS
[18] Ministry of Home Affairs, '*The Bharatiya Nyaya Sanhita 2023'* (PRS Legislative Research India) Available on: https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023> (last visited on accessed 24 May 2024).
[19] Ibid

development. This could prevent individuals with mental retardation from receiving prosecution protection. The MHA also defines mental illness to include substance abuse, such as alcohol and drug misuse. This could lead to the defense of mental illness for crimes committed while intoxicated, contrasting with the usual defence of intoxication in the IPC. This change could lead to punishment for some innocent people while freeing others. It is recommended to reverse the term to 'unsound minds' to avoid such discrepancies.

Provision for Unnatural Offenses

Repealed Section 377 of the IPC[20] defined and criminalized Unnatural Offences as '*intercourse against the order of nature against any man, woman or animal*'. The BNS neglects the rights of homosexuals, animals, and deceased bodies by not retaining a section on un-consensual same-sex intercourse, necrophilia, and bestiality. This is a step backwards in the fight for equality and discrimination. To prevent violations, it is recommended to reintroduce the provision for unnatural offences in new criminal laws, as it is a crucial step in the fight against discrimination.

Provision for Rape of a Man

Not an offence one of the most serious criminal acts in society is rape, which is now addressed under Section 63 of the Act[21]. Marital rape, a controversial topic, has not been criminalized and the rights of married individuals have not been secured. It is crucial to recognize the serious impact of this practice on victims' physical, mental, and emotional health and include it under punishable sexual offenses. Despite efforts to make the BNS more inclusive, it has left many loopholes in the criminal justice system, leaving room for debates, discussions, suggestions, and amendments.

The Bharatiya Nagrik Suraksha Sanhita

Although the *Bharatiya Nagarik Suraksha (Second) Sanhita* 2023 may appear as a revamped version of existing laws, it is essential to underscore its core objective: akin to its predecessor, it governs the procedures of investigation, arrest, prosecution, and bail in cases of offences.

[20] Sec. 377 of Indian Penal Code, 1860.

[21] Sec.63 of BNS

Provision for Zero FIR

One of the most remarkable features of the BNSS is the introduction of the provision of Zero FIR. A Zero FIR refers to a First Information Report (FIR) filed by the police for a cognizable offence, regardless of jurisdiction. While Section 154 of the *CrPC*[22] previously allowed for the registration of FIRs, it did not expressly address Zero FIRs. However, under the BNSS, specifically in Section 173(1)[23], it explicitly states that any information disclosing the commission of a cognizable offence can be reported to the police, 'irrespective of the area where the offence is committed'[24], whether orally or through electronic means. In many instances, the police refuse to register an *FIR*, citing a lack of jurisdiction, and the helpless victims or complainants have to run from pillar to post to get an FIR registered[25]. The *BNSS* has introduced provisions for Zero FIR, eliminating 389 obstacles for ordinary citizens to register an FIR, thereby making the Indian Criminal Justice system more citizen-friendly and aiding crime victims.

Forensic Investigation

Under BNSS, forensic investigation[26] is compulsory for crimes carrying a minimum punishment of seven years imprisonment. In such instances, forensic specialists will have to visit the crime scenes to gather forensic evidence. The law mandates video recording of evidence collection and requires states to use forensic facilities in another if they lack them. This move enhances transparency and accountability in evidence collection. The integration of technology and forensics in investigations modernizes India's criminal justice system, enhancing evidence quality and safeguarding the rights of accused and victims.

Specified Timelines for Procedures

The BNSS establishes strict deadlines for various legal processes. *For example*, it mandates that medical practitioners examining rape victims must submit their reports to the investigating officer within seven days[27]. Other specified timelines includes delivering a judgment within 30

[22] Sec. 154 of The Code of Criminal Procedure 1973.

[23] Sec. 173(1) of The Bharatiya Nagarik Suraksha Sanhita 2023.

[24] *Ibid.*

[25] Vaibhav Chadha, '*New criminal laws: An era of accountability, transparency and justice' available on* https://www.firstpost.com/opinion/new-criminal-laws-an-era-of-accountability-transparency-and-justice 13744274.html (Last visited on 24 May 2024).

[26] Sec. 176(3) of The Bharatiya Nagarik Suraksha Sanhita 2023.

[27] Sec. 184(6) of BNS

days of the completion of arguments (extendable up to 45 days)[28], informing the victim of the investigation's progress within 90 days[29] and framing charges by a sessions court within 60 days from the first hearing on such charges[30]This is a beneficial measure to expedite the judicial process, punish the guilty, and provide relief to the victim. *Additionally*, it paves the way for a society in which justice is served early. *Therefore*, it is one of the most appreciable changes made in the new laws.

Expansion of the powers of the police

The *BNSS* has been criticized for expanding police powers, which could potentially endanger the rights and freedoms of the common people. The Constitution and *CrPC* prohibit detaining someone in police custody for more than 24 hours without judicial oversight. Magistrates can extend this period up to 15 days if the investigation cannot be completed within 24 hours. Further extensions beyond 15 days are allowed if there are sufficient grounds. However, the BNSS modifies this procedure by allowing police custody of 15 days to be authorized within the first 40 or 60 days of the total detention period. This modification could result in bail being denied during this period if the police argue that they need to take the individual back into police custody. Apart from drawing out the powers of custody, the BNSS[31] also lays down the use of handcuffs for the arrest of a habitual offender or a person who is accused of committing heinous crimes. This provision violates the guidelines issued by the National Human Rights Commission and the Supreme Court's orders. In the case of *Prem Shankar Shukla v Delhi Administration*[32], the Court emphasized that the routine use of handcuffs should be avoided, as this practice is inhumane and violative of Article 21 of the Constitution[33]. Since these provisions give unlimited powers to the police to decide the fate of the case, these are not citizen-friendly and hence, require re-consideration and modification. New provision for search and seizure by the police A new provision has been added to the *BNSS* in the form of Section 105[34], which allows the police to search any place or take in possession any property that is allegedly involved in the crime. The search and seizure must be electronically recorded by the

[28] Sec. 258(1) of BNS
[29] Sec. 193(3)(h)(ii) of BNS
[30] Sec. 251(1)(b) of BNS
[31] The Bharatiya Nagarik Suraksha Sanhita 2023
[32] *Prem Shankar Shukla v Delhi Administration* (1980) 3 SCC 526
[33] Art. 21 of the Constitution of India 1948.
[34] Section 105 of The Bharatiya Nagarik Suraksha Sanhita, 2023.

police officer and forwarded to the District Magistrate, aiming to improve the quality of police investigations and contribute positively to the debate about new laws.

The Bharatiya Sakshya Adhiniyam

The *Bharatiya Sakshya Adhiniyam* marks a crucial step in transforming the rules for evidence presentation within the Indian legal system. This legislation is carefully designed to revolutionize how evidence is obtained, preserved, and presented in court proceedings. Though it retains many provisions from the Indian Evidence Act, it seeks to usher in a new era of clarity and convenience.

Recognition of Electronic Evidence

The current reinterpretation of criminal laws in the Indian Criminal Justice System, including the BNS, BNSS, and BSA, is a significant step towards reforming the British-era laws. Despite their flaws and need for suggestive changes, these laws have the potential to significantly change the Indian Criminal Justice System. They have encouraged the use of technology, ensured accountability and made the legal, police, and investigation system more efficient. Despite criticisms about their efficiency, these laws have stood up in encouraging technology use, accountability, and ease in the Indian legal, police, and investigation system. The next step is the proper implementation of these new criminal laws, which requires contributions from all stakeholders, including the government, judiciary, lawyers, police officers, law students, and citizens. The success of these new laws is a shining example of progress and reformative justice.

Conclusion

The current reinterpretation of criminal laws in the Indian Criminal Justice System, including the BNS, BNSS, and BSA, is a significant step towards reforming the British-era laws. Despite their flaws and need for suggestive changes, these laws have the potential to significantly change the Indian Criminal Justice System. They have encouraged the use of technology, ensured accountability and made the legal, police, and investigation system more efficient. Despite criticisms about their efficiency, these laws have stood up in encouraging technology use, accountability, and ease in the Indian legal, police, and investigation system. The next step is the proper implementation of these new criminal laws, which requires contributions from all

stakeholders, including the government, judiciary, lawyers, police officers, law students, and citizens. The success of these new laws is a shining example of progress and reformative justice.

AN EXAMINATION OF INDIA'S MEDICAL TERMINATION OF PREGNANCY ACT IN PRACTICAL AND ETHICAL DIMENSIONS

Dr. Sajan Patil *

Introduction

"Abortion," colloquially understood as the intentional termination of a pregnancy, has been a topic of societal discussion for generations. The history of reproductive healthcare is marked by the exploration, testing, and implementation of various methods for both preventing and terminating pregnancies. However, in today's modern and rapidly evolving society, the choice of a woman to undergo an abortion often becomes a focal point of controversy.

This contentious issue has spurred two conflicting ideologies, with passionate advocates of both pro-life and pro-choice positions engaging in vigorous debates across political, medical, and legislative spheres. The matter remains a complex and divisive one that numerous developed nations have grappled with, seeking resolutions that strike a delicate balance between individual rights and societal interests. Remarkably, India took a definitive stance on abortion in the 1970s.

India's approach to abortion signifies a commitment to upholding personal liberties, particularly those pertaining to women's reproductive freedom. The legal framework surrounding abortion in the country has undergone evolution, adapting to a nuanced understanding of the multifaceted issues involved. This discussion delves into the historical and legal landscape of abortion in India, offering insights into the practical and ethical considerations that have influenced the nation's approach to this delicate and sensitive matter.

India's Approach to Abortion:

Embracing the principles of personal liberty and recognizing the intrinsic importance of reproductive freedom for women, India took a groundbreaking step in 1971 by legalizing Medical Termination of Pregnancy (MTP). This pivotal decision marked a watershed moment

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in the country's legal and social landscape, affirming that women possess the fundamental right to make autonomous decisions regarding their bodies and reproductive choices.

The legalization of MTP underscored a commitment to upholding women's health as a paramount concern, acknowledging the significance of providing safe and accessible avenues for managing pregnancies. By granting women the legal right to terminate pregnancies under certain conditions, India acknowledged the complexity of reproductive decisions and the need to respect the diverse circumstances that women may face.

This progressive move reflected a broader societal shift toward empowering women with greater agency over their reproductive health. It recognized that women should be active participants in decisions concerning their bodies and family planning, challenging traditional norms that may have restricted their autonomy in such matters.

The legalization of MTP not only protected women's right to choose but also contributed to reducing the risks associated with unsafe and clandestine abortions. By providing a legal framework for safe and regulated terminations, the government aimed to safeguard women's health and well-being, acknowledging the potential dangers of unregulated procedures.

Furthermore, this landmark decision contributed to fostering a more inclusive and equitable society by acknowledging and respecting the diversity of women's experiences. It was a critical step toward dismantling societal stigmas surrounding reproductive choices and acknowledging that women, as autonomous individuals, should have the freedom to shape their lives in alignment with their values and circumstances.

In essence, the legalization of Medical Termination of Pregnancy in India in 1971 not only upheld personal liberty and reproductive freedom for women but also set the stage for a more progressive and inclusive approach to women's health, acknowledging their right to make decisions that profoundly impact their lives. This transformative shift in policy marked a significant stride toward gender equality and paved the way for a more enlightened and compassionate society.

Legal Aspects of Abortion in India

The legal landscape governing abortion in India has undergone substantial evolution, with historical roots embedded in the Indian Penal Code (IPC) of 1860. The initial legislative response to abortion was found in Sections 312 to 318 of the IPC, which delved into the

punitive aspects associated with the unlawful conduct of miscarriages. Section 312, in particular, took a stern stance by criminalizing the act of causing a miscarriage for any reason other than the preservation of the pregnant woman's life. This provision held both the person performing the miscarriage and the pregnant woman herself accountable, subjecting them to legal consequences.

The inclusion of such provisions in the IPC reflected the prevailing societal and moral attitudes of the time, emphasizing a restrictive and punitive approach toward abortion. The legal framework, rooted in the mid-19th century, sought to regulate and control reproductive choices by imposing criminal sanctions, thereby shaping perceptions around women's autonomy over their bodies.

Over the years, as societal perspectives on reproductive rights and women's health evolved, there emerged a recognition of the need for a more nuanced and compassionate legal framework. The realization that a stringent and punitive approach could lead to unsafe and clandestine abortions, endangering the lives and well-being of women, prompted a reconsideration of abortion laws in India.

The turning point came with the enactment of the Medical Termination of Pregnancy (MTP) Act in 1971, which marked a departure from the punitive approach of the IPC. The MTP Act recognized the importance of women's autonomy over their reproductive choices and aimed to provide a legal and regulated framework for safe and accessible abortions. It was a landmark decision that not only decriminalized certain instances of abortion but also laid the foundation for a more progressive and women-centric approach to reproductive healthcare.

The evolution of the legal framework surrounding abortion in India is a testament to the country's commitment to adapting laws in accordance with changing societal norms, medical advancements, and a deeper understanding of women's rights. While the historical provisions of the IPC reflected a restrictive perspective, the subsequent enactment of the MTP Act exemplified a paradigm shift toward prioritizing women's health, autonomy, and the right to make informed decisions about their bodies. This ongoing evolution underscores the dynamic interplay between legal, social, and medical factors in shaping policies that better reflect the values and needs of contemporary society.

Introduction of the Medical Termination of Pregnancy Act, 1971

In response to the growing concerns about unsafe abortions and the need to protect women's health and reproductive rights, the Medical Termination of Pregnancy (MTP) Act was introduced in 1971[2]. This legislation marked a pivotal moment in India's approach to abortion.

Key Provisions of the MTP Act, 1971

1. *Qualified Practitioners and Centers*: The MTP Act clearly laid down the criteria for a registered medical practitioner (RMP) and medical center to be deemed qualified to conduct MTPs. This was a significant step toward ensuring that abortions were performed by trained medical professionals, reducing the risks associated with unsafe procedures.
2. *Grounds for Abortion:* The MTP Act specified the grounds on which abortion could be legally performed. These grounds include:
    - When the continuation of the pregnancy poses a risk to the life of the pregnant woman.
    - When the pregnancy, if continued, would result in grave injury to the physical and mental health of the pregnant woman.
    - When there is a substantial risk that if the child is born, it would suffer serious physical or mental abnormalities.
3. *Gestational Limits*: The Act set gestational limits for abortion based on the grounds mentioned above. It allows for termination within 12 weeks of gestation if any of the specified grounds are met. For terminations between 12 and 20 weeks of gestation, the opinion of two RMPs is required. Abortion after 20 weeks of gestation is permitted only if there is a risk to the life of the pregnant woman due to the continuation of the pregnancy.
4. *Consent:* The MTP Act emphasizes the importance of informed consent. It states that MTP can be conducted only with the consent of the pregnant woman. However, in the case of a minor below 18 years of age or a mentally ill woman, the consent of a guardian is required.

[2] Ministry of Health and Family Welfare. The Medical Termination of Pregnancy Act, 1971. August 10th, 1971. Available from: https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/

Recent Supreme Court Ruling

In addition to the legislative framework, the legal landscape of abortion in India has seen significant developments through court rulings. A recent landmark ruling by the Hon'ble Supreme Court of India emphasized the importance of a woman's right to terminate her pregnancy, irrespective of her marital status. In this case, an unmarried woman, whose relationship status had changed during her pregnancy, was allowed to terminate her 24-week fetus. The court's decision highlighted that being unmarried should not affect a woman's right to make decisions about her own body and pregnancy.

Challenges and Ongoing Discussions

While the MTP Act, 1971, represents a significant step forward in safeguarding women's reproductive rights and ensuring safer abortions, there are ongoing discussions and challenges within the legal framework. Some of these challenges include:

1. The 20-Week Limit: The restriction on abortion after 20 weeks of gestation can be challenging for women who discover fetal abnormalities or health risks later in pregnancy. This limitation may create difficult situations for both women and medical professionals who must navigate complex decisions within the confines of the law.
2. Access to Safe Abortion Services: Ensuring that women across the country have access to safe and legal abortion services remains a challenge. Disparities in healthcare infrastructure and awareness can hinder access to these services, particularly in rural areas.
3. Reproductive Rights: The debate between pro-life and pro-choice advocates continues, with discussions about the balance between an individual's right to choose and societal interests ongoing.

Ethical and Practical Perspectives on Abortion in India

The Medical Termination of Pregnancy Act, 1971, in India, not only has legal implications but also raises important ethical and practical considerations. In this discussion, we will delve into

these aspects, focusing on the prioritization of maternal health, the absence of rights conferred to the fetus, and the ethical dilemmas surrounding bodily autonomy and reproductive choice[3].

Prioritization of Maternal Health

The foundational pillar of the Medical Termination of Pregnancy (MTP) Act lies in the unwavering prioritization of maternal health. This crucial principle is embedded within the Act's provisions, which expressly permit the termination of pregnancy when it poses a risk to the life of the pregnant woman or when continuation would lead to severe injury to her physical or mental health. Significantly, the MTP Act refrains from bestowing any legal rights upon the unborn fetus, firmly placing its focal point on safeguarding the well-being of the pregnant woman.

This approach is not only enshrined in the MTP Act but is also reflective of broader Indian legal principles, which, irrespective of gestational age, do not confer legal rights to the unborn fetus. The emphasis on maternal health within the MTP Act is a profound acknowledgment of a woman's autonomy over her body and reproductive choices, recognizing her right to make decisions that directly impact her physical and mental well-being.

Historically, prior to the enactment of the MTP Act, a significant number of maternal deaths were tragically linked to unsafe abortions conducted by unqualified individuals. The absence of a legal and regulated framework for abortion compelled women to seek out clandestine procedures, often under unsanitary and perilous conditions. Recognizing the dire consequences of this situation, the MTP Act emerged as a pivotal instrument in legalizing and regulating abortion services. By doing so, the Act aimed to address the root causes of maternal mortality associated with unsafe abortions, providing a safer and more controlled environment for women to access reproductive healthcare.

The Act's commitment to prioritizing maternal health is not merely a legal formality but a proactive step toward mitigating the risks and complications associated with unsafe abortion practices. By allowing women to make informed decisions about their reproductive health in consultation with qualified medical professionals, the MTP Act serves as a protective measure, reducing the incidence of maternal deaths and fostering a healthcare environment that values and safeguards the lives of women.

[3] Best Pract Res Clin Obstet Gynaecol 2020; 62:11-24

In essence, the prioritization of maternal health within the MTP Act exemplifies a societal commitment to recognizing and respecting women's agency over their bodies. It reflects a conscientious effort to move away from punitive measures and towards a legal framework that prioritizes the well-being of women, contributing to a more compassionate and progressive approach to reproductive healthcare in India.

Ethical Considerations

The ethical considerations entwined with abortion in India form a multifaceted discourse, with a central focal point being the delicate balance between the right to bodily autonomy and the reproductive choices of pregnant women. A pivotal ethical dilemma emerges from the original framing of the Medical Termination of Pregnancy (MTP) Act, which, notably, does not explicitly recognize a woman's unwillingness to continue her pregnancy as a valid ground for abortion. This particular omission has given rise to ethical concerns, especially when examined through the lens of contemporary values that emphasize and prioritize a woman's autonomy over her own body.

Understanding the ethical dimensions requires a nuanced exploration of the historical context in which the MTP Act was conceived in the 1970s. During this period, India grappled with a predominantly uneducated population, and policymakers were confronted with the concern that allowing abortion solely on the grounds of a woman's unwillingness to continue the pregnancy might lead to the potential misuse of abortion as a method of family planning. The fear was that such misuse could have far-reaching consequences for women's health and reproductive well-being, necessitating a cautious approach to the legal framework.

In response to these concerns, while still recognizing the paramount importance of bodily autonomy and reproductive choice, legislators incorporated a subjective clause into the MTP Act. This clause permits the termination of pregnancy if it is claimed that the pregnancy resulted from contraceptive failure, and such failure is believed to cause grave injury to the mental health of the pregnant woman. However, the crux of the matter lies in the recognition that this provision relies on a subjective assessment conducted by a registered medical practitioner (RMP). This introduces a layer of subjectivity that cannot definitively prove or disprove the claim of contraceptive failure, raising ethical questions about the transparency and objectivity of the decision-making process.

The inclusion of a subjective clause in the MTP Act reflects a conscientious effort to navigate the ethical tightrope of safeguarding against potential misuse while still upholding the principles of autonomy and choice for women. The delicate dance between these considerations underscores the ongoing need for thoughtful discussions and periodic reassessments of the legal framework to ensure it aligns with evolving societal values and ethical standards. As perspectives on women's rights and reproductive autonomy continue to evolve, the ethical landscape surrounding abortion warrants continued exploration and refinement to meet the ever-changing needs of a progressive and compassionate society.

Balancing Practicality and Ethics

The introduction of the subjective clause into the Medical Termination of Pregnancy (MTP) Act signifies a conscientious effort to navigate the delicate equilibrium between practical considerations and ethical imperatives. This nuanced provision is designed to strike a careful balance, acknowledging the emotional distress that may accompany contraceptive failure for women, while simultaneously recognizing the potential adverse mental health effects of continuing an unintended pregnancy. Importantly, it serves as a safeguard to forestall the misuse of abortion as a casual form of contraception.

The acknowledgment of contraceptive failure as a permissible ground for abortion reflects a pragmatic understanding of the complex emotional and psychological terrain that women may traverse. Contraceptive failure can be a profoundly distressing experience, and the resulting unintended pregnancy may give rise to a spectrum of mental health challenges for the woman involved. The subjective clause in the Act thus reflects an ethical consideration of the potential emotional toll on women and seeks to address their mental well-being in the context of reproductive choices.

Simultaneously, the inclusion of this provision stands as a safeguard against the misuse of abortion services. In a developing country like India, where healthcare resources may be limited, policymakers recognize the importance of avoiding the misuse of abortion as a casual means of family planning. By incorporating a subjective clause that necessitates a careful evaluation by a registered medical practitioner (RMP), the Act aims to ensure that abortion services are accessed for genuine and justifiable reasons related to health and well-being rather than as a routine contraceptive measure.

The nuanced approach of the MTP Act is particularly relevant in the context of a developing nation where healthcare resources may face constraints. Striking a balance between providing accessible, safe, and legal abortion services while upholding ethical considerations is no small feat. The Act, in its design, seeks to protect the health of pregnant women while also respecting their autonomy to make informed decisions about their bodies, underscoring a commitment to both practicality and ethics.

In essence, the inclusion of the subjective clause reflects a pragmatic response to the intricate intersection of practical and ethical considerations. It is a testament to the ongoing effort to refine legislation that not only addresses the diverse needs of women but also navigates the complex interplay between healthcare realities and ethical imperatives in the dynamic landscape of reproductive rights.

The Merits of the Medical Termination of Pregnancy (MTP) Act in India

The Medical Termination of Pregnancy Act, 1971, in India, has proven to be a significant piece of legislation with numerous merits that have positively impacted women's health, reproductive rights, and the overall healthcare system. This discussion will delve into the merits of the MTP Act, highlighting its contributions to safeguarding the health of pregnant women, ensuring access to safe abortion services, and upholding reproductive freedom and bodily autonomy.

Safeguarding Maternal Health

A key aim of the MTP Act is to ensure the well-being of pregnant women. Before the implementation of this legislation, a significant majority of abortions in India were carried out by unqualified individuals, often under unsafe and unhygienic conditions, utilizing unscientific methods. This resulted in a high incidence of complications and, tragically, fatalities associated with abortion.

The MTP Act tackled this issue by legalizing and overseeing abortion services. It established authorized centers where Medical Termination of Pregnancies (MTPs) could be conducted, expanding beyond government-run facilities. This inclusivity was vital because the government's medical infrastructure alone could not cater to the diverse needs of India's extensive and economically diverse population.

The Act also stipulated clear criteria for recognizing medical professionals as registered medical practitioners (RMPs) qualified to perform MTPs. Simultaneously, it criminalized the provision of MTPs by unrecognized centers or RMPs. These measures inherently reduced the rates of complications and fatalities linked to unsafe abortions, thereby significantly enhancing health outcomes for pregnant women.

Moreover, the MTP Act permits even unrecognized RMPs and centers to carry out MTPs in good faith when there is an immediate threat to the pregnant woman's life due to the pregnancy. This provision ensures that women lacking access to proper medical care can still undergo life-saving abortions in emergency situations.

Reproductive Freedom and Bodily Autonomy

he MTP Act plays a pivotal role in upholding reproductive freedom and bodily autonomy for women in India. For the performance of an MTP, the Act stipulates that consent from any individual other than the pregnant woman herself is not required. This implies that the approval of the husband or other family members is not obligatory. Even if the husband or family members express a desire for an MTP, it cannot be carried out without the explicit consent of the pregnant woman.

Furthermore, the Act acknowledges the intricacies associated with contraception and the potential failures of contraceptive methods. If a pregnant woman asserts that her pregnancy resulted from contraceptive failure, the registered medical practitioner (RMP) can consider her statement as a valid and ethical justification for conducting an MTP. This underscores the significance of respecting and recognizing women's experiences and choices in matters pertaining to their reproductive health.

Confronting Challenges Related to Rape and Stigmatization

The MTP Act demonstrates sensitivity in addressing the delicate issue of rape and the accompanying stigma. It acknowledges the considerable hurdles that rape victims may encounter when seeking medical assistance, whether due to the fear of police involvement or the traumatic nature of the experience. In recognition of these challenges, the Act takes a compassionate stance by permitting a mere allegation of rape to serve as grounds for a Medical Termination of Pregnancy (MTP).

Crucially, the Act does not mandate the filing of a formal police complaint, nor does it require the registered medical practitioner (RMP) to notify the police authorities about the alleged rape. This deliberate provision is crafted to prioritize the mental and physical well-being of rape victims, ensuring that they can access safe abortion services without encountering additional barriers.

By allowing a simple allegation of rape to be a valid reason for an MTP, the legislation strives to empower victims and provide them with a supportive environment to make decisions about their reproductive health. The absence of a compulsory police complaint requirement aims to mitigate the potential traumatization that victims may experience when dealing with legal processes, fostering a more compassionate and victim-centric approach.

In essence, this provision within the MTP Act not only recognizes the unique challenges faced by survivors of sexual violence but also actively works to reduce the hurdles they may encounter in seeking necessary medical care. It underscores the commitment to safeguarding the rights and well-being of rape victims, ensuring their access to safe and confidential abortion services while respecting their autonomy and dignity in the aftermath of a traumatic experience.

Impact on Maternal Mortality Rate (MMR)

The success of the MTP Act is evident in the significant decline in India's Maternal Mortality Rate (MMR). Before the Act, unsafe abortions were a major contributor to maternal deaths. However, with the legalization and regulation of abortion services, the MMR has seen a remarkable reduction. According to data, the MMR in India decreased by 77%, from 556 per 100,000 live births in 1990 to 130 per 100,000 live births in 2016.

This decline in MMR is noteworthy when compared to the global maternal mortality trend, which reported a decrease of 43%. The World Health Organization (WHO) has praised India's MTP Act for its role in making abortion safer and contributing to the reduction in maternal mortality[4].

The Demerits of the Medical Termination of Pregnancy (MTP) Act in India

[4] World Health Organisation. India’s amended law makes abortion safer and more accessible. April 13, 2021. Available from: https://www.who.int/ india/news/detail/13-04-2021-india-s-amended-law-makes-abortion

While the MTP Act has brought about significant improvements in the landscape of abortion in India, it is not without its demerits and criticisms. This discussion will delve into some of the drawbacks and limitations of the Act, including its gestational age restrictions, lack of a rights-based approach, and the need for modernization.

Gestational Age Restrictions

One of the significant criticisms of the MTP Act, prior to its recent amendment, was the strict gestational age restrictions for abortions. The Act allowed MTPs based on the opinion of a single registered medical practitioner (RMP) only up to 12 weeks of gestation. For pregnancies beyond 12 weeks and up to 20 weeks, the opinion of two RMPs was required.

The 12-week limit was criticized as being impractical because many pregnancies are confirmed after this point. It often left women with very little time to make decisions about their pregnancies. Additionally, the 20-week limit presented a challenge, as foetal anomaly scans are typically conducted after 20 weeks, leaving no time for an MTP in the event of a foetal anomaly being detected.

These strict deadlines sometimes forced women to cross the 20-week mark, at which point they had limited legal options for abortion. This led some women to resort to unscientific and unsafe methods or seek help from unqualified individuals, putting their health at risk.

Recent Amendments

It's important to note that some of these drawbacks have been addressed through recent amendments to the MTP Act in October 2021[5]. These amendments represent a significant step forward in modernizing and improving the Act. The key changes include:

- Extending the gestational limit for MTP based on the opinion of a single RMP from 12 to 20 weeks of gestation.
- Allowing MTP between 20 and 24 weeks of gestation based on the opinion of two RMPs for various specified cases, including rape, minors, change of marital status

[5] Ministry Of Health and Family Welfare. Rules to amend the Medical Termination of Pregnancy Act. October 12, 2021. Available from: https://egazette.nic.in/WriteReadData/2021/230390.pdf.

during pregnancy, women with physical disabilities, mentally ill women, foetal malformation, and humanitarian or disaster settings.

These amendments address some of the gestational age restrictions and provide greater flexibility for women facing specific circumstances. They acknowledge the evolving understanding of reproductive rights and the need to adapt the law to contemporary realities.

Recent Amendments to the Medical Termination of Pregnancy (MTP) Act in India

The recent amendments to the Medical Termination of Pregnancy Act, introduced in October 2021, mark a significant milestone in the evolution of reproductive rights and healthcare in India. These amendments aim to address the shortcomings of the original Act while aligning it with modern medical practices and ethical considerations. This discussion will provide an overview of the recent amendments, their implications, and their significance in the context of reproductive justice.

Extending the Gestational Limit

One of the most notable amendments to the MTP Act is the extension of the gestational limit for MTP based on the opinion of a single registered medical practitioner (RMP) from 12 weeks to 20 weeks of gestation. This change recognizes the challenges associated with confirming pregnancies within the initial 12 weeks and allows for a more flexible and practical approach to abortion access.

The extension of the gestational limit to 20 weeks is reflective of modern medical advancements, where safe MTP can be performed without significantly impacting the health of the pregnant woman. It acknowledges that women may discover their pregnancies later, and this should not pose a barrier to accessing safe abortion services.

Special Situations up to 24 Weeks:

The amendments go further by allowing MTPs between 20 and 24 weeks of gestation in specific circumstances. These circumstances include:

- Cases of rape, incest, or sexual assault.
- Pregnancies involving minors.
- A change in marital status during an ongoing pregnancy, such as widowhood or divorce.

- Pregnancies of women with physical disabilities (as per criteria laid down under the Rights of Persons with Disabilities Act, 2016).
- Pregnancies of mentally ill women, including those with mental retardation.
- Cases involving fetal malformation that poses a substantial risk of being incompatible with life or where the child may suffer from severe physical and mental abnormalities.

This extension of the gestational limit up to 24 weeks in such situations recognizes the unique challenges and vulnerabilities faced by these women. It ensures that they have access to safe abortion services, even when complex circumstances are involved.

Foetal Anomalies Beyond 24 Weeks

The amendments also address situations where fetal anomalies are detected beyond 24 weeks of gestation. In such cases, the pregnant woman can approach the medical board established in each state as part of the new modifications to the MTP Act. The medical board is responsible for providing a decision within three days of being approached.

This provision is critical for cases where severe fetal anomalies are detected late in pregnancy. Continuing such pregnancies would not only be detrimental to the woman's health but also to the well-being of the fetus. The medical board's timely decision ensures that these difficult situations are handled with the necessary care and attention.

Safeguarding the Rights of Vulnerable Women

These amendments are a significant step toward safeguarding the rights and reproductive freedom of pregnant women, particularly those who may be vulnerable due to their age, physical or mental health, or the circumstances of their pregnancies. They reflect a more compassionate and nuanced approach to abortion access, acknowledging that a one-size-fits-all gestational limit may not be suitable for every situation.

Increasing Awareness and Ethical Considerations:

These amendments also come at a time when there is increasing awareness about the MTP Act

in India. The medical community is beginning to explore not only the practical aspects of enforcing the provisions but also the ethical and legal considerations surrounding MTP.

Scholars and experts in the field have been contributing to discussions about abortion ethics, implications of the 2021 amendments, and the broader impact of the MTP Act on women's healthcare. These discussions contribute to a more comprehensive understanding of reproductive rights and healthcare in India.

Moving Toward Women-Centred Care:

In addition to legal changes, there is also a growing emphasis on transitioning from provider-centered care to women-centred care in reproductive healthcare. This means placing women's needs, choices, and autonomy at the forefront of healthcare decisions. This shift aligns with the broader global movement toward recognizing women's rights in healthcare.

Beyond Legislation: Awareness, Availability, and Accessibility:

It's important to recognize that beyond legislation, other factors play a crucial role in shaping the landscape of MTP in India. These include awareness, availability, accessibility, and affordability of quality MTP services and contraceptives. Efforts to improve these aspects are essential for ensuring that women can exercise their reproductive rights effectively.

Conclusion:

While the Medical Termination of Pregnancy (MTP) Act in India has undoubtedly marked a substantial stride forward in championing reproductive rights and enhancing access to safe abortion services, the journey towards comprehensive reproductive justice is ongoing. There remain several crucial areas where concerted efforts are needed to fortify the framework and promote a more equitable reproductive healthcare system.

Firstly, establishing an adequate number of medical boards is imperative to ensure efficient and timely assessments of cases related to abortion. These boards play a pivotal role in evaluating the medical necessity of procedures and can contribute significantly to streamlining the approval process, reducing delays, and ensuring that women receive timely and appropriate care.

Additionally, there is a need for clarification regarding the right to abortion for minors. Providing unambiguous guidelines and legal provisions for minors seeking reproductive healthcare services will help address potential ambiguities and ensure that the rights of this vulnerable population are adequately protected.

Improving healthcare infrastructure is paramount in creating an environment that supports safe and accessible abortion services. Adequate facilities, trained medical professionals, and the availability of essential resources are crucial components in fostering a healthcare system that can effectively cater to the diverse needs of women seeking reproductive healthcare.

Efforts to reduce unsafe abortions should be intensified through targeted educational programs, increased awareness campaigns, and improved accessibility to contraception. A focus on preventative measures can significantly contribute to reducing the prevalence of unsafe procedures and associated health risks.

Encouraging open discussions about reproductive health is essential to combat stigma and foster a more informed and supportive societal attitude. Breaking down taboos surrounding abortion, contraception, and reproductive choices will contribute to creating an environment where women feel empowered to make decisions that align with their personal circumstances and values.

Continued advocacy for reproductive justice is vital in shaping policy changes and ensuring that the rights of all individuals, irrespective of socioeconomic status or background, are safeguarded. Advocacy efforts should aim at addressing systemic inequalities and promoting policies that are inclusive, equitable, and considerate of diverse perspectives on reproductive healthcare.

In conclusion, while the MTP Act has laid a foundation for progress, ongoing collaborative efforts are necessary to fortify the reproductive healthcare landscape in India. By addressing issues such as medical board availability, clarifying rights for minors, improving healthcare infrastructure, reducing unsafe abortions, fostering open discussions, and advocating for reproductive justice, India can move closer to establishing a more inclusive and equitable framework that empowers women to make informed choices about their reproductive health.

DIVERGENT PATHS, SHARED GOALS:
EXAMINING GREEN FEDERALISM IN INDIA AND AUSTRALIA

Priyanshi Prakriti*

Introduction

The word "federalism" originates from the Latin word ‘foedus’, meaning "agreement." Federalism is actually an agreement between two kinds of governments to share authority and manage their respective domains. As opposed to a unitary state, this type of government is the one in which multiple state legislatures and the federal government (executive and legislative) coexist. Both governments derive their authority from the Constitution, they are supreme in their respective fields, and have direct influence over people. Both the federal government and the states are independent entities that work together. They both have the authority to exercise their separate authorities, and they do so with understanding and mutual adjustment.

Green federalism is about striking a balance between both central and state government and working in a co-operative manner towards dealing with issues pertaining to environmental degradation**.** It is a critical framework that underscores the distribution of powers and responsibilities between the central and sub-national governments, with a primary focus on environmental protection and sustainability. Some of the key components of Green Federalism are shared responsibility of both federal and state or regional governments, cooperation and collaboration among different levels of government, as well as engagement with non-governmental organizations, businesses, and other stakeholders, flexibility in policy implementation for more context-appropriate and effective environmental policies, resource sharing and adaptive management approaches, where policies and strategies are adjusted in response to changing circumstances and new information.

Green Federalism in India

Role of Central Government

The Indian federal system was designed with a strong central as one of the fundamental components of federation is tension and conflict between the interests of the centre and the states. In State of Rajasthan v. Union of India, the Supreme Court laid down that the Indian

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model of federalism is 'cooperative'[2] Under cooperative federalism, the Centre and the states exercise their powers jointly, even though there is a constitutional provision for the distribution of powers. In the words of a esteemed jurist, M.P. Jain, these governments are 'interdependent', not 'independent'.[3]

There are several constitutional provisions in Indian Constitution which accounts for this element of cooperation between Central and state. Parliament is empowered to make laws for the country and State legislatures are to make laws for their respective states under Article 245. Article 246 (read with Schedule VII) demarcates the subject matters upon which the Centre and states may enact laws. Moreover, there are three lists which contains matters of governance—the Union List upon which the Parliament solely legislates, the State List upon which the state legislatures legislate and the Concurrent List on which both the Centre and the state can legislate. Under Article 262, the Parliament can adjudicate inter-state water disputes. Article 263 establishes Inter-State Councils for investigation of those matters that interest both the Centre and states. The State Reorganization Act, 1956 enables establishing five Zonal Councils which are statutory bodies that facilitate cooperation and coordination between states.[4]

The Central Government of India has been given the duty to protect and improve the quality of the environment. One significant way the central government contributes to environmental protection is by enacting and amending environmental laws. The Environment Protection Act, 1986 provides the Central Government with the power to take measures necessary to protect and improve the quality of the environment by setting standards for emissions and discharges, regulating the location of industries, management of hazardous wastes, and protection of public health and welfare.

In India, The Ministry of Environment, Forest and Climate Change (MoEFCC) is the nodal agency at the central level, overseeing environmental matters. This ministry formulates policies and programs, conducts environmental impact assessments for development projects, and monitors compliance with environmental regulations. The introduction of the National Green Tribunal (NGT) in 2010 is another example of the central government's commitment to

[2] AIR 1977 SC 1361.
[3] MP Jain, *Some Aspects of Indian Federalism*, 28 ZAÖRV 1968.
[4] The States Reorganisation Act, 1956, § 15, No. 7, Acts of Parliament, 1956.

environmental justice. The NGT addresses cases related to environmental protection and conservation, providing a specialized forum to deal with environmental disputes.

India's participation in international environmental agreements and conventions is also facilitated by the central government. The Paris Agreement on climate change and the Convention on Biological Diversity are examples where India, through its central government, commits to global efforts for environmental sustainability.

The role of State Government

State governments in India play a crucial role in environmental protection as they are responsible for the implementation and enforcement of environmental policies and regulations within their respective jurisdictions. For instance, in the state of Delhi, the government has been actively involved in implementing measures to combat air pollution. During episodes of severe air quality deterioration, the Delhi government has implemented emergency measures such as the odd-even vehicle rationing scheme and the closure of construction activities to mitigate pollution levels. In an effort to reduce pollution, the Delhi Pollution Control Committee has also banned the production, importation, storage, sale, distribution, and use of single-use plastics.

States also play a pivotal role in the conservation of natural resources. In the state of Kerala, efforts have been made to protect the Western Ghats, a biodiversity hotspot. The Kerala government has implemented measures to regulate land use and prevent activities that could lead to deforestation and habitat destruction. State governments are responsible for overseeing Environmental Impact Assessments (EIAs) for various projects. In Maharashtra, for instance, the government has been involved in assessing the environmental impact of industrial and infrastructure projects to ensure sustainable development and minimize adverse effects on the ecosystem.

Waste management is another crucial area where State governments are actively involved. Tamil Nadu, for example, has taken initiatives to manage and regulate solid waste, including the promotion of waste segregation at source and the establishment of waste processing facilities.

State governments also collaborate with local communities and non-governmental organizations to promote environmental awareness and conservation initiatives. In Himachal

Pradesh, community-led initiatives for the conservation of forests and biodiversity have received support from the state government.

Challenges and limitations of green federalism in India

Green federalism in India faces several challenges and limitations in practice. One of the biggest is unequal resources and different capacities of different States. States in India vary significantly in terms of financial and administrative capacities. Some states may lack the resources and expertise to effectively implement and enforce environmental regulations. This unequal capacity can lead to disparities in environmental protection efforts across states, hindering the overall effectiveness of green federalism. Inter-State Coordination is also an issue when it comes to coordinating efforts between states which is crucial for effective pollution control and conservation as environmental issues often transcend state boundaries. Limited or poor coordination may result in challenges, particularly in the management of shared resources such as rivers and forests, where actions in one state can impact the environment in neighboring states. Political considerations influence environmental decision-making at the state level, leading to compromises on regulatory stringency. This interference can weaken the enforcement of environmental laws, as decisions may be influenced by short-term political gains rather than long-term sustainability objectives.

In a federal structure like that of India, there are policy inconsistencies to some extent between centre and states. The concurrent powers of the central and state governments can lead to divergent policies in environmental issues creating confusion for industries operating in multiple states, making it difficult for them to comply with varying regulatory frameworks. States may also set different environmental standards, making it challenging to establish uniform benchmarks for pollution control and natural resource management within different states.

There may arise several legal and jurisdictional conflicts between the centre and states particularly when both levels of government assert authority over the same environmental issue. Delays in decision-making can hinder swift and effective responses to pressing environmental challenges. Inconsistencies in state-level policies and enforcement may hinder India's ability to meet global environmental targets and commitments since international agreements and commitments require a unified approach from all states.

Overview of federalism in Australia

In a federation like Australia, there is often some tension between the different levels of government regarding the most appropriate distribution of various roles and responsibilities. These tensions become more apparent and are often difficult to resolve in areas like environmental management, where there is constant change due to the availability of new scientific evidence as well as public demand that government and industry should change the ways to deal with matters this sensitive in nature.

In Australia, federalism manifests itself as three levels of government: Federal, State/Territory, and Local. Federalism strengthens Australia's parliamentary representative democracy, meaning, specific federal, state or local matters can be addressed more efficiently. Section 51 of the Australian or Commonwealth Constitution outlines the legislative powers of the Federal Parliament which are administered by the Australian Government. Still, Australian governments have struggled to make clear their respective tasks and responsibilities in connection to environmental concerns because the Constitution is unclear concerning the distribution of power over environmental regulation.

The Intergovernmental Agreement on the Environment (IGAE) represents the recognition that different levels of government play distinct but complementary roles in protecting the environment.

The agreement was signed in May 1992 by the Heads of all Australian Governments and the President of the Australian Local Government Association. In order to adopt a cohesive approach, the agreement offers a "map" outlining how the three levels of government have decided to communicate with one another about environmental issues.

The role of Federal government

The protection of the environment is a shared responsibility, with both levels of government working together to address national and international environmental challenges. The federal government in Australia is a key player in environmental protection, employing legislative measures, policies, and collaborative approaches to address environmental challenges. An important piece of legislation in this regard is the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). This Act provides a framework for the protection of

matters which are of national environmental significance, such as World Heritage areas, threatened species, and migratory species. It grants the federal government the authority to assess and approve or reject activities that may impact these matters. Under the EPBC Act, the federal government conducts environmental impact assessments for proposed activities that could have a significant impact on matters of national environmental significance. This process ensures that potential environmental risks are identified and mitigated before approvals are granted.

The federal government also develops and implements national environmental policies that guide environmental management across the country. These policies cover a range of issues, including climate change, biodiversity conservation, water management, and sustainable development. The government also sets 'emissions reduction targets' and implements strategies to achieve them, aligning with international commitments related to environmental protection. The federal government, as the representative of the nation, commits to meeting certain environmental standards and targets set by these international agreements. Examples include the Paris Agreement on climate change and the Convention on Biological Diversity.

The Australian federal government provides funding and grants to support environmental conservation and sustainable practices. This includes funding for research on environmental issues, conservation projects, and initiatives aimed at reducing pollution and promoting biodiversity. These funds are often distributed in collaboration with state and territory governments.

The role of State/Territorial Governments

While the federal government has a significant role, environmental protection in Australia is a collaborative effort with state and territory governments. State and territory governments in Australia play a crucial role in environmental protection, working alongside the federal government to preserve and manage their unique natural resources and ecosystems. The Environment Protection and Biodiversity Conservation Act, 1999 recognizes the importance of cooperation, allowing for bilateral agreements that delegate certain responsibilities to the states and territories while maintaining national standards. State and territory governments have their own environmental legislation and regulatory frameworks that focus on issues specific to their regions. These laws often address land use planning, water management, air quality, biodiversity conservation, and waste management. They set standards and regulations to protect the environment and natural resources within their boundaries.

Governments at the state and territory levels are responsible for sustainable management of natural resources such as minerals, fisheries, and agriculture along with management of land and water resources, including forests, national parks, coastal areas, and water catchments. They implement strategies for sustainable land use, conservation of natural habitats, and protection of biodiversity. This involves creating and managing reserves, regulating land clearing, and implementing measures to prevent soil erosion and degradation. They develop policies and regulations to ensure these resources are utilized responsibly, balancing economic interests with environmental conservation.

Similar to the federal government, state and territory governments conduct environmental impact assessments for proposed developments and activities within their jurisdictions. They assess potential environmental impacts, consult with stakeholders, and issue approvals or impose conditions to mitigate adverse effects.

Waste Management and Recycling fall under the purview of state and territory governments. They establish waste management policies, regulate waste disposal practices, and support recycling programs to reduce the environmental impact of waste generation.

States and territories also allocate funding for environmental conservation projects, research initiatives, and community programs aimed at protecting local ecosystems, improving water quality, restoring habitats, and addressing environmental challenges specific to their regions. These programs are often implemented by help of collaboration with federal agencies and non-governmental organizations.

Challenges and Limitations of Green Federalism in Australia

Green federalism in Australia faces several challenges and limitations in its pursuit of effective environmental governance. Fragmented Governance is one of primary reason that leads to conflicting policies, varying regulations, and differing priorities among different jurisdictions can hinder cohesive environmental strategies. Overlap in jurisdictional responsibilities often result in complexities. Determining which level of government holds authority over certain environmental issues lead to inefficiencies and delays in decision-making and implementation.

While cooperative federalism exists in Australia, coordination among different levels of government isn't always seamless. Disparities in resources, capacities, and communication gaps between federal and state authorities can impede effective collaboration on large-scale environmental challenges.

Disparities in funding allocations among different levels of government limits the implementation of effective environmental policies. Ensuring meaningful community engagement and consultation across various jurisdictions is also a challenging task.

Inconsistent policies and regulations across states and territories makes it challenging to achieve uniform environmental standards or goals nationwide. Additionally, variations in the capacity and expertise of different states and territories to address complex environmental issues leads to uneven outcomes. For example, smaller jurisdictions might lack resources or specialized knowledge required to effectively manage certain environmental challenges.

Shifting political landscapes and differing priorities among different governments may impact long-term environmental planning and sustainability efforts. Changes in leadership or political agendas can lead to alterations in environmental policies and priorities.

Comparative Analysis of green federalism in India and Australia

Similarities in approach

India and Australia, despite their geographical and socio-economic differences, share certain similarities in their approach to green federalism. Both countries exhibit a federal structure where environmental governance involves collaboration between the central/federal government and state/territorial governments. Both India and Australia have constitutional provisions that delineate the distribution of powers between the central and state/territory governments concerning environmental governance. India's Constitution under Schedule VII provides for the division of powers between the Union (central) and States, similar to Australia's delineation of powers in its Constitution.

Both countries have established legislative frameworks to address environmental concerns. India's Environment Protection Act, 1986, and Australia's Environment Protection and Biodiversity Conservation Act, 1999, delineate the responsibilities of the central government in protecting the environment while allowing states to manage their local environmental issues.

Both nations embrace the concept of cooperative federalism in environmental governance. They encourage collaboration, coordination, and consultation between the central and state/territorial governments to address environmental challenges. India's National Green

Tribunal (NGT) and Australia's cooperative arrangements for environmental management demonstrate efforts toward cooperative federalism.

Both countries mandate environmental impact assessments for proposed projects that could have significant environmental implications. India's Environmental Impact Assessment (EIA) process and Australia's parallel assessments under their respective laws aim to evaluate and mitigate potential environmental impacts of development activities.

Similar to Australia, India's federal structure grants significant responsibilities to its states and territories in environmental governance. States in India, akin to Australian states/territories, hold authority over specific environmental matters within their jurisdiction, such as water management, land use planning, waste management, biodiversity conservation etc.

India and Australia are signatories to various international environmental agreements and conventions. Both nations commit to meeting international environmental standards and collaborate on global environmental issues like climate change, biodiversity conservation, and sustainable development.

Even the challenges faced by both countries are similar in nature. Issues such as jurisdictional overlaps, inadequate coordination, resource disparities, policy inconsistencies, and legal complexities are shared challenges affecting effective environmental governance at different levels of government. Hence, even though India and Australia differ in the specifics of their environmental policies and contexts, the overarching principles of cooperative federalism, legislative frameworks, division of powers, and efforts to address common environmental challenges highlight the similarities in their approaches to green federalism.

Differences in approach

Despite sharing many similarities in their approaches to green federalism, India and Australia also exhibit notable differences in their environmental governance systems and practices. Starting from Constitution of respective countries, India's Constitution provides a detailed list of subjects under three lists—Union List, State List, and Concurrent List—outlining the distribution of powers between the central government and states. In contrast, Australia's Constitution specifies specific powers granted to the federal government, leaving residual powers to the states. This difference in the constitutional framework shapes the extent of environmental jurisdiction and authority held by each level of government. The division of environmental responsibilities between the central and state governments also differs in India

and Australia. India's federal structure grants significant autonomy to states in managing environmental issues within their jurisdiction, leading to varying environmental standards and approaches across different states. In Australia, while states manage some environmental matters, the federal government retains authority over key areas of national environmental significance.

India's environmental legislation, such as the Environment Protection Act, 1986, focuses on regulatory aspects at the federal level, with states adopting and implementing regulations accordingly. Conversely, Australia's Environment Protection and Biodiversity Conservation Act, 1999, operates as a federal legislation dealing with matters of national environmental significance while allowing states to manage their local environmental issues within their legislative frameworks.

Both countries practice cooperative federalism but with distinct approaches. India's approach involves a greater degree of decentralization and coordination between the central and state governments, often requiring consensus-building among multiple stakeholders. Australia's cooperative federalism emphasizes collaboration but maintains a more structured division of powers, delineating specific responsibilities between federal and state levels. Additionally, In India, states have more autonomy and authority in environmental matters. States play a significant role in policy formulation and implementation, resulting in diverse environmental policies and priorities across different states. Conversely, in Australia, territories such as the Australian Capital Territory (ACT) have less autonomy compared to states, impacting their environmental decision-making powers.

India, being a developing country, faces distinct environmental challenges which includes issues related to rapid urbanization, industrial pollution, water scarcity and balancing biodiversity conservation with interests of people whereas Australia's environmental challenges include managing vast natural resources, conserving unique biodiversity and managing the impacts of climate change on its ecosystems.

When it comes to International Commitments and Global Engagement, levels of engagement and priorities in global environmental forums may vary for both the countries. India often advocates for developing countries' interests and focuses on issues like sustainable development, while Australia usually prioritizes its interests in areas like climate change mitigation and biodiversity conservation.

Conclusion and Suggestions

In conclusion, the comparative analysis of green federalism in India and Australia underscores the diverse approaches and challenges in environmental governance within federal systems. India's federal structure manifests as a complex interplay between central and state governments, resulting in varied policy implementation and enforcement across regions. While the country boasts progressive environmental legislation, the efficacy often faces hurdles due to administrative complexities and resource disparities among states.

In contrast, Australia's federal system demonstrates a more centralized approach to environmental regulation, with clearer delineation of powers between federal and state entities. This allows for a more unified environmental policy framework, yet it can sometimes stifle innovation and flexibility needed to address regional nuances effectively.

Both countries grapple with similar issues such as balancing economic growth with environmental sustainability, indigenous land rights, and climate change mitigation. However, their differing federal structures significantly influence the strategies adopted and the degree of success achieved.

Ultimately, this comparative study illuminates the importance of adaptive governance models that harmonize central directives with regional autonomy, leveraging the strengths of both centralized and decentralized approaches to address the complexities of environmental challenges in federal systems.

By decentralizing decision-making, green federalism seeks to promote more effective and responsive environmental policies that reflect the unique needs and values of different regions. This approach also has the potential to increase public participation in environmental governance and promote greater accountability among policymakers.

Further, in order to achieve success in the implementation of green federalism, it is imperative to establish effective coordination and cooperation between various levels of government and across different regions. This will require a concerted effort from all stakeholders involved in the process of implementing environmentally sustainable policies and practices. By working together towards a common goal, we can ensure that our planet remains healthy and vibrant for generations to come. Therefore, it is essential that we prioritize collaboration and communication in all aspects of green federalism initiatives, including policy development,

resource allocation, and implementation strategies. Only through a unified approach can we hope to achieve meaningful progress towards a greener future.

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INTERNATIONAL CRIMINAL LAW: HUMAN RIGHTS VIOLATION

Akansha*

Introduction

World has not known international criminal law for long; it is new in the field of global laws concerning justice. Therefore, it aims at individuals who perpetrate very serious offenses against mankind rather than states. This distinguishes it from conventional international laws which have mainly concentrated on state accountability.

Major Principles and Institutions:

Jus cogens: Genocide, crimes against humanity, war crimes and aggression are examples of jus cogens or peremptory norms – universally condemned offenses that cannot be rejected by treaties.

Aut dedere aut judicare: This principle refers to "extradite or prosecute" which mandates countries to extradite persons suspected of these crimes to countries where there exists jurisdiction or they should prosecute them domestically.

International Criminal Court (ICC): The ICC is the most important in terms of international court responsible for investigating and prosecuting those suspected of having committed most serious offenses within its jurisdiction. However, membership at the Rome Statute (the foundation upon which this court operates) gives it limited authority over only those member states.

Central offenses:

Genocide: The deliberate destruction targeting whole or parts of a national, ethnic group or religion.

*Crimes against humanity***:** Attack directed widely or systematically against noncombatant population**.**

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War Crime: Violations against the laws of war, such as unlawful killings of civilians or prisoners of war.

Aggression: The use of armed force by a state against the territory or sovereignty of another state.

Literature Review

In the last few decades international criminal law experienced a lot of noticeable developments directed towards holding individuals accountable for serious crimes against humanity. This part of literature is voluminous and heterogeneous covering different theoretical, empirical as well as practical aspects. The objective of this literature review is to give an overview of major trends and themes in this area.

Based Theories

Philosophical underpinnings: Scholars have examined some ethical and moral principles that inform international criminal law such as justice, accountability and human rights.

Legal frameworks: Research has looked at the rise and progression of international legal tools like the Rome Statute, Geneva Conventions among other treaties relevant to this subject matter.

Jurisdictional issues: Scholars have investigated the hurdles which prevent effective international criminal jurisdiction especially on issues relating to national sovereignty as well as *aut dederes aut judicare principle*.

Significant crimes:

Genocide: The explicit elucidation of genocide and the various aspects covering it have been extensively researched alongside its historical and current appearances.

Crimes against humanity: Different types of crimes against humanity including but not limited to imprisonment, torture, persecution and sexual violence have been examined by researchers.

War crimes: The pertinent acts that can be classified as war crimes such as killing civilians unlawfully and killing prisoners of war are what researchers have focused on in their studies on laws governing wars.

Aggression: In this regard, scholars have scrutinized the concept of aggression as well as difficulties associated with defining and prosecuting aggressions. International Criminal Court (ICC)

Jurisdiction and Procedures: The ICC's jurisdiction, investigative and prosecutorial powers as well as procedural rules are areas that have been significantly researched.

Effectiveness: The effectiveness of the ICC in holding perpetrators accountable and promoting justice has been evaluated by scholars.

Challenges and Limitations: Key challenges and limitations that face the ICC include financial constraints, political interference, prolonged hearing periods among others; this is what various research works have claimed.

Trendy upsurge and arising dilemmas.

Cyber offense: Authors have examined the barriers faced in pulling the criminals who are computer-based into justice under the international legal system concerning crime.

Global warming: Studies have researched on how warming affects global politics or policies for instance in ecocide.

Non-State players: Analysts have looked at non-state forces like international terrorist's groups and transnational mafia as perpetrating international crimes.

Methods of Approaching the Research

Doctrinal Examination: The legal frameworks and tenets controlling international criminal law have been studied by different scholars through doctrinal examination.

Empirical Investigations: In order to find out how often do most people do this or that thing, which types of crimes are most common and what are their effects, empirical investigations including case studies, statistics analysis and surveys have been used.

Interdisciplinary Research: To understand the historical, social and psychological aspects behind these crimes scholars have used an interdisciplinary approach.

Research Questions

- What philosophy governs international criminal law? In what ways does this philosophy shape its development and application?
- What is the connection between the international criminal law system and domestic ones?
- In what manner does international criminal law harmonize individual responsibility and state sovereignty?
- What difficulties could one encounter while attempting to prove such crimes especially when there is no conclusive evidence?
- How does command responsibility fit into international criminal law, and what does it mean for senior officials' prosecution?

Primary Methods

Doctrinal Analysis

Legal analysis: This involves studying the main sources of law such as treaties, conventions, and the case law in order to explain or implement legal principles and provisions.

Comparative analysis: This is where one looks at similarities and differences in various legal systems as well as approaches to international criminal justice. Theoretical analysis: Involves examining philosophical and theoretical foundations of international criminal law, e.g., theories of justice, accountability as well as human rights.

Empirical Research Case Studies: is an in-depth study of specific cases or events related to international crimes.

Statistical analysis: Refers to the use of quantitative methods in data analysis on international crimes such as victim numbers, perpetrator profiles and patterns of occurrence.

Survey research: is where data is collected through surveys or questionnaires to gather information about public opinion, expert views or experiences of victims and survivors in relation to ICC activities.

Interdisciplinary Research

Historical Analysis: Look into the historical context behind ICC activities and process that led up now.

Sociological Analysis: Examine social and cultural factors which contribute towards international crimes happening ever so often

Psychological Analysis: Investigate motivational factors associated with committing acts of violent and extreme criminality at an international level.

Qualitative Research

Interviews: Conducting interviews with professionals, casualties, survivors, and other concerned parties.

Focus groups: Gathering deeper information on certain topics linked to international criminal law via focus groups.

Ethnographic research: Carrying out field research in order to see and capture the experiences and views of those affected by international crimes.

Ethical Considerations

Respect for victims: This means ensuring that the research does not retraumatize victims or survivors of international crimes.

Confidentiality: Maintaining privacy of individuals involved in research.

Objectivity: This requires keeping objectivity without bias in research findings.

Predictive Policing

Predictive policing is a new area in international criminal law that offers both opportunities and challenges. For instance, the potential public good associated with data analytics, which can be used to predict future crime patterns and direct police resources more efficiently, remains largely unexplored. However, there are also major ethical concerns about privacy issues related to these technologies. To be successful in implementing predictive policing internationally, it would require cooperation between nations and development of standardised collection methods for data analysis. On the other hand, it will be important not only for compliance with international treaties on human rights but also for avoiding perpetuating existing inequalities or injustices in the process of using these techniques for policing purposes.

Research Objectives

Grasping the Pillars:

Evolution over the years: This part gives an overview on international criminal law from time immemorial to modernity.

Regulatory frameworks: Examine some of the key international treaties and conventions regulating international criminal law like the Rome Statute and Geneva Conventions.

Philosophical foundations: Discuss the moral and ethical principles that underpin international criminal law; for example, justice, accountability and human rights.

Investigating Chief Concepts:

Crimes against humanity: Discuss as well as evaluate distinct typologies of crimes against humanity such as genocide, war crimes or crimes against peace. Jurisdiction: Analyses the jurisdictional problems faced by international courts such as International Criminal Court (ICC).

Immunities: Consider immunity concept with respect to whether it can be removed or abandoned in relation to international criminal law.

The aim of this study is to provide a comprehensive understanding of the development of international criminal law by looking at its history, treaties and conventions, ethical principles and some related concepts. One way to do this would be through an examination of certain definitions of key terms within crime against humanity, jurisdiction or emphasis on immunity issues.

Finally, to gain fuller perspective on global justice mechanisms including grounds for bringing an individual to account for their actions during conflicts or wars requires delving deeper into difficult questions about how these mechanisms work concerning different cases; how they can initiate political

transition processes after major wars around world or why did not happen anything when some countries have experienced serious violations like genocides?

Appraising the Value of Global Criminal Justice:

Deterring: Investigate global criminal justice as an obstacle to forthcoming atrocities.

Responsiveness: Evaluate the level of success that global criminal justice has achieved in holding wrongdoers accountable.

The obstacles and constraints: Distinguish the major hindrances and limitations that international criminal law encounters such as enforcement issues, political interference and lack of resources.

Investigating Evolving Trends and Concerns:

The internet crime: Consider the challenges faced when prosecuting internet crimes using international criminal law.

Changing weather patterns: Examine how alterations in weather patterns may impact upon international criminal law with particular reference to the ecocide argument.

Non-State Players: Research into terrorist groups' involvement in transnational crimes which are regarded as crimes against humanity.

Comparative Analysis

Domestic criminal law: In what ways does international criminal law differ from and resemble systems of domestic criminal law?

Transgressions, whereas international criminal law deals with only those acts that threaten global peace and security, such as genocide, war crimes and crimes against humanity.

It is evident that international criminal law and domestic criminal law have similarities in their basis for punishing offenders but also differ widely in terms of the situation they apply to. International criminal justice system is a body of laws designed for prosecuting and punishing individuals for serious crimes with a trans-border character which include crimes against humanity, war crimes and genocide. The domestic criminal justice system on its side is the totality of laws which operate within a particular country defining what constitutes crime at the same time specifying penalties associated with commission of the offences (Hoffman, 2007). The two systems share some common grounds but differ in terms of various aspects as explained below. The first similarity between international criminal law and domestic criminal law is that both are based on certain legal principles such as legality, proportionality and culpability. Hence both systems aim at ensuring that individuals are punished for wrong doings (Hoffman, 2007). Secondly, the methods used to investigate crimes by these two systems are similar. For instance, they rely on gathering evidence from various sources including

interrogating witnesses and conducting forensic analysis. Moreover, procedural safeguards are established by both international criminal law and domestic criminal law so as to ensure that the rights of accused persons are not violated. In this context we take into consideration principles like right to a fair trial, presumption of innocence or even provision of legal representation when one is charged with a criminal offence.

As opposed to international crimes which concern international community as a whole hence transcending national boundaries; domestic criminal laws pertain only within specific nations (office for the prosecutor [of the international criminal court], 2015). Thus, national boundaries help define where domestic courts can operate while enabling study of how laws differ among countries depending on where the cases occur (Cryer, 2007). In addition, the focus of domestic criminal law is on individuals who are subjects of that particular nation or are residing within it (office of the prosecutor of the international criminal court, 2015). On the other hand, international criminal law applies to human beings who are not necessarily from any specific ethnicity or country. The crimes which fall under this jurisdiction include war crimes and crimes against humanity among others. Some offences against local law may differ from those under universal jurisdiction resulting in such actions being regarded as a violation of global morals.

Both international and national legislation on crime differ in terms of their applicability though they have similarities to some extent when it comes to theories on punishment. Thus, international law targets all states while ensuring that criminals can be tried regardless of where these activities happen unlike domestic laws which apply only within defined territories but also vary depending upon different nations at times.

Country Level: Home-grown criminal legislation is largely unveiled through respective state courts while international communities have well-defined bodies mandated to implement their own international criminal laws. The case in point is the International Criminal Court (ICC).

Power Application: At the most basic level, enforcement of national criminal laws is regulated at the level of national security organizations; whereas international criminal law may depend on persons from across national boundaries having power to enforce it or even some alternative modes of implementing such norms.

Regional courts: Describe how the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have contributed to the development of international criminal law.

Legal and Ethical Challenges in International Criminal Law Legal Problems

Jurisdictional Issues: The jurisdiction of international courts, like the International Criminal Court (ICC), is governed by the Rome Statute which requires state parties. As a result, these criminals may enjoy impunity in countries that are not part of this treaty; Immunities: It is hard to enforce international law against heads of state, diplomats, and military commanders because they have immunity from prosecution except under certain circumstances; Evidence: When there is a lot of shooting going on and many people may have been killed in the conflict zone where those crimes were committed, it will be difficult to gather evidence; Statute of Limitations: The statute of limitations could make prosecution difficult especially for cases that happened many years ago; National Sovereignty: While balancing international justice with national sovereignty can be sensitive. Some nations may resist the ICC's authority or prefer not to prosecute their citizens.

Moral dilemmas

Victims' rights: an important ethical issue is to ensure the rights of all victims of international crimes. It includes reparations, access to justice and protection from further offenses.

Cultural Sensitivity: Different cultures should be taken into account while making international criminal law. One ought not to impose Western Legal concepts on Non-Western societies.

Bias: There exists a possibility for bias during international criminal trials especially in cases that involve powerful nations or groups.

Prison and rehabilitation: To minimize recidivism and guarantee public security, it is important that people found guilty of international crimes are effectively imprisoned and rehabilitated.

The International Criminal Court (ICC) also faces some ethical challenges in its quest for justice.

Key Findings

Jurisdictions that are limited: The ambit of the ICC extends only to those countries that have ratified the Rome Statute, as well as crimes committed on the territory of these

countries or these countries' citizens' perpetrated crimes. This can result in those who perpetrate crimes not facing justice in countries which are not parties.

Obstacles in evidence gathering: This is due to episode of war-torn states' conditions which are often insecure, witness' reluctance to testify due to fear, and destruction of evidences encountered there.

National sovereignty versus international justice: National sovereignty versus international justice emerges in a recurrent form within international criminal law. Some countries could defy ICC command or demand their citizens be exempted from prosecution.

Victim participation importance: There exists a vital function performed by victims of international offences during legal proceedings or judicature process. Their involvement with probes and trials helps make surrealistic some realities faced by people who suffered through them.

Need for global cooperation: The successful administration of global penal legislation necessitates active collaboration between nations, supranational agencies, and civic organizations.

Ethics considerations: For instance, making use of global penal laws raises ethical issues including biases possibilities; the safeguarding of injured party's memorial rights; and the appropriateness of consolidating proceedings in absentia etcetera. This is an instance of ethical challenges faced by international criminal court (ICC) in serving its quest for justice.

Conclusion

International criminal law has turned out to be a significant instrument in dealing with the most serious crimes against humanity. Numerous international institutions and legal frameworks for their establishment have emerged, however remaining challenges include issues of jurisdiction, enforcement and protection of victim's rights.

One such thing is ICC which holds individuals responsible for such crimes yet it is limited in terms of jurisdiction and political factors may reduce its effectiveness. Additionally, another problem arises during evidence collection process because war zones are unstable therefore some evidence may go missing forever.

Another aspect of this is balancing between the international justice system and state sovereignty, since some states may not recognize the authority of ICC or even some of their citizens may be exempted from prosecution. Nevertheless, global crimes can only be solved through international cooperation.

In light of this, the international community should fortify its legal framework, build on the capacity of international institutions and see to it that justice is dispensed and victims of international criminal activities compensated. Only by doing so can human rights and justice be upheld globally.

FATHER'S MATTER TOO:
EXPLORING THE IMPACT OF PATERNITY LEAVE POLICIES

Sahil Arora*

Introduction

A very strong yet undiscussed dialogue was there in the movie '3 Idiots,' in which Aamir Khan, a.k.a. Rancho, said, *'Ye engineers badhe chalaak hote hai, aaisi koi machine he nhi banai jo yaha (dimaag) ka pressure naap ske (Engineers are a clever bunch; they haven't made a machine to measure the mental pressure)'.* This dialogue was made in reference to a scene where a college student committed suicide because he was not able to deal with the mental pressure and stress put on him. Now, keeping the movie aside, if a common man is asked to remember when was the last time he did meditation, or forget about meditation, when was the last time he gave his mind a break and did not perform any task and just relaxed by closing his eyes, most probably he will have no answer to this. For most of us, it might seem impossible to take some time for ourselves from our so-called busy schedule and take care of our body and mind. This is the place where the importance of leave comes into play.

Now let's enlarge this picture with the help of a few statistics. According to the World Bank, in the year 2022, the worldwide female labour force participation rate stands slightly above 50 per cent, while men have a participation rate of around 80 per cent. And in India, sadly, this labour force participation gap between both genders is 57 percentage points[1]. Looking at other statistics, a blog which was published in the year 2023 on the IMF says that while 72 per cent of men are engaged in today's labour markets, only 47 per cent of women are actively participating in them[2]. And in the same year, the participation at work for men in India stood

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[1] *Female labor force participation*, WORLD BANK GENDER DATA PORTAL (Feb. 3, 2024, 10:18 PM), https://genderdata.worldbank.org/data-stories/flfp-data-story/#:~:text=The%20global%20labor%20force%20participation,business%20expansion%20or%20career%20progression.

[2] Antoinette M. Sayed, Alejandro Badel, Rishi Goyal, *Countries That Close Gender Gaps See Substantial Growth Returns*, IMF (Feb. 3, 2024, 10:21 PM), https://www.imf.org/en/Blogs/Articles/2023/09/27/countries-that-close-gender-gaps-see-substantial-growth returns#:~:text=Only%2047%20percent%20of%20women,decades%20and%20remains%20unacceptably%20wide.

at 67 percent; meanwhile, the participation at work for women declined from around 36 per cent in 2021 to slightly over 33 per cent in both 2022 and 2023[3].

Now analysing this data presents two things, one which is the standpoint of majority of people that the participation of women is less as compared to men in the paid work, and that is a thing to worry for the people who consider doing paid work only as real work. This is the sad reality of today because whenever any workforce data is collected, only the paid work is calculated, and it's not their fault either because it is much more difficult to calculate the unpaid work, especially when it comes to calculating in monetary terms, and moreover, society also prefers to give respect to the one who performs any kind of paid work. Coming to the second point, this tells that males are more involved in the paid workforce. Now by interpreting this line, it will not be wrong to say that males, because of spending more time at work, are not able to spend much time with their families, even at the time of the birth of their child, without taking an unofficial leave. This is an unfortunate thing, which will be discussed in this article in detail below.

Why is There a Need for Leave?

Today, an average person prefers to go to the gym to maintain his body, which is no doubt a good thing, and as per a survey, around 60 per cent of Indians spend their 4 hours a week on their fitness, most of which is done in the gym. And if calculated in monetary terms, around Rs. 20,000 is spent annually on a gym membership in metropolitan cities[4]. From these numbers, it might seem that we humans are giving at least something, if not nothing, beneficial to our body, but the unfortunate thing is that these numbers are not even close to the time we give to our mind.

In our daily routine, if a person wants to take a break from his work due to any personal reason, it will not be easy for him to do so. It usually becomes more difficult when someone is employed under someone else, as his employer will initially not allow him to take an off from his work because he might think that this would lead to pendency of work, and even if he allows him to take an off, he puts a condition that some amount will be deducted from his salary or

[3] Manya Rathore, *India: share of work participation by gender 2023*, STATISTA (Feb. 3, 2024, 10:25 PM), https://www.statista.com/statistics/1043300/india-work-participation-by-gender/.
[4] *How Much Do Indian Spend on Fitness on Average?*, ADITYA BIRLA CAPITAL (Feb. 3, 2024, 10:33 PM), https://www.adityabirlacapital.com/abc-of-money/how-much-does-the-average-individual-spend-on-fitness-in-india.

other benefits. And from the above statistics, it will not be wrong to say that this happens mostly with males, and moreover, for women's, there are already some legal provisions like 'The Maternity Benefit Act of 1961'[5] which was amended in the year 2017[6]. Now because there is no such provision at the central level for every organisation, this acts as a trap, and the person in most cases himself denies taking an off. But if, in the same situation, there comes a law that allows the male employees to take an off for a certain period of time or day without any deduction in their pay, they would then try to fulfil their other commitments too.

Types of Leaves

For different people, at different stages or phases of life, different types of leaves can be provided so that they can ease their lives and maintain a balance between their personal and professional lives. Some of these leaves are already regulated by law; a few of them are in the stage of discussion about whether they should be implemented or not; and a few of them are such that they are unfortunately not getting attention nowadays. A brief list of these leaves is mentioned below:

1. Paternity Leave
2. Maternity Leave
3. Menstrual Leave
4. Leave for Trans People
5. Leave for Children

Of course, this is not an exhaustive list, and many more leaves, like sick leave, earned leave, bereavement leave, etc., are there which are important and cannot be denied to the deserving ones. But this piece of work will mainly focus on paternity leave, which, among some other leaves, is not discussed much in society and/or is not regulated by a central law.

What is Paternity Leave and Why is it so Important?

According to the Merriam-Webster dictionary, the term paternity leave means '*time off from a job given to a father after a child is born*'[7].

[5] The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).
[6] The Maternity Benefit (Amendment) Act, 2017, No. 6, Acts of Parliament, 2017 (India).
[7] MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/paternity%20leave (Feb. 3, 2024, 10:46 PM).

In simple terms, following the birth of a child, a new father is granted a period of time, commonly known as paternity leave, to stay at home from work. This leave can either be offered by the employer or required by the state or federal government.

The importance of paternity leave can be ascertained from the fact that the Madras High Court has said that '*refusing paternity leave to a father violates a child's right to life under Article 21*[8] *of the Indian Constitution*[9,10]. Also, the State of the World's Fathers 2019 Report revealed that an astonishing 85 per cent of fathers express a robust aspiration to be fully engaged in the care of their newborn. However, the report also reveals a significant disparity in the actual level of involvement compared to mothers, as fathers assume significantly less responsibility[11]. Women are given leave, but not men, so is this not discriminatory? Another report published by ILO (International Labour Organisation) in 2014 titled 'Maternity and paternity at work'[12] also mentions that '*research suggests that fathers' leave, men's take-up of family responsibilities and child development are related. Fathers who take leave, especially those taking two weeks or more immediately after childbirth, are more likely to be involved with their children young (Huerta et al., 2013). This is likely to have positive effects for gender equality in the home, which is the foundation of gender*' *(page 52 of Report)*. The same report also says that out of 167 countries in the world whose data is available as of 2013, only 79 countries have national legislation with regard to paternity leave. This number might seem great but unfortunately only 3 per cent of these provide paternity leave for more than 16 days or more, and many countries (21 per cent) provide leave for only 1-6 days. And this is in no sense justified in any way.

From these statements, it can be ascertained that providing paternity leave will be beneficial not only for the fathers but also for the children born or adopted, as well as for the mother and the place of work of the father. These benefits are discussed in detail below:

I. Benefits to the Father

[8] INDIA CONST. art. 21.
[9] INDIA CONST.
[10] Sparsh Upadhyay, *'Refusing Paternity Leave To Father Violates Child's Right To Life U/Article 21':Madras HC, Says India Needs A Law On This Subject*, LIVE LAW (Feb. 4, 2024, 1:46 PM), https://www.livelaw.in/high-court/madras-high-court/madras-high-court-refusing-paternity-leave-father-violates-child-right-life-article-21-need-law-india-235738?s=08.
[11] *State of the World's Fathers 2019 Report Finds That 85 Percent of Fathers Say They Would Do Anything To Be Very Involved in Caring for Their New Child but Are Still Taking on Far Less Than Mothers*, MENCARE (Feb. 4, 2024, 1:52 PM), https://men-care.org/2019/06/05/state-of-the-worlds-fathers-2019-report-launch/.
[12] *Maternity and paternity at work*, International Labour Organization (Feb. 4, 2024, 1:58 PM), https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_242615.pdf.

- Around 320 million men will be benefitted if the 'Paternity Benefit Bill, 2017[13]' gets implemented, and this paternity leave benefit will then extend to all natural parents, adoptive parents, as well as individuals acting as caregivers to children[14].
- Providing paternity leave will give the father an opportunity to spend some time with her partner during her crucial days. Their relationship will get stronger, and they could both experience the joy of those moments without worrying about work because it would be a paid leave.
- Not only with their partner, but the father-child bond will also become stronger as they both will get to spend significant time with each other. This will also help the father with mental relaxation, as it is no hidden fact that spending time with the family helps getting a piece of mind, no matter whether any study proven this or not.
- The problem told in the 'World's Fathers Report' regarding dissatisfaction will be solved to some extend as, through this leave, the fathers will get time to enjoy that time. Thus, their regret over not being able to spend much time with their family and children will also be reduced significantly.

II. Benefits to the Mother

- As the trend towards nuclear families is on the rise, thus, most of the time there is no elder to handle and support the pregnant-mother. Thus, during the time of pregnancy and childbirth, the husband, if provided with leave, would be in a much better position to support his wife in many aspects, like emotional support, hospital travel convenience, the postpartum period, etc. Not only that, if provided a sufficient period of leave, the father will also be able to take care of the child, and this will provide more rest to the mother, leading to a speedy recovery of her health after the child's birth.
- In the absence of the father, the mother will have to handle the household work, making it riskier for the child in the womb as well as for the mother itself because even a little mishap during such a crucial period can have complexities in later stages.
- A major issue which is often discussed whenever policies related to maternity leave or menstrual leave are discussed is that this might lead to lower chances of women getting

[13] The Paternity Benefit Bill, 2017, No. 90, Acts of Parliament, 2017 (India).
[14] Sonal Verma and Deonn Nash Lobo, *Analysis Of Paternity Leave In Modern India And Beyond – Employee Rights/ Labour Relations – Worldwide*, MONDAQ (Feb. 4, 2024, 2:06 PM), https://www.mondaq.com/india/employee-rights-labour-relations/1403798/analysis-of-paternity-leave-in-modern-india-and-beyond#:~:text=The%20primary%20objective%20of%20the,those%20in%20the%20unorganized%20sector.

employment in the outside world because they will spend comparatively less time in their work but still have to be paid the required remuneration, and thus it would be better to employ fewer women's. But if the concept of paternity benefit leave is also introduced, then this might slowly become a normal thing to take leave for necessary situations, like childbirth, because if both genders are given same benefits, the employer will then have no other reason to discriminate against one gender and not the other. Another thing which would benefit women's lives will be that they would not have to be in a dilemma to choose between their job and household, which could then lead to an increase in their proportion of the workforce.

III. Benefits to the Children

- One of the factors which helps in the development of a child's brain growth in the early stages of his life is his interaction with his parents[15]. Home is the place where the child starts learning the basics of everything, which lays the foundation for wholesome connections and emotional stamina in the future.
- The paternity leave will give the child a stronger bond with their father, and the more time they get to spend with each other, the more they will get to know each other, leading them to respect each other's choices and decisions in the long-term.

IV. Benefits to the organisation

- The efficiency of any person in his professional life is somewhat directly related to his satisfaction and fulfilment in his personal life. So, a happy man will definitely be more productive in his work as compared to a man who, although physically present in the office for work, is struck in the memories of his new-born child. Thus, it would be better for the organisation where the father is working to provide him with sufficient paternity leave so that he can maintain a proper balance between his family and work, leading to no loss in any aspect.

V. General Benefits

- As discussed above, by providing paternity leave to the father's, it will start normalising the trend for both genders to take a certain period of time off from their work and

[15] *The Impact of Parent-Child Interaction on Brain Structures: Cross-sectional and Longitudinal Analyses*, NATIONAL LIBRARY OF MEDICINE (Feb. 4, 2024, 2:10 PM), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6705349/.

contribute that time for the family. This will have chances to formulate a more gender-equal society where not only the mother but also the father will learn how to take care of the child and perform the necessary stuff during the early stages of the child, such as feeding, diaper changing, making him fall asleep, etc. This gender equality will have a long-term impact on their relationship because it will make both partners realize the value of each other.

- The contribution made by the father to household chores will help to break the age-old stereotype that only women's are responsible for taking care of the child and doing housework, and men's are the breadwinners of the family and they have to work outside the house to support their family. These leaves could give the partners an opportunity to switch their roles, which have been followed for a long time, providing them with the option to choose both the job as well as family at their leisure.
- As the trend towards nuclear families is increasing, the thing which is an option today, paternity leave, would become the necessity tomorrow. Women can take maternity leave without much worry because of the present provisions in the law, giving her time to have the necessary and required rest, and the father would take leave to take care of his wife during such a crucial time. It is the truth of tomorrow, and we have to make ourselves ready before it gets too late. It would be a situation like '*prevention is better than cure'*.

Current Status of Paternity Leave

- *International scenario*
    1. According to some estimates, around 63 per cent of the countries worldwide offer 'paid' paternity leave, and India is included in this list. But around 90 countries are still there which do not offer 'paid' paternity leave time at all, including the United States[16].
    2. Sweden is the first country in the entire world to introduce paternity leave so that both parents could enjoy the right to paid parental leave.
    3. Because of the lack of a proper law for paternity leave in many countries, the private sector, which recognizes the importance of it, decided to give it to their employees.

[16] Emily Peck, *Majority of countries guarantee paid paternity leave- but not the U.S.*, AXIOS MARKETS (Feb. 4, 2024, 2:14 PM), https://www.axios.com/2023/02/28/majority-of-countries-guarantee-paid-paternity-leave-but-not-the-us.

For instance, Amazon gives paternity leave for 6 weeks[17]; Zomato for 26 weeks[18]; Starbucks for 12 weeks[19]; Spotify for 6 months[20]; and many more such companies prefer to give their employees a decent time to spend with their families.

4. UNICEF also becomes the first United Nations agency to provide paternity leave across all of its offices worldwide, and that too for 16 weeks[21].

- *Indian Scenario*

1. As per UNICEF, India is among the ninety-two countries in the world that lack national policies to guarantee new fathers sufficient paid time off to spend with their newborn babies[22].
2. During the discussion for the amendment of the Maternity Benefit Act in the year 2016-17, the lawmakers also did a thorough discussion for bringing legislation for fathers through the law to be called the 'Paternity Benefit Bill, 2017', through a private member bill. A point to be noted is that the leave provided under this law is paid leave, and if the employer fails to pay the amount of paternity benefit, he can be made liable for the same. And cognizance for any offence can be taken by a court not inferior to that of the Metropolitan Magistrate or a JMIC.

   This law applies to a man, whether he is self-employed or working in an unorganized sector, which can help to reach a wider audience.

   According to Section 4 of this Bill, a man with less than two surviving children can take a maximum of 15 days of paternity leave, and this leave can be requested within three months, starting from the date when the child is born. This law applies equally to the children born naturally as well as those adopted. Another condition to avail

[17] *Benefits Overview for U.S. Amazon Employees excluding Hawaii*, AMAZON.JOBS (Feb. 4, 2024, 2:16 PM), https://www.amazon.jobs/en/landing_pages/benefitsoverview-us#:~:text=Six%20weeks%20of%20paid%20leave,manager%20to%20take%20Parental%20Leave.
[18] *All Zomato employees to get 26 weeks parental leave*, MONEYCONTROL (Feb. 4, 2024, 2:21 PM), https://www.moneycontrol.com/news/business/companies/all-zomato-employees-to-get-26-weeks-parental-leave-4059741.html/amp.
[19] *Starbucks and Other Companies Provide Paid Parental Leave*, STEPHEN KOPPEKIN (Feb. 4, 2024, 2:23 PM),https://stephenkoppekin.net/starbucks-and-other-companies-provide-paid-parental-leave/#:~:text=Birth%20mothers%20who%20are%20district,twelve%20weeks%20of%20unpaid%20leave.
[20] Michael Kim, *Parental Leave Is Not A Vacation, But It Is A Blessing*, HR BLOG (Feb. 4, 2024, 2:25 PM), https://hrblog.spotify.com/2023/11/22/parental-leave-is-not-a-vacation-but-it-is-a-blessing-strong/#:~:text=When%20it%20comes%20to%20parental,with%20their%20new%20family%20member.
[21] *2 in 3 infants live in countries where dads are not entitled to a single day of paid paternity leave – UNICEF*, UNICEF (Feb. 4, 2024, 2:29 PM), https://www.unicef.org/press-releases/2-3-infants-live-countries-where-dads-are-not-entitled-single-day-paid-paternity#:~:text=Earlier%20this%20year%2C%20UNICEF%20modernized,beyond%20the%20standard%20four%20weeks.
[22] Ibid.

of this leave is that he should have been actively employed in the employer's establishment for a minimum duration of eighty days within the twelve months directly preceding the anticipated delivery date of their legally wedded wife or commissioning mother.

Section 5 of the said Bill also provides for the formulation of a 'Parental Benefit Scheme' by the Central Government for providing paternity benefits to every man. But unfortunately, till date, this Bill didn't get passed by the Houses of Parliament, and thus, as of now, there's no central legislation in this matter in India.

3. Currently, because of the absence of a central legislation which is applicable to all sorts of employment with regard to paternity leave, some states have come up with their own schemes in this regard. Also, public health being under the State List (item 6) and family planning being under the Concurrent List (item 20A) of the 7th schedule of the Indian Constitution, the state has an equal right to make such schemes, and Sikkim has taken a progressive step in this regard by providing a period of one-month as paternity leave to the males to support their spouses during their childbirth and in early childcare[23]. Earlier, in 2016, the West Bengal government also allowed paternity-cum-child care leave to its male employees for a period of 30 days[24].
4. After the announcement of such news, an important announcement was made in the Lok Sabha that the single male government employees and females will be granted 730 days of Child Care Leave (CCL)[25] under 'Rule 43-C' of the 'Central Civil Services (Leave) Rules, 1972'[26].
5. Apart from the above laws, 'Rule 43-A and Rule 43-AA' of the same 'Central Civil Services (Leave) Rules, 1972'[27] provide for paternity leave for childbirth and valid adoption, respectively. As per these provisions, a male government servant will

[23] *Pre-poll sops: Sikkim Govt to grant 1-year maternity, 1-month paternity leave to its employees*, NORTHEAST LIVE (Feb. 4, 2024, 2:38 PM), https://northeastlivetv.com/topnews/pre-poll-sops-sikkim-govt-to-grant-1-year-maternity-1-month-paternity-leave-to-its-employees/.

[24] *Mamata allows child care leave to male Govt employees*, BUSINESS STANDARD (Feb. 4, 2024, 2:40 PM), https://www.business-standard.com/article/pti-stories/mamata-allows-child-care-leave-to-male-govt-employees-116021701082_1.html.

[25] *Female, single male govt employees eligible for 730 days of child care leave: Centre in Lok Sabha*, THE HINDU (Feb. 4, 2024, 2:42 PM), https://www.thehindu.com/news/national/female-single-male-govt-employees-eligible-for-730-days-of-child-care-leave-centre-in-lok-sabha/article67175795.ece.

[26] Central Civil Services (Leave) Rules, 1972, § 43-C, Page 36 of Rules, https://ccrtindia.gov.in/wp-content/uploads/2023/06/CCS-Leave-Rules.pdf.

[27] Central Civil Services (Leave) Rules, 1972, § 43-A and 43-AA, Page 34 and 35 of Rules, https://ccrtindia.gov.in/wp-content/uploads/2023/06/CCS-Leave-Rules.pdf.

only be given a leave for a period of 15 days, and this leave will be a paid leave of salary equal to the pay drawn immediately before proceeding on leave.

6. Similar paid leave is provided under Sections 551(A), 551(B) and 551(D) of the 'Indian Railway Establishment Code, sixth edition- 2020'[28] to male railway employees or servants for a period of 15 days.

Problems with Grant of Paternity Leave

1. Our Indian Constitution, which on one hand talks about equality through Articles 14 to 18, also discriminates through Article 42[29], which comes under the Directive Principles of State Policy (D.P.S.P.), on the other hand by making it the responsibility of the State to ensure just and humane working conditions and maternity relief only. Nowhere does our Constitution talks about the paternity leave or relief, because of which no much special emphasis has been made on this till date.
2. Another reason why paternity leave is not preferred much, especially by employers, is that, according to them, giving paid leave to their employees will hamper or lower productivity at the workplace. This could increase the burden on the rest of the staff and can also increase the financial burden on his shoulders because he has to pay even when the employee is not working. This prevents male employees from spending much time with their newborn children and taking care of their spouses.
3. Because of the lack of a nation-wide policy for paternity leave which is applicable to all sectors equally, the employees (fathers) have to remain at the mercy of their employers for any leave. This gives the employer a chance to harass its employees as in exchange of the leave, he may give them extra work to do, and may not pay them for that work either.
4. The stigma in our minds also prevents us from accepting the fact that males can also take care of the house and newborn child while the wife takes rest, or goes to work, leaving the child with her husband. The conventional roles that only wives will take care of children and houses and men will earn and work outside the house have made us far from giving these kinds of benefits to men. Because of such a mindset in society and the workplace, even if paternity leave is provided to an employee, it is observed

[28] Indian Railway Establishment Code Sixth Edition- 2020, § 551(A), 551(B), 551 (D), Acts of Parliament, 2020 (India), https://www.irtsa.net/pdfdocs/Draft-of-Revised-Indian-Railway-Establishment-Code.pdf.
[29] INDIA CONST. art. 42.

that they are sometimes hesitant to take it, thinking that it would make them seen as less masculine in the eyes of others.

Solutions

1. The first step which can be taken by an amendment to the law is to add the provision of 'paternity benefit or leave or relief' so that the lawmakers focus more on this topic also along with maternity benefit. This seems to be a small step, but as our Constitution is considered the 'Grundnorm', so, in future, if any law regarding this came into discussion, at least it would not be rejected only on the ground that, as there is no such concept in our Constitution, it could not be brought into reality.
2. The tension of the employer regarding financial burden can be relieved by establishing a fund for such leave purposes, such as the 'Parental Scheme Benefit Fund', in which both the employer and employee, and also the government in some cases, will contribute a significant portion as per already decided terms so that the burden does not fall on any one person's shoulders. This mixed model of working towards the sources of funds is prevalent in Singapore and South Africa already. Apart from this, to promote the idea of paternity leave, the government can provide certain tax exemptions or give some incentives to the establishments which provide paternity benefits to their employees. This will encourage the employer and give him sufficient reasons to provide such benefits to its male employees.
3. The enactment of the Paternity Benefit Bill will also help to solve a major chunk of problems as then this would work as an obligation to provide such a benefit. Certain points to be kept in mind while implementing this Bill are that it should be applied in every sector of work and to every eligible employee, whether he is in the organized or unorganized sector, public or private sector, or the government. And after its implementation, proper monitoring mechanisms should be made, which will ensure that there is compliance with the provisions of the law and that establishments are strictly adhering to the conditions of the law.
4. Spreading awareness at school level can also play a significant role, as this will help to normalize such benefits as they grow up. This could help to break the traditional illogical stereotypes and ensure a healthy life for everyone- husband, wife and newborn child.

5. At last, one thing which is to be made clear is that such benefits or leave are not to be given as any mercy or favour; they are to be given by properly explaining its need so that everywhere an environment of support is created rather than that of helplessness.

Landmark Case Laws:

1. *Chander Mohan Jain v. N.K. Bagrodia Public School & Ors. (2009)*[30]
   In this case, the court ruled that all the male employees from unaided recognized private schools are entitled to paternity leave as they fall under the control of the Director of Education as per DSEAR, 1973[31]. Thus, the rules in regard to paternity leave of the Central Civil Services (Leave) Rules, 1972 will be applicable to them.
2. *B. Saravanan v. The State of Tamil Nadu & Ors. (2023)*[32]
   In this case, an Inspector of Police was ordered to be reinstated on his duty when he was punished for taking an unauthorized leave to attend to his wife's delivery of their IVF child. The court's verdict emphasizes the importance of a father's presence during the early stages of a child's life and proposes that paternity leave should be acknowledged as a right in the context of the child's welfare and family support. Although this case does not establish a universal law for paternity leave, but it could certainly impact future legal considerations and policies.
3. *Rama Pandey v. Union of India & Ors. (2015)*[33]
   This case acknowledges the importance of paternity leave in various situations, including child adoption, and underscores the significance of granting this benefit to male employees. The paternity leave may be taken together with any other type of leave and will not be deducted from the leave account.

Conclusion

Though men may be acknowledged and valued for their contributions at work, their contributions as fathers and providers of care are frequently overlooked. The need of the hour is the implementation of a proper paternity benefit law which would be applicable throughout the borders of the territory, irrespective of the kind and place of work. Our top priority is our family as we strongly believe in their importance. By offering support, we can initiate a new

[30] Chander Mohan Jain v. N.K. Bagrodia Public School & Ors., WP (C) No. 8104/2009.
[31] The Delhi School Education Act, 1973, No. 18, Acts of Delhi State Legislature, 1973 (India).
[32] B. Saravanan v. The State of Tamil Nadu, W.P.(MD). No. 19561/2023.
[33] Rama Pandey v. Union of India, (2015) WP (C) No. 844/2014.

beginning rather than an end. Additionally, it would help to extend assistance to other individuals or groups in need, such as those belonging to the LGBTQ+ community.

The work will not end by just implementing the laws or schemes, because despite the implementation of supportive laws, their effect may be diminished if the overall environment does not undergo the necessary changes. Some people will struggle to recognize the direct benefits from these leaves and laws, while others may view them as obstacles to their professional advancement, resulting in a lack of preference or support. And this would be because of the absence of prominent role models, but luckily the situation is changing, and it is seen that many popular celebrities are openly talking and taking paternity leave, like Virat Kohli. So, moving step by step, we can surely achieve the desired results and ensure that fathers have the opportunity to be fully present in their children's lives from the very beginning.

NAVIGATING THE DOMESTIC LEGAL FRAMEWORK: INDIA'S IMPLEMENTATION OF BIT AWARDS

Saumya Raj *

Introduction

Bilateral Investment Treaties (BITs) are now considered essential tools in facilitating international commercial arbitration. By promoting the economic spread of the country, it has become a necessary element of India. International investment in India is largely secured and encouraged through BITs. International trade arbitration and dispute resolution are the two key features of BITs. When it comes to resolving disputes yield from bilateral investment treaties, international arbitration is crucial.[1] Among these conditions are limitations on the host state's ability to expropriate the investment, as well as a requirement that the host state treat foreign investment equally and without prejudice, subject to conditions agreed to by both countries, including repatriation of profits. International trade dispute resolution is mainly aimed with the autonomous resolution of conflicts arising between foreign states and hosts. The process in question is called the Investor-State Dispute Settlement Mechanism (ISDSM), or Investment Treaty Arbitration (ITA).[2]

Overview of Bilateral Investment Treaties (BITs):

The terms and conditions of private investments made by individuals and business entities from one sovereign state into another sovereign state are set out in bilateral investment treaties, or BITs. BITs are often negotiated by contracting governments as an ingredient of a wider trade deal. Investors of a contracting state are given certain guarantees by BITs, including free transfer of cash, safeguard from expropriation and fair and equitable treatment.[3]Ahead, they offer investors the option of settling issues with the host state through arbitration, often operated under the auspices of ICSID.[4]

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[1]*Exploring the Challenges for Bilateral Investment Treaty Disputes*, (Oct. 3, 2023), https://jindalforinteconlaws.in/2023/10/03/challenges-for-bilateral-investment-treaty-disputes/.

[2]DOLZER & SCHREUER, *supra note* 1.

[3]*Bilateral Investment Treaties (BITs)*, Guides at Georgetown Law Library https://guides.ll.georgetown.edu/c.php?g=371540&p=4187393.

[4] Prabhash Ranjan, *Indian Courts and Bilateral Investment Treaty Arbitration*, 2 Indian Law Reviews 199-220. (2020).

Evolution of India's bit regime

A legally binding treaty known as a bilateral investment treaty (BIT) is intended to safeguard investments made in a target country by investors from two or more sovereign states. To promote, identify and maximize foreign investment, India and the UK signed the first Bilateral Investment Treaty (BIT) in 1994. The Indian Model BIT of 2003 and the India- UK BIT of 1994 were very identical, with the latter placing greater emphasis. On the safeguard of foreign investors compared to the state regulatory authority. It was this model BIT that attracted investors and laid the groundwork for India's subsequent BIT agreements.[5] To identify and compensate investors for their efforts, the 2003 Model BIT fixed that investments and returns should be treated fairly and equally in the jurisdiction of the other contracting party. In addition, it contained clauses that ensured independent assessment of the value of investments or court review. Of the many BITs that India signed, seventy-two came into force before 2011. The only instance in which BITs were used against an Indian party was an out-of-court settlement, which resulted in no award. International arbitration this happened in 2011. BITs can be seen as an international corporate governance regulatory framework that balances the interests of industrialized and developing countries.[6]

Background

A main reason in India's economic progress and advancement path is foreign direct investment or FDI. India's huge market potential, highly qualified labour force and expanding customer base have made it a desirable destination for international investors looking for profitable opportunities in several industries. Bilateral investment treaties (BITs), which serve as legal instruments to bestow safeguards and guarantees to foreign investors, are compulsory to India's view to attracting and retaining foreign investment.[7]

A. *Overview of Bilateral Investment Treaties (BITs):*

[5] Hanno Wehland, 'Domestic Courts and Investment Treaty Tribunals: The Effect of Local Recourse Against Administrative Measures on the Breach of Investment Protection Standards') 36 (2 207–229) JIL (2019)
[6] *Ibid*
[7] A. Sarvanan and S.R. Subramanian, '*Role of Domestic Courts in Investor-State Dispute Settlement Process: The Case of South Asian BITs'*20(2), International Arbitration Law Review 42-54 (2017).

Two nations can encourage and safeguard foreign private investment in each other's territory by mutually agreeing on BITs. BITs set minimum norms for how foreign investment will be handled between two countries. These norms involve national treatment, which means that foreign investors will be treated the same as domestic companies, fair and equitable treatment in compliance with international law, and safety from expropriation, which permit foreign investments operating on each country's own soil, restricts the ability to seize.[8] By guaranteeing foreign investors how to handle their interests, bilateral investment treatise's (BITs) goal is to bestow a stable and predictable investment environment. BITs are designed to slacken investment risks and encourage cross- border capital flows by clearly defining rules and responsibilities for both investors and host states. Ahead, arbitration clauses in BITs enable investors to pursue remedies when the host state is accused of infringing treaty terms. India has signed BITs with various countries around the world as part of a larger plan to attract foreign capital and pursue economic cooperation. The global progress rate of foreign direct investment is still very fast. Albeit, various international agreements, called as bilateral investment treaties or BITs, bestows crucial legal safeguard that various multinational corporations making investments may not be aware of. More than 150 countries have signed one or more investment agreements. BITs give investors a strong private right of action against the host government if it fails to perform its obligations, in addition to needed host countries to bestow certain protections for foreign investments.[9]

B. Evolution of India's BIT Regime:

Since liberalization of foreign investment in 1991, India has entered into 74 BITs. Anyway, India faced various investor-state disputes, chief among them being the White Industries case, in which India was ordered to pay US$1.07 million in fees and damages by ISDS arbitration. Between 2011 and 2015, only one BIT and one IIA were signed by India with the United Arab Emirates (UAE) and ASEAN, respectively. The above change occurred after the launch of the updated Indian Model-BIT in 2015, which was favoured by the regulator. Host country authorities draw on the extensive substantive security bestows for investors by the previous 2003 Model-BIT. More than 68 states have announced that they want to renegotiate new BITs under the Indian Model-BIT, but only eight IIAs have objected to the unilateral termination of

[8] Alan Redfern, REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION (5th ed., New York: OUP 2009).
[9] *Supra* 7

77 BITs by India since 2016. India signed only five BITs under the new model—with Belarus, Taiwan, Kyrgyzstan, Brazil, and, most recently, the United Arab Emirates—but it signed others like Bangladesh and Colombia to fill any interpretive gaps in existing BITs also issued joint declarations with governments.[10]

The first investor-state dispute against India was resolved through a settlement in 2010. Subsequently, the India-Australia BIT witnessed its inaugural unfavourable decision in the case of "*White Industries* v. *Republic of India"* in 2011. These incidents drew attention to the BIT regime in India. Due to this, BIT cases started coming up against India. As of 2015 there were approximately 17 known BIT claims; India was disputing every one of them. There were calls to limit investor-state dispute settlement (ISDS) due to growing national concern over the increase in BIT arbitrations against India. India reviewed its BIT framework from 2012 to 2016, which yielded two major outcomes.[11]In December 2015, a new model BIT was adopted with the dual goals of providing "appropriate protection to foreign investors in India while maintaining a balance between the rights of investors and the obligations of the Government". The second option was to either terminate the previous BITs when their initial period expired or issue Joint Explanatory Notes/Statements (JIS) for renegotiation based on the Model BIT when the initial period of the BITs was still valid. India has entered into several "new generation BITs", such as with Belarus, Brazil, Taiwan and Kyrgyzstan, all of which are primarily based on Model BITs, and has ratified 77 BITs since 2016. The most recent to be cancelled was the Latvia BIT.[12] The above actions are indicative of India's efforts to achieve a balance between attracting global investment and maintaining its regulatory independence in areas of public concern. In conclusion, India's evolving BIT regime reflects changing strategic purpose, regulatory concerns and economic priorities. Albeit India's investment policy framework still includes BITs, the country's strategy for negotiating and executing these agreements has changed in response to domestic needs finally; the architects of the Model BIT did not support any of the above dramatic options. Finding a middle ground between the competing interests of investors in safeguarding their investments and the rights of governments to govern in the public good may be the best way to describe the drafting process. The continued existence and

[10] R. Dolzer, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW (2nd ed., OUP 2012)
[11]Prabhash Ranjan and Deepak Raju, 'The Enigma of Enforceability of Investment Treaty Arbitration Awards in India' 6 Asian Journal of Comparative Law (2011)
[12] SK Kapoor, *Investment Treaty Arbitration: India*, Global Arbitration Review https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/india.

continued status of the ISDS system as an effective tool for protecting foreign investors is the clearest example of this difficult balancing effort.[13]

C. Judicial review of bit awards in India

Of course, Indian courts have already come under fire for inferring too much in arbitral awards. However, legislation and court decisions have resulted in improvements in recent years. Judicial scrutiny of arbitral awards should be severely curtailed, as the 2015 amendments to the *Arbitration and Conciliation Act, 1996* clearly make clear. This view has been especially emphasized in the recent judgments delivered by the Supreme Court of India in relation to Section 34 of the Act, which deals with challenges of awards in arbitrations conducted in India.[14]

1. Legal Framework:

India has complicated as well as very simple procedures to enforce arbitral awards given in international commercial arbitration proceedings. The Arbitration and Conciliation Act of 1996 is in force. Over the last ten years, Indian investment jurisprudence has seen a number of controversial cases which have been handled in a different way by the courts. India is not a party to the ICSID convention, so it is not able to enforce arbitral awards in countries that have ratified the convention. In pursuance to UNCITRAL rules, the non-signatory usually becomes subject to certain additional facility rules. The investment arbitration system, from the initiation of arbitration to the execution of the award, is not fully covered by the above provisions. It merely raises questions about the process that investment arbitrations should follow and leaves a number of unresolved concerns regarding the execution of the award. The court may enforce the award in accordance with the provisions of the Act unless it finds grounds for refusal as specified in Section 48 of the Act, which includes public policy considerations and procedural irregularities. For the first time in an investment arbitration dispute, India is the target of an award in this case. As a result of various present cases, the Government of India has been working towards an investor-friendly framework. India has not ratified the Convention on the Settlement of Investment Disputes (ICSID Convention), thereby opting out of the ICSID

[13] *Anti-arbitration Injunctions in International Investment Arbitration: An Indian Overview*, ICL (Apr. 15, 2024), https://indiacorplaw.in/2018/12/anti-arbitration-injunctions-international-investment-arbitration-indian-overview.html.
[14] *Ibid*

framework for investor-state dispute resolution. Despite this, the Indian government has entered into a multitude of Bilateral Investment Treaties (BITs) with foreign states. These BITs frequently incorporate provisions establishing arbitration as a preferred method for resolving investment disputes and mandating the enforcement of arbitral awards rendered pursuant to such treaties.

Essentially, while India has chosen not to be bound by the comprehensive dispute resolution mechanism offered by the ICSID, it has nevertheless agreed to a series of bilateral arbitration regimes through its BIT network.[15]

2. Case Analysis:

A number of crucial judgments laying down valuable standards and guidelines have influenced the Indian judiciary's scrutiny of BIT awards. For example, in the *White Industries Australia Limited v. Republic of India dispute*, the enforcement of an arbitral award made under the India-Australia BIT was upheld by the Supreme Court of India, which required India to preserve its international legal obligations under it. The commitment was also confirmed Bits. This is one of the most remarkable cases in such a situation. Apart from highlighting the requirement for finality and certainty in the execution of arbitral awards, the Court focused the norm of minimal judicial interference in investment arbitration processes. In the case of *Union of India v. Vodafone Group Plc*,[16]The Delhi High Court, in a connected case, rejected the Indian government's arguments challenging the jurisdiction of the arbitral tribunal and upheld the enforcement of an international arbitral award in favour of Vodafone. The court's decision showed that Indian courts are still in favour of enforcement and will accept awards from foreign arbitral tribunals. But not every instance involving the execution of BIT awards has gone well for investors. Due to procedural errors or public policy concerns, Indian courts sometimes refuse to enforce arbitral awards. In particular, in the example of *Telkom Malaysia Berhad* v. *Union of India*,[17] The Delhi High Court decline to enforce an arbitral award awarding damages for breach of contract in a government procurement dispute on the grounds that it was against Indian public policy. These cases highlight the complex interplay between domestic law, international obligations, and judicial discretion in the enforcement of BIT awards in India.

3. Comparative Analysis:

[15]*Supra* 12
[16]*Union of India* v. *Vodafone Group Plc* AIR ONLINE 2018 DEL 1656
[17] *Telkom Malaysia Berhad* v. *Union of India*, WRIT APPEAL No.991 OF 2018

To gain further insights into India's approach to the enforcement of BIT awards, it is instructive to conduct a comparative analysis with other jurisdictions. Existing legal systems for the execution of arbitral awards, especially those resulting from investment disputes, are found in countries involving the United States, the United Kingdom, and Singapore. Enforcement of arbitration awards, involving investment arbitration mechanism, is facilitated by the Federal Arbitration Act (FAA) in the United States. There are few grounds on which US courts may decline to recognize and enforce arbitral awards as they have a long history of favouring enforcement.[18]

Similarly, in the United Kingdom the Arbitration Act 1996 governs the enforcement of arbitral awards and bestows a definite and foreseeable legal framework to parties wishing to execute foreign arbitral awards. Especially when it comes to arbitral awards resulting from investment disputes, UK courts have showed a strong commitment to preserving their finality and enforcement. It would be attractive to play the role of a country ratifying the ICSID Convention. In England and Wales, investment awards are enforceable as if they were domestic orders.[19] The provisions of English domestic law governing arbitration were invoked in this case to challenge the award. Distinct from clearly stating that the court would still have jurisdiction even if the UK was not a party, the courts readily acknowledged that it had jurisdiction over investment award cases. Distinct from the cases outlined above, there are other investor- state disputes which are still pending in Indian courts and have not been resolved. India has long been a leader in defending the tenets identify by international law. The Indian judiciary has repeatedly prescribed that customary international law will be duly recognized in domestic law unless it conflicts with fundamental principles of national laws.[20]

D. Challenges and criticisms

Execution of arbitral awards in India has not been discussed. This is the result of a conflict within the nation arising from bilateral investment treaties (BITs), the details of which have not been made available for public discussion.

1. Delay and Backlog:

[18]P. Ranjan, "Vodafone Versus India: A BIT of Confusion" The Wire (12 Sep., 2017) https://thewire.in/176371/vodafone-versus-india-a-bit-of-confusion accessed Apr., 15 2024.
[19]*Supra* 15
[20]*Supra* 16

It is up to the individual to decode what constitutes a fundamental infringement of due process and a denial of justice. In the event of arbitration, the arbitral tribunal shall have the authority to decode these Terms. Denial of justice under customary international law has been understood in three ways. The wider sense of the term includes any wrongful act committed by states against foreign nationals through any government agency. The most restrictive explanation of this idea may be limited to delaying or denying an investor access to justice. It can also be understood in a more balanced way, which would involve instances of the state administering justice unfairly, involving, but not limited to, insufficient procedural justice and access to court. Given that there are three probable explanation of the term "denial of justice", it is unlikely that an arbitral tribunal will apply the standard and the dispute in a way that best suits its own subjective interpretation, whether restrictive or broad.[21]

2. Interpretive Challenges

Ahead, due to the unusual treatment of investors' provisions, which exclude the customary norms of FETs from BITs, ISDS courts will be able to read this section albeit they see fit, especially given that it contains several wider explanations of norms are included. One of the primary interpretive challenges relates to the scope of investor rights and the permissible grounds for state regulation. BITs typically contain provisions guaranteeing investors' rights to fair and equitable treatment, non-discrimination, and protection against expropriation. However, the interpretation of these provisions often varies depending on the legal and factual context of each case.[22]For example, the concept of "fair and equitable treatment" has been subject to divergent interpretations by arbitral tribunals and national courts. While some tribunals interpret this provision broadly to encompass a wide range of investor protections, others adopt a more restrictive approach, focusing on specific commitments made by the host state. There is an elementary interpretive doubt in the FET criterion. No traditional and unified core meaning exists for the standard. The norm is usually considered to be one that is not limited to limiting bad faith actions of the host state and is separate from national legal procedures.[23]

3. Enforcement Hurdles:

[21]*Supra* 10
[22]*Ibid*
[23]*Supra* 9

The Convention on the *International Centre for Settlement of Investment Disputes (ICSID)* has not been ratified by India. Therefore, it is not essential to acknowledge and uphold BIT awards like final judgments of a local court. Under these situations, India's BIT award enforcement mechanism is still unclear. A key area of issue is whether the 1996 *Arbitration and Conciliation Act (the Act)* applies to arbitrations bring by bilateral investment treaties (BITs) distinct opinions have come out from distinct High Courts on this matter. The Calcutta High Court supposed jurisdiction over the case in which it granted that "*a domestic court in India has issued a restraining order preventing a claimant from pursuing legal action before an investment arbitration tribunal established under the India- France BIT."* This order effectively stalls the arbitration process. The crux of the issue lies in the domestic court's determination that an award rendered by an investment arbitration tribunal does not qualify as a "judgment" or "decree" within the meaning of the Code of Civil Procedure (CPC). As a result, the enforcement mechanisms prescribed for foreign judgments under Section 44A of the CPC are inapplicable to investment arbitration awards. This stance implies that while investment arbitration awards hold significant weight in international law, their enforceability within India is subject to considerable legal challenges due to the absence of a specific domestic enforcement regime for such awards.

In essence, the Indian legal framework currently presents a hurdle for the enforcement of investment arbitration awards, creating uncertainty and potential delays for foreign investors seeking redress through this avenue. As a result, if the judgments of the Delhi High Court are honestly executed, award holders in investment treaty arbitrations may be able to recover the award amount only by bringing a new suit. In such a case the arbitral award may only be useful as evidence, which denies the whole point of using arbitration to settle investment treaty disputes quickly.

E. Reform proposals and future directions

Although the underlying framework difficulties of the ISD system contribute to India's adverse experience with investment intermediation, there are additional observations in relation to Indian policy, structures and strategy. These relate to shortcomings in the formulation of

national policies, the drafting and negotiation of treaties, or mediation strategy. Here is a summary of these components.[24]

1. Institutional Reforms:

In this section, I address the argument for an institutional reform ideal after outlining and assessing the intricacies of existing reform initiatives. In pursuance to research on BITs, their influence on FDI growth is, at most, trivial. The quality of domestic institutions has been found to be a crucial factor in empirical studies on the determinants of FDI. That evidence is described in Section III.A. Section III.B makes the case for a redesign of BITs with a stress on strengthening domestic institutions to boost their capacity in attracting foreign direct investment, taking into account all currently available data what works and what doesn't. Finally, Section III.C bestows an explanation of why the institutional reform model should be adopted more realistically as it has the possibility to be a better deal for both parties.[25] Obviously, no one argues that a company's decision to invest in a state is elementary influenced by the capacity of its institutions. Both logic and empirical data point to the type and extent of occupational chances as a key source of motivation. Investment in a country can never be based solely on the lack of political or legal threats. Ahead, given the magnitude of the economic potential, investment may be justified even in the presence of those risks if they are addressed only as challenges.[26] Foreign companies are especially sensitive to any kind of incertitude, involving uncertainty arising from inefficient governance, policy reversals, corruption, or lax enforcement of property rights and the legal system in common, due to the fact that That their investments often result in sunk costs. It is therefore reasonable to suppose that, at a minimum, the institutional quality of a state will influence FDI levels, and the data confirm this theory.[27]

2. Legislative Amendments:

The enforcement of investment awards is covered by the ICSID Convention. Since domestic final judgments are implemented in the contracting state, Article 54 states that all parties to the Agreement apply equal identification and enforcement of awards. Since India is not identifying as a member state by ICSID, ITA awards cannot be enforced in India without NYC. The NYC bestows that an arbitral award given in a contracting state of another party must be reputable

[24] *Supra* 10
[25] *Ibid*
[26] Alan S Alexandroff and Ian A Laird, 'Compliance and Enforcement' in Peter Muchlinski, Federico Ortino, and Christoph Schreuer (eds), The Oxford Handbook of International Trade Law (OUP 2008)
[27] *Supra* 26

and recognized by all contracting states. India ratified the NYC in 1960 with two exclusions. The Government of India will execute this Agreement particularly as amended by the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.[28] To bring ITA awards in New York City within the commercial reservation ambit, Section 44 of the Act needs to be amended. For parties seeking enforcement of ITA awards in India, the Indian legal system will remain a challenging and lengthy process.[29]

3. Stakeholder Engagement:

As per the Susan Frank, the creation of the capacity to arbitrate treaty claims does not mean that foreign investors lose their power in the market if it is supposed that they are stakeholders in maintaining institutional integrity and the rule of law. Play an important role. Collaborative efforts involving diverse stakeholders can foster dialogue, build consensus, and ensure that reform measures are responsive to the needs and concerns of all parties involved. The government plays a crucial role in driving reform initiatives and creating an enabling environment for investment arbitration. Engaging with government agencies responsible for policy formulation, legal reform, and international trade can help align legislative and institutional reforms with broader policy objectives and strategic priorities. Furthermore, engaging with the judiciary and legal community is essential for building judicial capacity and promoting coherence in judicial interpretations. Organizing workshops, seminars, and training programs on investment arbitration and international law can facilitate knowledge-sharing and skill development among judges, lawyers, and legal professionals.[30] The devoir and rights of the home state are not involved in the current BIT. But when it comes to foreign direct investment, home states are undisputed stakeholders. Home countries' concerns about the safeguard of their investors, who often export wealth from the state and return home profits, largely shape their policies. Distinct from the obvious profit of having a treaty model, there are also some probable drawbacks to this process. It will take a long time to create a model because a large number of stakeholders are included in its progress. All parties included—governments, intergovernmental organisations, the commercial sector, civil society, think tanks and academia—must creatively interact and think collectively in response to this crucial growth.[31]

[28] Stephan W Schill (ed), International Investment Law and Comparative Public Law - An Introduction (Schill). (OUP 2010)
[29] M Soronrajah, The International Law on Foreign Investment (2nd ed., CUP 2004)
[30] M Soronrajah, International Commercial Arbitration: The Problem of State Contracts (Longman Publications 1990)
[31] *Ibid*

There is a great requirement for a new strategy for BITs. Several shortcomings in the current model have been pointed out by commentators, and more crucially, emerging countries are beginning to wonder whether joining is still in their best interests. Even though many academics focus on changes in investor security strategy, these adjustments will only serve to control BIT costs and will not further the objective of encouraging FDI. On the other hand, supporter from progressive countries offer wider views that have the potential to significantly boost the capacity of bilateral investment treaties (BITs). However, in redrafting the framework, they failed to adequately consider the unique concerns of capital-exporting countries.

4. Importance of a Robust Enforcement Mechanism:

The present predicament concerning the enforcement of Bilateral Investment Treaty (BIT) awards in India necessitates a radical overhaul of the existing legal framework. The judicial determination that the Arbitration and Conciliation Act (A&C Act) is inapplicable to investment treaty arbitration has created a significant lacuna in the domestic legal order, casting a long shadow over India's investment climate. A definitive resolution to this impasse requires either a categorical repudiation of the aforementioned judicial precedent by the Supreme Court of India or a legislative intervention to create a specialized regime dedicated to the enforcement of BIT awards. While the latter option presents its own challenges, the status quo is untenable. The Supreme Court is presently burdened with the Herculean task of reconciling the competing interests of foreign investors, sovereign states, and India's burgeoning economy within the confines of a legal landscape ill-equipped to address the intricacies of international investment law. A comprehensive and coherent legislative framework is imperative to instill confidence in the foreign investor community and to position India as a global investment destination.

Essentially, the current state of affairs poses a systemic risk to India's economic trajectory and its standing in the international investment arena. A robust and predictable legal regime for the enforcement of BIT awards is essential to safeguard the nation's reputation as a reliable and trustworthy jurisdiction for foreign investment.

5. Addressing Challenges and Criticisms:

Existing BIT proceedings show that India is a popular destination for foreign investment, but it also has shortcomings. India has to follow the rules and due process of law proficiency and openly. India must take decisive action and adopt an open and honest strategy. By offering a constant investment environment, India should bestow stability to global investors. The legal

environment can be strengthened by safeguarding both domestic and foreign investors. The inclusion of investor-state dispute clauses in these treaties will help achieve this goal.

F. Proposals for Reform:

It seems that Indian courts are in favour of not enforcing ITA awards in India, so there is an urgent need for legislative action to amend domestic laws in a way that ensures India's compliance with the New York Convention for Commercial Relations bestow clearly. Investment intermediary awards are involved under the reservation. To fulfil this, it is important to change Section 44 of the Act to add ITA awards to the "Commercial Reservations" area of NYC.

G. Future Directions:

First, given existing worldwide experience, India should assess whether its existing BITs need amendment or reform. What are the rights that a foreign investor is legally entitled to, and where does a nation require to draw the line? Second, India needs to acknowledge that it has an inherent disadvantage in BIT investment arbitration. It is well acknowledged that foreign investors benefit disproportionately from investment arbitrage. The small number of Indian arbitrators and lawyers in this field, as well as their limited experience, compounds this disadvantage. Because of this, India is forced to select foreigners to act as arbitrators or lawyers in most of its BIT issues.

Conclusion

The current legal landscape in India presents a significant challenge for the enforcement of Investment Treaty Arbitration (ITA) awards. There is a notable ambiguity surrounding the authority and jurisdiction of Indian courts to provide remedies in disputes arising from these international investment treaties. This uncertainty creates a complex and unpredictable environment for both investors and states.

To ensure a clear and efficient process for ITA award enforcement, India requires a comprehensive legislative framework specifically tailored to the unique characteristics of investment treaty arbitration. Such a framework would establish a well-defined relationship

between domestic Indian courts and international arbitral tribunals, providing a clear path for investors seeking to enforce their ITA awards within the country.

Without such a specific legal regime, parties seeking to enforce ITA awards in India are likely to face protracted and complex legal proceedings. The absence of clear guidelines increases the risk and uncertainty associated with the enforcement process, deterring potential investors and undermining the overall attractiveness of India as a destination for foreign investment.

In essence, India's current legal system lacks the necessary clarity and structure to effectively handle ITA award enforcement. The development of a specialized legislative framework is crucial to fostering a predictable and investor-friendly environment.

RISK MANAGEMENT IN THE ERA OF CYBER SECURITY: NAVIGATING EVOLVING THREATS AND STRATEGIES IN THE FINANCIAL SECTOR, WITH A FOCUS ON INSURANCE AND REGULATORY FRAMEWORKS

Poulami Dasgupta *

Introduction

In a modern digital world, the financial industry is facing unprecedented challenges from cyber threats that put its integrity and sensitive data at risk. The increasing sophistication and diversity of cyber-attacks demand novel strategies for risk management to safeguard financial institutions and their customers. This paper explores the complex landscape of financial industry cyber security, focusing on the insurance and regulatory frameworks. Exploring the developing landscape of threats, including phishing scams, ransom ware attacks, and advanced persistent threats, and their implications for both financial institutions and the individual, this study highlights the pressing need for proactive defense. It assesses the place of cyber insurance in mitigating financial losses and regulatory frameworks in enhancing security standards. Furthermore, the paper assesses the impact of cyber threats on common individuals, broader economic consequences, and the effectiveness of existing insurance and regulatory responses. This research project, therefore, aspires to offer insights into navigating the rising cyber security challenges of the financial industry and fostering resilience against these cyber threats.[1]

What does Cyber security threat mean?

Cyber security threat can therefore be defined as a broad category of disruptive actions endangering the confidentiality, availability, and/or integrity of information technology systems, computer networks, as well as information. These threats can be from people, organizations, and possibly states, and they extend to people, institutions, and governments at large.[2]

First and foremost, of these considerations is the acknowledgement of the fact that threats are diverse and varied in their nature. According to William Stallings in his book Network Security Essentials: Applications and Standards, According to Stallings (2014), A cyber security threat is defined as any circumstance or event that can have an adverse effect on an organizations'

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[2] The Global Cyber Threat. Available at: https://www.imf.org/external/pubs/ft/fandd/2021/03/global-cyber-threat-to-financial-systems-maurer.htm (Accessed: 3 June 2024).

operations, its assets, or the public through an information system by unauthorized access, information destruction, disclosure, modification of information, and/or denial of service.[3] This definition reflects the rich variety of cyber security threats, which may act not only on the information but also on the usability and availability of informational systems.

There are several main types of cyber threats that are primarily grouped based on the nature of threat they pose and the targets they can go for. Malware, for example, is one of the highly prevalent types of threats that one can encounter in the context of cyber security. It consists of viruses, worms, trojans, ransom ware, and spyware and other similar threats of a similar nature. Bruce Schneier in Secrets and Lies: Digital Security in a Networked World defined Malware as pointing to malicious software which is developed to penetrate, harm, or destroy computers, systems and networks, and upon doing so gain control of the devices or steal information (Schneier, 2000).[4] Some of the reasons for using malware are monetary related, spy and throw out services among others.

Other common types of cybersecurity threats include the phishing scams whereby fraudulent emails or websites are created with the purpose of deceiving victims to release their login credentials, account numbers, passwords, and other crucial information.[5] Referring to The Art of Deception by Kevin Mitnick, it is possible to consider that "Phishing attacks rely on social-engineering methods, leveraging weaknesses inherent in the human psychology rather than specific technological loopholes, and this makes them incredibly hard to counter" (Mitnick, 2002). Most of these techniques involve exploiting human tendencies to complete a particular goal, explaining why a user should stay wary and informed when approaching cyber security matters.

APTs deemed to be a different type of cyber-attack which tends to be longer and more skillful, mainly executed by a talented group, sometimes sponsored by a state. Typically, APTs have constant and covert campaigns to infiltrate a network where they lay low for long to conduct data theft or disruption of network functions. According to Richard Bejtlich in The Practice of Network Security Monitoring: Reflecting on IDR: Well, APTs are determined by their tenacity, cloak and dagger nature, and their versatility, as they continue to challenge conventional

[3] *Ibid*
[4] *Ibid*
[5] *Financial Sector Cyber security*, CSIS. Available at: https://www.csis.org/programs/strategic-technologies-program/past-work/cybersecurity-and-governance/financial-sector (Accessed: 3 June 2024).

methods of security. Understandably, having a lengthy presence within a business environment makes APTs potentially devastating, as they may cause substantial harm before being detected.

External threats are threats arising from sources outside the organization while another threat type is internal threat, this is a threat that emanates from within the organization but with malicious intent and always manipulates the system to the organizations detriment. This makes these threats quite risky to deal with, as insiders often have authorized entry to numerous systems and databases. In his book, Insider Threats by Michael G. Gelles, he explains it this way, "The insider threat is special in that it takes advantage of the trust that is vested in individuals who work in an organization and perhaps for this reason is one of the hardest threat types to deal with" (Gelles, 2016).[6]

Considering the fact that the threats faced in the field of cyber security are constantly changing and emerging, it is crucial to have stable and reliable defences. Although it can also be practiced at various levels, one has to ensure that cyber security is practiced with a combination of policy measures and even education to the users composing the computer networks as well as technological solutions like firewalls and an intrusion detection system and encryption.[7] Interference, threat intelligence as well as incident response should also be ongoing activities in any organization seeking to maintain a strong cyber security posture.Thus, a cybersecurity threat is a general term describing a number of dangerous actions threatening information security and the security of individuals using computer systems and networks. Everything from viruses, Trojans, worms and scams to Advanced Persistent Threats, advanced insider threats, and tar file malware threat cyber space.

Cyber security threats faced by the financial sector

The financial sector is one of the most important segments of the global economy, as it is responsible for handling the trade and management of enormous numbers of highly confidential financial records and transactions throughout the world on any given day. However, it's a great importance and content richness make it a preferred objective for a range of cyber security risks. It will be significant to recognize and categorize these threats to design stronger security measures and make a guarantee of the solidity of the financial services. Here are some of the most pressing cyber security threats facing the financial sector:

[6] *Ibid*
[7] *Ibid*

Phishing Attacks

Usually, phishing attacks are considered to be the most common threats related to the financial sector. The basic idea of phishing is to make the employee or the customer reveal information such as passwords, account numbers, PINs, and other personal identification numbers by presenting them with inciting emails, messages, or a web link.[8] These attacks can therefore compromise the integrity of the financial system, and customer accounts most probably leading to loss of significant amounts of money and blow to the reputation of the affected organizations. Preliminary probing methods like spear-phishing and whaling are designed to even go as far as using the actual name of a person in the company by using the email address provided by the company.

Ransom ware

Ransom ware is a similar type of malware, in that it will encrypt a victim's files and refuse them its decryption key unless the victim pays a ransom. On one point, financial institutions are highly susceptible to ransom ware attacks due to the necessity of their functions. It can also cause denial of services, which in turn has impacts on operations within agencies and can consequently result in losses. The risk of losing sensitive details belonging to the customers, together with the common threats of data breaches, adds to the pressure the circumstance of ransom ware on financial organizations. New development of ransom ware attacks involves the application of sophisticated encryption methods and social engineering skills to ensure high success rates.[9]

Distributed Denial of Service (DDoS) Attacks

DDoS means that large numbers of computers request services from an online service and in doing so the target service becomes unavailable to those who require it. For financial institutions a JeDato attack can be disastrous as it poses a risk to one's internet banking, trading, and Payment Systems amongst other online services.[10] These attacks not only render an institution costly for affecting the bottoms line due to service outages but also the reputation of

[8] *Ibid*

[9] (2024). *Global financial stability is at risk due to cyber threats, the IMF warns. Here's what needs to happen* [Online]. World Economic Forum. Available at: https://www.weforum.org/agenda/2024/05/financial-sector-cyber-attack-threat-imf-cybersecurity/ (Accessed: 3 June 2024).

[10] (2024). *Global financial stability is at risk due to cyber threats, the IMF warns. Here's what needs to happen* [Online]. World Economic Forum. Available at: https://www.weforum.org/agenda/2024/05/financial-sector-cyber-attack-threat-imf-cybersecurity/ (Accessed: 3 June 2024).

the institute along with reducing customer trust. To prevent DDoS attacks, one needs to put in place concrete measures such as filtering of traffic, traffic control through rate limiting and deploying numerous infrastructure systems to accommodate the increased traffic load.

Insider Threats

Employee risk is particularly significant for the financial industry because insider threats are often from within the organization and act covertly. There can also be internal threats from the people working under an institution or from the contractors and business partners who are granted access to an institution's systems and information. Insider threats are often characterized by the participation of employees who engage in one or multiple types of attacks including the: malicious activities where the goal is to have a specific end result such as stealing, embezzling or disrupting; and inadvertent activities where the individual is not deliberately seeking a change in circumstances such as when the employee inadvertently releases this information or falls prey to social engineering tactics.[11] The loss of sensitive information or even the financial damage due to the actions of insiders may have dramatic consequences. To address the issue, financial institutions have to adopt stringent security measures, education for the employees, and automated alarms to prevent insiders from threatening financial institutions.

Advanced Persistent Threats (APTs)

APTs are exceptional and sanitized long duration incursive that directs itself to a target many networks and compilation for an appreciable period. APTs are likely to focus on the financial institutions, given that they usually contain quite valuable information. APT assaults principally tend to make targeted attempts to acquire valuable information comprising personal client information, patents, and monetary data. These attacks are commonly multiphase and may include numerous stages such as entry, probing, exploitation, and exit. In this process, APTs can gradually infiltrate the organization's personnel or information technology systems either directly or with the help of insiders by exploiting vulnerabilities in the infrastructure or weak spots in the security measures.[12]

Third-party and supply chain risks

[11] *Ibid*
[12] *Supra*

Common third-party relationships are generally in the nature of outsourcing arrangements where banking institutions depend on the services of third parties in the performance of the bank's functions. These relationships can prove to add more risks in cyber security since the third-party may have a loophole that an attacker can use to attack the financial institution's system. Targeted attacks that involve having a malicious actor gain access to the supply chain partner with the intention of getting inside the target organization are common today. Since third-party vendors provide products or services to businesses directly, it is equally important to assess and address security risks related to them by conducting proper verification, constant security audits, and setting rules for their companies in the sphere of cyber security. [13]Targeted threats cannot be exhausted in this list of threats. It is important to learn about the nature and the characteristics of these threats to be able to protect one self and prevent the occurrences of such events in the future. While society has moved online and embraced technological advancement, so too has evil decided that cyberspace is its home and an area which requires constant monitoring and preservation from malicious individuals.

Data Breaches

Security breaches are a critical concern of the financial services industry as the nature of information processed and the consequences of the breach are detrimental. Basically, hackers particularly focus their attacks on organizations' financial records, customers' information, and other sensitive data. Even minor and less severe breaches can lead to significant or costly fines, legal penalties, and reputational damage. The rise of the new regulation like GDPR &CCPA further underlines the importance of have a strong barrier for securing data. Hence, financial institutions should ensure that information is encrypted, their accessibility controlled, and ways and means of preventing loss of information is employed.[14]

Emerging Threats:

Crypto jacking is a form of malicious crypto mining for financial gain and is a method of hidden monetization of hacked websites and devices and quantum computing as a disruptive and highly developed technology with far-reaching implications for everything from cyber security to materials science.

[13] C. Stapleton, (2023). *Cyberattacks and the Risk of Bank Failures*. Available at: https://www.investopedia.com/articles/personal-finance/012117/cyber-attacks-and-bank-failures-risks-you-should-know.asp (Accessed: 3 June 2024).
[14] *Ibid*

Innovative perils like Crypto mining malware and the use of quantum computers are more recent dangers that have cropped up. Crypto jacking refers to the covert use of a financial institution's resources in order to carry out cryptocurrency mining, therefore negatively affecting performance and thereby incurring additional expenses.[15] However, despite scientists still working on this innovative approach called quantum computing, it makes it possible to crack existing cryptography, and therefore destabilize financial operations and communications. To counter these threats, it is essential for practitioners and organizations to carry out research with the intention of embracing innovations in the security field and always evolving in their security practices.

Effect on common people

Devastating effects to the common man result from cyber-attacks in finances. There could be loss of money, theft of important information among other reasons as result of a cyber-attack targeted at finances. This impact needs an appreciation if we are to formulate powerful methods that will ensure customer protection is improved while at the same time bolstering the security of finance systems

Financial Losses

In as much as there are tallises in observing privacy and security measures, there is no doubt that the human factor is a key entry point for hackers, especially in cases of phishing attacks that tend prompt people to pay up for a transaction that was fraudulently initiated in their accounts. But once they get into bank accounts, credit cards or some other personal financial information they are in a position of embezzling cash directly from the victim's accounts or carrying out unauthorized purchase. Even small losses can be crippling because many individuals and families are living pay-check-to-pay-check and when they lose money, it becomes hard for them to make ends meet including paying their bills, affording basic necessities and maintaining of their finances.

Identity Theft

Identity theft is another major problem arising from cyber security breaches. If cyber criminals manage to get hob off the barrel, including SSNs, addresses and many more, then, they are in a position to impersonate individuals. This can lead to purchase of goods and services as well

[15] (2023). *Why Is Cyber Security Important In The Financial Industry?* [Available at: https://www.eccu.edu/blog/cybersecurity/why-is-cyber-security-important-in-the-financial-industry/ (Accessed: 3 June 2024).

as opening of other credit accounts, obtaining of credit, and even criminal activities in the identity of the victim. The effects of identity theft are for long, where victims take many years working hard to rebuild their credit status, clear their track records and recover from the devious acts perpetrated by the criminals.

Psychological and Emotional Stress

It is, however, important not to overlook the psychological cost of a cyber-attack. Target consumers of financial fraud and identity theft suffer stress, anxiety, and perceptions of violation. Not knowing how much of his/her personal information has been compromised and the possibilities of future economic losses have negative psychological effects that may take a long time to alleviate. This stress may impact their job performance, relationships and health among other aspects of their lives.[16]

When people lose trust in financial institutions, the outcome is the following:

Security threats and violations pose a risk to public trust in the financial system. When banks, credit card companies, or other providers of financial services are attacked, customers may have no faith in the institution to protect their data and assets. Such distrust may result to reduced use of the digital banking services, and increased use of cash, which is less efficient, for the consumer, and costly to the provider. This gradual decline in trust can slow down the implementation of new technologies in the financial industry and affect the effectiveness of the overall financial mechanism.

Broader Economic Consequences

Cyber security threats in the financial sector also pose some macroeconomic costs and risks in plain view of the man on the street. Full-scale data breaches are capable of disrupting entire financial industries and markets, and creating tumultuous environments that negatively affect stock exchanges and monetary value. These disruptions may likely affect employment opportunities, investments, and future economic development.[17] For example, a large-scale data breach in a financial firm or bank may cause loss of employment within that firm as well as other related industries affecting the families and societies within which the workers from those companies belong.

[16] H. Murphy, (2024). *Cyber attacks reveal fragility of financial markets* . Available at: https://www.ft.com/content/a8b8de58-8691-4ece-ade3-5b7be63dbef2 (Accessed: 3 June 2024).
[17] *Ibid*

Increased Costs for Consumers

Lately, it has been observed that the financial institutions counterbalancing the costs of cyber security incidents to customers. Some of the effects of this phenomenon can be in the form of making charges for services provided by banks higher, having higher interest rates in loans and credit cards among others, as well as inserting extra charges for identity protection.[18] Although these measures are justified to fund the augmented cost of security and fraud ultra modernization, they further impose expenses on consumers – in this case, those who comprise the lower-end economy minority.

Regulatory and Policy Responses

Due to the increasing threat that exists in cyberspace, the government and other regulatory agencies have pulled up their socks and are aiming at protecting the consumer through the implementation of some strict measures. Though these are important measures that help improve the level of security, they do present additional compliance costs for financial institutions. This has been realized through increased tariffs that are levied by the financial institutions and various organizations. Furthermore, new rules, which might be introduced by the regulatory bodies, can lead to extra time and cost to perform some transactions and thus, negatively influence the customer experience.[19]

How does Insurance and regulatory factors help in case of crisis?

As we enter an era where the world is connected digitally, financial sectors are exposed to cybercrime attacks. Such breaks can cause drastic loss of money, harm to image, and, at the end, showering of fines. Therefore, the industry and the legal mechanisms such as insurance have a crucial effect on the reduction of the risks of such cyber threats.[20] When one comprehends how these mechanisms operate the advantages and disadvantages of the framework can be illuminated when looking at real-life polices attempting to guard against cyber-attacks.

Cybercrimes have become prevalent in today's society, and this makes insurance important in cyber security since it protects the insured from financial losses arising from the effects of cybercrimes. Cyber Insurance has become an important factor that more financial institutions

[18] *Ibid*

[19] *Ibid*

[20] *What Is Cyber Insurance? Why Is It Important? Risk Coverages* . Fortinet. Available at: https://www.fortinet.com/resources/cyberglossary/cyber-insurance (Accessed: 3 June 2024).

are embracing to hedge against risks that are inherent in the current world where hackers and other evils are nowadays designing the destiny of many organizations. Information technology risk management insurance generally addresses several exposures that relate to data theft, operations disruption, and ransom demands. This is because the financial risks associated with cyber criminals attacks can effectively be shifted or shared with insurers. In addition, insurers also offer risk control solutions such as risk evaluation for cyber threats, planning of measures to be taken in case of a breach, and education seminars to make sure the staff of an organization is aware of the possible dangers and take precautionary measures effectively.

One such example is the Metal casting Technologies (a subsidiary of Norsk Hydro) that fell victim to a ransom ware attack back in 2019. Cyber insurance can be seen to have served the company well in regards to the financial loss incurred by the attack, including restoration expenses. This case makes it clear that cyber insurance should be an integral part of the risk management programs due to the increased susceptibility of organizations to cyber-attacks.

Regulatory Frameworks in Cyber security

The country's regulatory bodies are pivotal in identifying base-line security measures to be adopted and enforcing sound practices in the financial institutions. Policies introduced certain security standards that must be followed including protection measures such as data encryption, use of several factors for authentication, and even security check-ups which in turn averts constant cyber-attacks.

In the United States, there is the Gramm-Leach-Bliley Act that insists that financial organizations should safeguard the privacy of their customers' financial information. GLBA necessitates any firm to put in place appropriate measures regarding the privacy of information or data to be shared and to inform the clients. Observance of the provisions of GLBA reduces the likelihood of exposing sensitive information to the wrong hands and ensures the public has faith in the financial sector.[21]

Likewise, the General Data Protection Regulation (GDPR) has played a major role in enhancing the cyber security of organizations in the EU, particularly for the firms in the financial industry. GDPR imposes strict guidelines for handling personal data and vacates hefty penalties for non-compliance thus encouraging organizations to apply appropriate safeguards

[21] *Ibid*

to data. It has therefore brought about improvement of investment on cyber security and general implementation of more robust measures in the protection of data.

Various real-life policies and frameworks addressing the threat of cyber-attacks in the field of finance have been realized, some of which have met with substantial success.

NIST Cyber security Framework: Cyber Security is a very complex area, the NIST Cyber Security Framework is an extensive resource for organizations to improve their Cyber Security measures. The approach has been popularly embraced in the financial industry for its mechanism to timely handle the risks posed by cyber threats. The usefulness of the above framework is that it reminds people to apply pragmatism and to reflect on the fact that threats are changing and that there might be a need to adopt or modify some of the resources provided above depending on the context of their organizations.[22]

PCI DSS (Payment Card Industry Data Security Standard): PCI DSS is a standard that contains requirements, issuance of which is intended to guarantee the companies to store, process and transmit credit card data safely. The payment card industry data security standard or PCI DSS is a set of rules that must be followed by all merchants that process payment card transactions. The standard has been successful in cutting the rate of credit card fraudulence cases and enhancing the general payment system safety.[23]

SWIFT Customer Security Programme (CSP): SWIFT initiated the CSP to enhance the security of its financial messaging network that connects thousands of member institutes. The program makes the participants of the program agree to adhere to a set of security controls and one is to be audited to ensure compliance with the program. An added advantage of the CSP is that it was able to limit the number of actual cases of cyber attackers being successful in compromising SWIFT's systems, thus proving the fabric's pivotal role in strengthening security in the financial industry.[24]

Success and Challenges

Bearing testimony to these insurance and regulatory measures are enhanced performances of financial institutions against cyber threats. For instance, due to the latter enactment, such legal

[22] *Cybersecurity in Banking I CRIF Solutions*. Available at: https://www.crif.in/blog/fraud-management/cybersecurity-in-banking-understanding-the-importance-risk-and-solutions (Accessed: 3 June 2024).
[23] *Ibid*
[24] *Ibid*

standards as GDPR have shown a significant decline in the number of data breaches within the EU because companies acted as actors to adopt innovative cyber security measures to prevent costly fines. Also, the PCI DSS has helped organizations minimize cases of credit card fraud as they provide safety for consumers and the financial institutions.

Conclusion

Circulated by the examples of the modern world, the financial sector faces a lot of challenges connected with the contemporary level of digitalization and the presence of numerous cyber threats that can potentially harm the stability and effective functioning of financial organizations. This paper has explored and identified various risk and risk management frameworks related to the subject of cyber security with a particular reference to financial insurance and regulation. Now that the Discussion is under way, one could conclude that, indeed, the threats associated with cyber means are diverse and ever-changing, which requires financial institutions and regulatory authorities to adapt and evolve at all times.

It stresses the focal areas of financial systems and data by discussing common threats from phishing to advanced persistent threats. These threats also pose a threat by making consumers distrust institutions while the institutions' financial health is at stake. The cost of cyber terrorism does not just lie at the payroll and infrastructure loss but also includes psychological trauma, impersonation, other people's monies, etc. However, due to the constantly changing nature of threats in cyberspace, an added element of uncertainty exists, making it important to take preventive action and be prepared for new challenges.

In this regard, insurance and regulation are two strategic safeguard bases against the risk of cyber threats. Cyber insurance plays the role of safeguarding an organization against the effects of cyber-attacks and enabling them to minimize their loss. Industry regulating bodies and government have established basic guidelines through policies and laws such as the GDPR and the PCI DSS; they ensure that compliance to the set standards is mandatory within the financial sector hence creating awareness on cyber security.

However, challenges remain. The modern threat of cyber-attacks can be unstable and unpredictable, which is why they constantly change, and the rules and insurance policies are also subject to constant updates. The case obviously illustrates that financial institutions need to remain vigilant and constantly working to adopt the best practices of security and adherence to the standards of the day. Also, cyber insurance in particular implies an opportunity to be insured financially in case of this type of hazard, but it does not necessarily protect one from

being a victim of cyber incidents in the first place. It is easy to conclude that having a solid defense against cyber threats, being compliant with the rules and regulations, as well as having proper insurance protection is the key to dealing with cyber risks.

Thus, insurance and regulation as advanced protective means can; By all the aforementioned observations, it is clear that insurance and regulation as protective measures are effective in enhancing the stability of financial institutions to cyber threats. Moreover, the case has shown that legal compliance is effective for minimizing a chance of data breaches and managing potential economic and image-related losses. Cyber insurance is a safeguard, which caters for the consequences of the cyber threats following their occurrences in an organization without much hindrance to operation.

Nevertheless, several obstacles have continued to surface with regards to CSRM. This makes it inapplicable to stay defensive for a long time because, in the world of technology and the cyber sphere, change is occurring at the speed of light. However, due to the constantly changing regulatory environment and complexity of insurance products, the challenge perhaps, has persisted with constant reinforcement in relation to the importance of developing cybersecurity measures.

Thus, it can be summarized that while the technology and policy components to mitigating risk have primary importance for cybersecurity, the component involving collaboration between businesses, government, educational institutions, and other relevant stakeholders appears to be of utmost importance for the future. The cyber risks are very real and the regulation in theories and frameworks suggests that financial institutions must be on the offense, with layered defense, awareness in work force and planning for incidents as part of their approach. Regulatory bodies that are in place play an important and central role for the setting of standards that must be followed and the monitoring and enforcement of these standards, while cyber insurance acts as an additional layer of necessary protection. With these principles in mind and by constantly adapting to the emerging threats, the financial sector safely and effectively can move in the world of cyber space.

ABORTION IN INDIA- AN ANALYSIS OF CURRENT PRACTICES AND THE ROLE OF HEALTHCARE SYSTEMS

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Dr. Mridula Sarmah**

Introduction

Since the inception of time, human civilization, has its foundation in living beings which is the composite of men, women and the other components which all together form a cohesive society. Speaking in terms of general parlance, the domain of reproductive rights can be understood as a concept which centers around a woman ability to make an independent choice regarding her reproductive autonomy. The notion of reproductive rights is crucial as because it enables women to fairly decide about their reproductive choices i.e. whether they wish to get married or not, the number of children and the spacing between them alongside the means of reproduction. The International Encyclopedia of Social & Behavioral Science while putting forward their views on reproductive rights have made a declaration that reproductive rights encompass within itself the liberty of individuals to make an informed choice regarding the use of contraceptive measures, abortion, method of childbirth etc [1]. Therefore, under the domain of reproductive rights, both male as well as female should be given the freedom to make an informed and independent choice about their bodies which includes their physical as well as mental health. Speaking of Abortion, Abortion is a highly controversial and sensitive topic that has sparked intense debates worldwide. The right to abortion comes under the broader realm of reproductive rights for women in the Indian context which form a subject of immense importance, complexity, and ongoing debates. These rights navigate the delicate intersection of women's autonomy over their bodies, societal values, and the legal framework governing reproductive health. India, a country with diverse cultural and legal landscapes, has witnessed a transformation in its approach to women's reproductive rights, which have undergone substantial evolution over the years.

While a woman's independent choice and reason to opt to for an abortion may differ, there are a few commonalities that may explain why Indian women make this decision. Abortion is a very personal choice that is influenced by a variety of factors [2]. Notwithstanding India's legal

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[1] Neil J. Smelser & Paul B. Baltes, *The International Encyclopedia of the Social and Behavioral Sciences* (Amsterdam Elsevier Netherlands, 2, 2015)

[2] Puri, Sunita, Vincanne Adams et al "*There is such a thing as too many daughters, but not too many sons": A qualitative study of son preference and fetal sex selection among Indian immigrants in the United States."* 72(7)

Social Science &Medicine, 1169, 1169-1176 (2011)

framework's provisions for safe and authorized abortions, there are still obstacles to overcome, such as social perceptions and limited access to healthcare [3]. It is crucial to address these issues in their whole and make sure that women have access to the knowledge and tools they need to make decisions about their reproductive health. Invoking the idea of the right to an abortion, the discussion covered by this study is anticipated to offer a thorough and in-depth examination of women's abortion rights in the Indian context. The objective of this study is to examine the laws that control abortion in context of India, such as the Medical Termination of Pregnancy Act (1971) and its later amendments, and evaluate how well they protect women's reproductive rights in terms of sufficiency, accessibility, and efficacy. This research paper is to provide a glimpse of the areas surrounding abortion in India while acknowledging various ways in which these factors influence women's experiences and choices. It also seeks to assess the difficulties women encounter in obtaining safe and authorized abortion services.

1. Materials and Methods

This study uses a doctrinal approach to thoroughly analyze the landscape medical procedure of abortion in India while trying to study the interplay of legal frameworks cultural attitudes and the role of healthcare system. In order to support the study, the researcher has also drawn insights from landmark judicial cases.

2. Discussions & Findings

2.1 Understanding Abortion Rights: Broadening Horizons Through Constitutional Provisions:

The inception of the term abortion can be attributed to the Latin term '*abortus*' which in turn means the separation of an object from its primary place. In medical terms, it is referred to as a procedure which involves the removal of the fetus from the womb prior to the term of pregnancy. Abortion is an issue that is always been surrounded with many controversial aspects. However, the one commonality that still exist among the people which share different aspects of this medical procedure is that people have agreed is to endanger the life of the fetus

[3] Priyanka, Menda, Aman Pathak, et al, "*Legal Abortion in India: A Comprehensive Analysis Of Laws, Access, And Public Perception." Natural Volatiles & Essential Oils Journal,* 6778, 6778-6784

in order to save the mother from any sort of suffering. When a women's life was in peril, then the procedure of abortion was resorted to by the medical professionals.

The World Health Organization has put forward its own definition of abortion as a process for terminating an unwanted pregnancy which is supposedly carried out by medical personnel which do not possess the required level of expertise and the procedure is carried out in an ambience not confirming to medical quality. If reports are believed to be true, it is being estimated that 21 million abortions occur every year, with an annual rate of 16 for every 1000 women in the modern world, where loads of unsafe abortions happen. The medical procedure of unsafe abortion has been getting a lot of attention as it is considered as a vital medical procedure that causes maternal mortality. Risky abortions for a developing country like India are mostly performed by women who self- administer themselves by subjecting themselves to unsuccessful drugs or by consuming approved drugs inaccurately. The health care providers lack the adequate expertise along with the skill set which ultimately results imperfect abortions which further leads to complications. Hemorrhage, uterine perforation or severe damage to the internal organs of a women's body are some of the complications that have seem to occur by the reason of a women opting to go for unsafe abortion. Some of these critical scenarios which sometimes proves to be fatal require immediate medical attention for blood transfusion, reparative surgery and in case of an emergency when proper medical assistance is not provided to the patient, irreversible removal of a women's uterus is the only option available. When a woman opts for unsafe abortion, if it is not carried out by proper medical procedure, women suffer psychological traumatic stress disorder which ultimately deteriorates their mental well-being. Young women who have undergone this medical procedure have a psychological struggle that has its effects throughout their lives. Information received from the governmental department on family welfare in India have reported that 620,472 abortions have taken place between 2010-2011 at approved medical institutions [4]. However, the Consortium which exist for Medical Abortion in India has insisted that these statistics do not hold true as because hospitals keep a record of abortions which are legally approved. The consortium has estimated around 11 million abortions are taking place in India every single year and 20,000 deaths have been reported due to unsafe abortion. If reports are to be relied upon, only 40% abortions are considered to be safe in India [5]. Even though the use of contraceptive measures has been on a

[4] Sarika Chaturvedi, Sayyed Ali,et al, "Availability and distribution of safe abortion services in rural areas: a facility assessment study in Madhya Pradesh, India" *Global Health Action*, 1-7 (2015).
[5] *Ibid*

steady increase, national survey reports that hardly 55% of women who are married use contraceptive measures in order to avoid a pregnancy which is still on the lower side[6]. Research have proved in order to limit the number of children and to maintain spacing between children are the main factors which have led to women seeking abortion services which point towards having lack of access to limited contraception and abortion.

Speaking in perspective of the Indian Constitutional provisions, the foundation of gender equality is being truly reflected through its Preamble[7], Fundamental Rights[8] along with the Directive Principles of State Policy[9]. The Constitution of India has expressly provided through Article 14 which speaks about *"Equality before Law"* furnishes that equal opportunities will be provided to all men and women in respect of social, economic and political spheres. In context of Article 21 of the Indian Constitution[10] which speaks about "*right to life and personal liberty",* it is the inherent right of a woman to freely exercise her reproductive choice which is safeguarded as a fundamental right under the Constitution of India. Broadening the scope of Article 21, a woman has a right to protect her bodily integrity and autonomy in a scenario where there is a forcible intrusion on her bodily autonomy which results in violation of a woman's fundamental right. A woman's sole decision to freely decide her reproductive autonomy i.e. whether to procreate or to abstain from procreating is also included under Article 21 of the Indian Constitution which speaks about personal liberty. In other words, an individual has been given freedom to make decisions regarding personal matters without having any sort of unnecessary interference from any other person including the state. The right to privacy which is guaranteed by the Indian constitution conveys an ideal that an individual has got the freedom to lead his life the way he wants. Therefore, for a woman to make her own decision regarding reproductive freedom is a matter where the right to privacy has to be maintained and this need to be strengthen with reproductive choices in order to enable a woman to take her own decision without any sort of fear, coercion or interference from any third party. The significance of right to privacy has been vividly illustrated in the landmark judgement of *K.S. Puttaswamy (Retd). and Anr. v. Union of India*[11] where it has been held that Article 21 of the

[6] *Ibid*
[7] The Preamble of the Constitution of India explains the values which the Indian Constitution represents.
[8] Fundamental Rights are mentioned in Part III of the Indian Constitution which are enforceable by the judiciary.
[9] The Directive Principles of State Policy are a set of guidelines which the Government has to follow while formulation of policies aimed for creation of a just society.
[10] Article 21 of the Constitution of India- "No person shall be denied the right to life and personal liberty except according to the procedure established by law"
[11] AIR (2017) 10 SCC 1.

Indian constitution assimilates within itself the ideal of right to privacy. If women are not given the freedom to make their reproductive choices whether as to have a baby or to undergo abortion, whether she decides to have the child and become a single parent, in all these scenarios her reproductive right which is one of the essences of right to life guaranteed by the constitution of India gets violated. There are instances regarding reproductive rights which has got various legal provisions as well as enactments which govern the birth of a child either by ART procedures or via surrogacy. Some of the issues are in relation with the proper usage of gametes and embryos also come under the right to maintain privacy and it becomes a mandate for the state as well as for the legal authorities to keep these matters far away from any sort of socio-cultural hindrances.

Coming to the Directive Principles of State Policy[12] which has been expressly mentioned in Part IV are aimed at improving the social and economic base of the country. The principles lay down an obligation towards the state to take affirmative steps with the objective of creating a welfare state for the people.

Article 38 of the Directive Principles of State Policy mentions about the role of the state and its commitment towards securing the welfare of the public and to create a just social order where work progressively in eliminating the inequalities thereby increasing facilities and opportunities for all people [13].

Similarly, Article 42 of the Directive Principles of State Policy mentions about the state taking steps for creating proper humane conditions for work and maternity relief [14]. This is important for safeguarding a mother's health in order to ensure that a woman can fully exercise her reproductive right and freedom without any sort of hindrances.

Article 47 speaks about the obligation of the state in raising the level of nutrition along with the standard of living of its people and taking appropriate steps to improve public health as its primary duties. [15]

Part IV A of the Constitution of India mentions about Fundamental duties which have been inserted by the 42nd Amendment Act. These are duties which state certain fundamental

[12] Supra note 9 at 4
[13] Article 38 of the Constitution of India- "The State shall secure a social order for the Promotion of Welfare of the People"
[14] Article 42 of the Constitution of India states that "The State must ensure proper working conditions for all and provide maternity leave"
[15] Article 47 of the Constitution of India states that the Government's duty to improve the standard of living and works towards public health

obligations of the citizens towards maintaining the unity of the nation. Article 51-A(e) mentions about maintain harmony and it shall be the duty of every citizen of India to abdicate practices which would be degrading towards women [16]. These ideals which have been incorporated in the Constitution of India reflects that women's rights in the Indian society should be protected and cared for as per the values of the grundnorm.

2.2 Medical Termination of Pregnancy Act 1971:

The custom for a woman to embrace pregnancy in a good state of health is something that has been preferred and welcomed by the society always. The legalities which are connected to abortion have been vividly explained by the provisions of the Indian Penal Code, 1860 since time memorial. If one has to strictly follow the outlines mentioned in the Indian Penal Code, then abortion can be considered to be an unlawful act for which the women who is pregnant with the unborn child along with the medical personnel who had performed the abortion will have to face penalties as per the law except when the said medical procedure was undertaken to save the life of the pregnant women. The Central Family Control Board was deeply anxious regarding the increasing number of illicit abortions which were being performed by medical professionals who were not equipped with the adequate knowledge along with the expertise which had ultimately resulted in death of countless women who opted for this procedure. Consequently, in the year 1964 a penal under Shri *Shanti Lal Shah*[17] had been formed with the sole purpose to look into the legality of abortion laws. The standing committee after a thorough analysis of the existing abortion laws had put forward its opinion stating that the existing provisions of the Indian Penal Code was very constricted and the only way was to ease the said provisions, The Medical Termination of Pregnancy bill was introduced in the upper house i.e. Rajya Sabha on the 17th of November 1969 which was then scrutinized in every aspect by the Joint Select Committee, The bill after having been discussed by the members of both of houses i.e. The Rajya Sabha and Lok Sabha was passed on 27th May 1971 and 2nd August 1971 after which the bill received the assent of the President on 10th August 1971. The Medical Termination of Pregnancy Act[18] came into force on 1st April 1972. The said act is said to be

[16] Article 51-A(e) of the Constitution of India speaks of promoting harmony and the spirit of brotherhood amongst the people of India transcending religious, linguistic and regional or sectional diversities.
[17] WH0-CCR IN HUMAN REPRODUCTION, ALL INDIA INSTITUTE OF MEDICAL SCIENCE, https://aiims.edu/aiims/events/Gynaewebsite/ma_finalsite/report/1_1_4.htm (last visited Sept 29, 2024)
[18] An Act which was bought into force which provided for the termination of certain pregnancy by registered medical practitioners.

applicable to entire nation of India except for the state of Jammu and Kashmir. The goal for which the said act has been enacted can be briefly summarised in the following points-

1. To lend a hand to helpless woman who have been subjected to heinous sexual offences.
2. To medically assist women whose life is likely to be endangered due to the birth of a crippled child.

The Medical Termination of Pregnancy Act 1971, abortion rights were made accessible at the acumen of the medical experts. The permission to opt for an abortion was allowed if the women who is pregnant with the unwanted child is able to fulfil the criteria of abortion mentioned in the act. Section 3 of the Medical Termination of Pregnancy Act has rightfully mentioned that during the time period of twelve to twenty weeks, the medical procedure of abortion is permitted only if the unborn child poses as a threat that is likely to harm to the women's health physically or mentally. However, if such a condition arises where the length of the pregnancy exceeds permissible duration of twelve weeks but does not exceed twenty weeks then certification/ approval of two registered obstetricians is required.

However, The Medical Termination of Pregnancy Act 1971, just like any other piece of legislation has some loopholes or inadequacies which had to be looked into by the law makers. The Medical Termination of Pregnancy Act 1971 provides lack of option to the women who is pregnant with her unborn child. In case a woman wants to abort the child, it is the opinion of the medical professionals whose opinion will be taken into account rather than the woman. This is a clear violation of a woman's own reproductive freedom. Section 3 of the said act mention about the scenarios where a pregnancy may be terminated by a registered medical practitioner, the said section states when a pregnancy happens due to the lack of success of any contraceptive measures used by a couple for limiting their number of children, then in such a scenario abortion can be opted for as it may cause mental agony to the pregnant women, The applicability to this section applies to only married women and its relevancy to unmarried women is completely ignored by this section.

2.3 Reasons for Amendments to the MTPA 1971:

The foremost Medical Termination of Pregnancy Act 1971[19] was passed as it enabled women to opt for termination of pregnancies by registered medical professionals. Due to the involvement of proportionate less prospect of risk, advancement of science and technology in

[19] *Ibid*

the medical field and the urge for increasing the gestational period for women who wish to opt for abortion, the Medical Termination of Pregnancy Act 1971 had to undergo a few changes which ultimately led to the passing of the Medical Termination of Pregnancy (Amendment) Bill in the year 2020. The bill then received the assent of the President on March 25th 2021. The current Medical Termination of Pregnancy Act 2021 has been receiving a positive response from lawmakers, jurist, eminent personalities as the contesting members made no distinction between married and unmarried women as the new amendment had replaced the word "husband" with the word partner.

2.4 Key Changes in Medical Termination of Pregnancy (Amendment) Act 2021:

The Medical Termination of Pregnancy (Amendment) Act, 2021 in its current state has provided that in case there is a failure to prevent pregnancy even after the use of contraceptive devices by couples, then according to the new act, a termination can be opted for my any women, in case she does not wish to carry the child to term up to twenty weeks.

The said act has also increased the incubation period from twenty weeks to twenty-four weeks for women who have been victims of rape, incest and others. Moreover, the Medical Termination of Pregnancy Act 2021 mentions about abortions which is to be performed by medical professionals who have got specialized knowledge in gynaecology or obstetrics. The law makers while enacting the said act, has taken a strong step of maintaining the privacy of any women who wish to opt for abortion and her identity will be kept in confidentiality and shall not be revealed except by a person acting under the authority of law.

2.5 Judicial Interpretation Towards Abortion:

From the year 1973 onwards, the laws which were in motion in the United States had abruptly alternated with the decision put forward by the Supreme Court in *Roe Vs Wade* [20]. In the following case, the U.S. Supreme Court upheld that the criminal abortion statute which was in operation at Texas firmly criminalizes the medical procedure of abortion except to save the life of a mother is in violation of the Due process provision which has been mentioned under the Fourteenth Amendment of the U.S. Constitution[21]. The Supreme Court held that the word 'person' which has been mentioned in the fourteenth amendment, does include within itself an unborn child, and the query about when life supposedly begins cannot be assumed by it [22].

[20] 410 U.S. 113(1973)
[21] US Supreme Court Reports, Vol 35, New York, 147-199
[22] *Ibid*

Moreover, the Supreme Court has recognised the "right to privacy" which included within its ambit one's freedom to decide whether to get married or not, procreation, the number and spacing of children. The right to privacy is a crucial aspect of personal liberty which is broad enough to circumscribe within itself a women's personal choice whether to opt for an abortion or not.

Coming to the year 1992, the Supreme Court had put forward its decision in *Planned Parenthood Southeastern Pennsylvania Vs Casey* [23]. Through the following case, the court had not over rule Roe's case but broadened the dimensions on the right of abortion. The court held that the "undue burden test" is to be put into effect instead of the trimester framework in order to enable to determine whether the regulations of the state have got some objective of putting considerable obstacle for a woman who opts for a termination of pregnancy.

In *Nand Kishore Sharma Vs Union of India* [24], Supreme Court held that the Medical Termination of Pregnancy Act was in conformity with Article 21 of the Constitution of India, and its foremost objective is to save the life of the pregnant women in order to save her from any sort of harm to her physical and mental health. Therefore, the court allowed her to go for the abortion beyond the permissible time limit of 20 weeks.

Similarly, in *Suchita Srivastava Vs Chandigarh Administration* [25], the Apex Court held that it is the sole decision of a woman to make reproductive choices, which includes within its ambit her independent choice whether to have or abstain from having any children which has been given due recognition under personal liberty under Article 21 of the Constitution of India.

In *X Vs Union of India*[26], a woman who was detected HIV positive, was found to be 18 weeks pregnant due to forced prostitution. The woman was denied her request to opt for an abortion by the legal authorities. As a result, she filed an appeal in the High Court of Delhi. The court looking into the facts of the case allowed her to opt for an abortion relying on *Section 3* of the MTPA Act which resulted as a consequence of rape as because not allowing her would amount to causing physical and mental and economic crises if the said pregnancy would be allowed to continue.

[23] 505 U.S. 833 (1992)
[24] AIR 2006 Raj 166
[25] 2009, 9 SCC 1
[26] Writ Petition [Civil] No 1137 of 2023

3. Factors affecting Access to Abortion Services in India:

In India, access to abortion services is influenced and shaped by a complex mix of legal, social and healthcare- related factors. Although the Medical Termination of Pregnancy Act 2021 legally permits abortion under certain conditions. However, substantial access to safe and legal abortion services varies significantly across the country. These inequalities are often influenced by a host of factors which includes geographical, socio-economic status, caste along with the availability of trained healthcare experts.

3.1 Urban Vs Rural Divide

Access to abortion services in India is heavily influenced by geographical location. Women residing in urban areas have got greater access to healthcare facilities which includes private hospitals and clinics, where abortion services are more readily available. Urban centres generally offer better access to trained gynaecologists and medical practitioners who are authorised to perform abortions as mandated by the provisions of the MTP Act.

Conversely, rural areas face a severe shortage of healthcare infrastructure and trained medical professionals, leading to limited access to safe abortion services. Women in rural regions often have to travel long distance to reach healthcare facilities which can prove to be a major factor which cause delayed access to timely care. Furthermore, cultural stigmas and lack of awareness about legal abortion options contribute to women residing in rural areas to opt for unsafe abortions which are performed by unqualified medical individuals leading to higher risks of complications and maternal mortality.

3.2 *Public vs. Private Healthcare*

In India, there is a marked difference in the quality and availability of abortion services between the public and private healthcare sectors. While public healthcare facilities are legally required to provide safe abortion services, the availability is often restricted due to underfunding, a lack of resources, and a shortage of trained personnel. Many public hospitals and clinics, especially in rural areas, do not have the required facilities or trained doctors to perform abortions, leading to delays or denials of service.

On the other hand, private clinics offer better access to abortion services, particularly for women who can afford them. However, the cost of procedures in private facilities can be prohibitively high for lower-income women, forcing them to seek cheaper, often unsafe alternatives. This economic divide exacerbates the inequalities in access to safe abortions, with

wealthier women having better options compared to their economically disadvantaged counterparts.

4. Impact of Caste and Society

4.1 Caste and Class-Based Disparities

Caste and class also play a significant role in determining access to abortion services in India. Lower-caste women, particularly those from Scheduled Castes (SCs) and Scheduled Tribes (STs), are more likely to face barriers in accessing healthcare due to discrimination, social stigma, and economic deprivation. Many lower-caste women, especially in rural areas, may lack awareness of their legal rights under the MTP Act and may not have access to healthcare facilities that provide safe abortion services.

Upper-caste women, particularly those from wealthier backgrounds, tend to have better access to private healthcare facilities and are more likely to seek out safe abortion services. Tis caste-based divide in access to healthcare reinforces systemic inequalities, leaving marginalized women more vulnerable to unsafe abortion practices.

4.2 Legal Restrictions and Societal Stigma

While abortion is legally permitted under the MTP Act, certain legal restrictions—such as the requirement for a doctor's approval and the gestational limits—can limit access, especially in areas with fewer medical professionals. These restrictions, combined with the societal stigma surrounding abortion, discourage many women from seeking care in a timely manner. In rural and conservative communities, women face additional pressure from family and society, making it difficult to access abortion services without fear of judgment or social ostracism.

5. Impact of Healthcare Inequalities on Maternal Health

The disparities in access to abortion services have a direct impact on maternal health in India. Unsafe abortions account for a significant portion of maternal deaths, particularly in rural and underserved areas. Lack of access to proper medical care increases the risk of infection, injury, and complications from unsafe abortion practices. Additionally, the limited availability of post-abortion care in many parts of the country means that women who experience complications may not receive the necessary follow-up treatment, further endangering their health.

Health care professionals and medical personals who are engaged in such procedures should keep themselves updated by improving their knowledge about prevention alongside the risk factors which are associated with unsafe abortion which will inculcate knowledge about the health care professionals and as a result these medical professionals can disseminate the knowledge, they have earned for themselves and increase awareness among the young female groups. Young children should be inculcated with the education on how to use contraceptives as an effective measure to avoid unsafe abortions which comes as a secondary option as a result of unplanned pregnancy. Abortion services should be readily made available to women and young girls which the laws permit. Women should be educated about the circumstances and the scenario where abortions are considered to be legal It is the sole responsibility among the health care providers to provide proper referral which will ensure a woman's approach to safe abortion services are not delayed. Speaking in terms of the global scenario, in countries where abortion is considered to be legal, the health care system has got a primary responsibility to care for women who seek such services and they are not supposed to let their personal judgement get in the way which leads to a delay in proper abortion services. Some of the other ways of preventing unsafe abortions includes a collaborative partnership amongst community and service providers, proper health and medical counselling sessions along with educating the youth about safe sex is a mandatory step which will serve to lessen the mortality rate of women happening due to unsafe abortion.

Conclusion: Way Forward

Abortion is deeply intertwined with women's autonomy, dignity, and overall well-being, particularly in the context of India. The discourse surrounding abortion rights reflects broader discussions on reproductive justice, human rights, and gender equality. The evolution of laws and policies governing abortion in India underscores the ongoing struggle to balance women's rights with societal values and legal frameworks. While legal provisions exist for safe and legal abortions, challenges persist in terms of access to healthcare services, societal attitudes, and stigma surrounding abortion. Unsafe abortion remains a significant public health concern, leading to preventable complications and maternal mortality. Efforts to prevent unsafe abortion must prioritize education, access to contraception, and comprehensive healthcare services. Ultimately, the discourse on abortion and reproductive justice underscores the importance of respecting women's autonomy, agency, and bodily integrity. Upholding these principles

requires ongoing dialogue, policy reforms, and societal shifts to ensure that all individuals can make rational choices about their reproductive health free from coercion, stigma, and discrimination. Despite the fact that Medical Termination of Pregnancy Act has been in enactment in India from 1971, still research has showed that some of the plans which govern abortion services seems to be constrictive in nature which has ultimately resulted in limited access to abortion services. Following 2000, Vast changes which have been implemented continuously which possess possibilities to make abortion services being made available to women who wish to opt for this medical procedure. Facilities, for safe abortion with proper certification was localised to the district level, competent health care centres were set up at different parts of the country, some of the state's collaboration between health sectors have been set up for prompt delivery of services to women. Although, a lot has been attained to make sure that women have access to safe and legal abortion services, still there are miles to be covered, still women in some remote parts of India who are economically backwards still suffer stigmatization and gender discrimination till date. The root cause which needs to be looked into promptly is by addressing the problem of gender biasness and one amongst many ways this issue can be solved is by educating young women about their rights which will capacitate women to acquire their self-control over their reproductive choices which will lead to a healthy outcome. A women's reproductive health needs to be treated with care as it varies with culture, age and a hist of other related factors. Therefore, it becomes necessary that all women need to have access to accurate and adequate information regarding their reproductive health care. In case women are denied such information, they are put at a risk which will ultimately affect their physical as well as mental health which ultimately deteriorates their reproductive capacity. As a result of the changes made by the Amendment Act which was enacted in the year 2021, massive improvements have led to positive outcomes as a result of increasing the time limit for availing the time period which has proven to be a blessing in disguise for women, however the consciousness regarding the same seems to be a major issue. The medical procedure of abortion is a terminology which has got various social, ethical as well as financial issues connected with it, as a result, this creates an obligation for the society as well as the law makers to provide proper medical assistance regarding accidental pregnancies thereby strengthening women's independent choice of opting for abortion.

DIGITAL RAPE IN INDIA

Garima Jargar *

Introduction

Immersive use of technology is a crucial part of emerging the nation into transformative regime wherein a prominent aspect is disclosed which provides with a virtual space. Entering the world that is surrounded with the creature living the in parallel world, that is either unknown or undiscovered; irrespective of the performance of act that can be categorised as criminal offence. Well, metaverse is the combination of the virtual reality that is argumentative, dynamic, unethical, interoperable space, and harsh to the reality. Within the platform of metaverse it is categorised as social space connected with the digital world that can be benefited to the population. As it was created on the bedrock of the blockchain technology and for the welfare of the developing countries, but somewhere it is impacting the people in a very vicious manner.[1]

Digital Rape is a quite nascent for the Indian legal System that is misinterpreted by the people as the word signify two different aspects i.e., Digit + Rape wherein the sexual penetration done in the human body, which might be caused by any finger, thumb or even toe by a person committed on another person. Herein this offence is gender neutral as well as applicable to men section and all kinds of the offender, accused or victims. However, the omission of the word "Digital Rape" have neither been expressed or written explicitly anywhere nor have specified in any of the code.[2] Thus, it is not mentioned in "Indian Penal Code 1860 nor in the POCSO Act, 2012". It is seen, that this situation has made a huge level of shortcoming for both the methodology, which should be urgently ratified by the legislature without any further delay.

Section 375 of IPC provides with the definition of rape that made a new set of guidelines after the Nirbhaya case in 2012[3] for either toughen the punishment or for criminalising the alleged offender without any further unwanted delay. The criminal law amendment act 2013 [the amendment Act is also known as "Nirbhaya principles, guidelines, or act"]. was initially being

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[1] Ms. Jyotsana Singh & Dr. Prashant Mishra, Digital Rape in India: A Doctrinal and Empirical Studies (with special reference to Jhansi district of Uttar Pradesh), Vol.11 (9), pp. – 788 – 800 (2023).

[2] Tanishka Tiwari, "What is the concept of Digital Rape," Law Insider (22th Feb. 2024, 10:50 A.M.), https://www.lawinsider.in/columns/what-is-the-concept-of-digital-rape-in-india

[3] (2017) 6 SCC 1

passed that revised whole guideline for the punishment of the commission of crime, and digital rape was explained u/s 375 (b).[4]

"According to the Protection of Children from Sexual Offences Act 2012" – S. 3 explain about the sexual offenses or act which is done against children, likewise it is entitled as "penetrative sexual assault". Similar S. 375 of IPC, defines that – "penetrative sexual assault is categorised as offence of rape and elaborated into four categories – insertion of any object or any such part of the human body, not compulsorily being male reproductive organ (penis), into the female reproductive organ (vagina), urethra or anus of the child to such an extent that deteriorates the physical health of the child or by making the child to perform with some other person that is said to be 'digital rape'.[5]

If the definition is sum up then it can be stated as - "The clear difference between rape and digital rape is of genital (reproductive organ)."

Coining of the phrase "Digital Rape"

Every country justice delivering system should uphold only one principle i.e., fair, effective, and law that can benefit the society at large. The pragmatic approach for adopting the application for restorative justice aims for accounting equal right to the victim and offender. It emphasizes on the reintegration towards the offender within the societies rather than possessing controlling the stratagems of the punishment as well as exclusion. Sexual offence has nowadays become a commonplace in the society customary response for the crime that can be neither be benefited to the victim nor to the offender towards the deterrent effect.[6]

After the Nirbhaya case the word 'digital rape' was coined with reference to different section and portion of the POCSO act and other criminal codes. The difference between both the form of rape have categorised only based on the genitals which create a huge gap between the execution of law and implementation of the issues. However, the laws which were related to

[4] According to section 375 (b) "If a man penetrates into the private part (vagina, urethra, anus) of a woman any object or any other part of the body which is not the genital (penis) of the man, to any extent or from the victim himself or any other makes a person do it, it is said that he commits digital rape."
[5] J Lakshmi Charan, Rape sentencing in India: Need for Uniform sentencing guidelines, IJLMH, Vol. 6 (6), pp. 1940 – 1950 (2023).
[6] CHIRAYU SHARMA, "Digital rape is a Punishable Offence in India, a recent Conviction in Noida," India Law watch (25th Feb 2024, 12:10 P.M.), https://indianlawwatch.com/digital-rape-is-a-punishable-offence-in-india-a-recent-conviction-in-noida/

the Rape, Sexual assault, Sexual offences, and other relative issues, were not being resolved due to which it was creating an imbalance of the statute available and amended provisions.[7]

Earlier, it was suggested by the government that they had trouble while handling the relative cases with accordance of the case related rape statutes. Herein the Apex Court which have either to alter the definition or to enshrine over the light towards the fact - that there were several other ways as well as methods for a man to either violate the dignity of the woman or the insight of the child. However, the term 'rape' which was ratified in 2013 while all the situation related to the commission of crime which will be kept in mind.[8] The new definition - defines – "rape is considered as an act which is either forcing the penis, any object, or other body part in the woman's mouth, anus, or urethra." Although after the amendment - the lawmakers have divided the rape victims into two different groups i.e., Majors & Minors. Minor digital rapists are tried both under Sections 375 & 376 and alleged under the POCSO Act, whilst Major digital type of rapists is usually arrested and subsequently tried with accordance to S. 375 and 376.[9]

Cyber-raping vis-à-vis Digital Rape

Because of the Nirbhaya case the situation and severity of the crime went very harsh and tougher in sentencing simultaneously there have been several incidents which took place within the jurisdiction for committing the crime like of sexual assault or etc., through the digital networks. Herein the term 'digital rape' might be either conjure in act or unethical images would be circulated in the internet or within the cyber world. Any of the sexual offense that will be either committed on the online platform, which will include some of the impersonating of the other person or for abusing him/her on any of the online platform, is not referred to as "digital rape." Yet, this act does not initial related to the act of either inserting any of the one's fingers or toes without that person's consent (herein the person includes both men and women) into the private areas. There are broad categories of rape which are as follow –

[7] R B, Monesh, Rape Laws in India: A Gender Perspective, SSRN (25th Feb. 2024, 16:40 P.M.), https://ssrn.com/abstract=4309580 or http://dx.doi.org/10.2139/ssrn.4309580

[8] Susmita Sen, "THE DEFINITION OF DIGITAL RAPE AND ITS LEGAL RAMIFICATIONS," Vol. 2 (3), pp. 318 – 328 (2023).

[9] S. 375 (b) of IPC – "penetrative sexual assault is categorized as offence of rape and categorized into four
– Insertion of any object,
- Not compulsorily being male reproductive organ
- Into the female reproductive organ, urethra, or anus
- Deteriorates the physical health.

1. Date Rape- Herein the "date rape" is widely described as ‘acquaintance rape,’ categorised as a non-domestic rape which is either committed by a known person or also headed as sexual assault. The situation can be that the - offender intentionally uses drugs on the victim for getting incapacitated.
2. Gang rape- It is described that – “a group of people who eventually participated in the action of rape with single victim.” This involve two or even more perpetrators.[10] The punishment with a minimum of ten years rigorous imprisonment, that can be extended to life imprisonment with fine or both.
3. Marital rape- Referred to ‘spousal rape,’ wherein a married pair or the de facto couple force any type of sexual assault against the other. It is also considered as domestic violence or sexual abuse.[11]
4. Custodial rape - Custodial rape is stated that - a man in authority and commits rape of woman within his custody.[12] If there is any misuse of their authority or position then it will be termed as very heinous and severe crime. For instance, in 1983, the matter was given significance as well as favour, for terming ‘custody’. Example can be “the Mathura Rape case.”
5. Digital rape - A forceful or coerced penetration by fingers or with toes without the consent.

Sentencing Policies and Penalties of Digital Rape

In Indian Penal Code and POCSO the offender will receive 5 year of rigorous imprisonment that can be extended by overlooking the severity of the crime. [13] however there few clauses in POCSO that specified the penalties –

- S. 3 of POCSO which is read with S. 376 of IPC that states any penetration which is done on a child vagina, urethra, or anus with any object or part of the body will be consider as an offence guided under the provision. This will also include sexual assault not only the provision will be considered but imposition of the punishment would be immediate.

[10] S. 376(2)(g) of IPC
[11] Section 375 (Exception 2) states that - “sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”, in certain cases, Courts stated it as 18 years instead of 15 years.
[12] Section 376A of IPC
[13] S. 376 of IPC

- S. 5 (m) and 6 of POCSO wherein the child (below the age of twelve) if any serious penetration caused through the crime of sexual assault, then there will be strict imprisonment of 20 years i.e., death penalty. Additionally, according to S. 6 the aggravated offence punishment can be extended according which can be categorised as more than twenty year and imprisonment for life and liable for the fine or with death. This also includes the full compensation rewarded to the victim i.e., medical expense as well as rehabilitation.
- S. 7 of POCSO which specifies that – touching any private part of the child shall be considered as a heinous crime which will be equivalent to sexual assault wherein it provides with minimum of one year of punishment and fine.

Due to lack of any rigid implementation over law there were no law which was amended in the country wherein Chapter 16 of IPC act as a major portion for the protection from the offences committed against the body. S. 164A CrPC[14] which specifies that the rape victims should be medical examiner. In accordance, with S. 327(2) CrPC, that every victim must compulsorily undergo in-camera trial.

Case studies where Digital Rape was Penalized

After the Nirbhaya rape case it was said that there are different offences related to sexual abuses that are eventually been overlooked by the women. Moreover, there is an excessive level of demand for re-generating the process of reviewing, ratifying, restructuring, and lastly amending the provisions related to law with reference to crime against women.[15]

"In furtherance of this Justice JS Verma Committee" meticulously is formed for reviewing the laws which will be dealing with the offences that are against the women which will come up with the recommendations that are much needed for being done in the order for either making the laws related to women friendly or filling the loopholes within the judiciary. It was recommended and amended according to the S. 376 of IPC, that elaborates - not only by penetrating the male reproductive organ i.e., penis into the female reproductive organ i.e., vagina which is conducted without the free will or consent of the woman that should be defined

[14] Medical Examination of the Rape Victim
[15] Yogeshwar Krishna Purohit, "Understanding the Concept of Digital Rape," The Law Advice (26th Feb. 2024, 10:45 A.M.), https://www.thelawadvice.com/articles/understanding-the-concept-of-digital-rape

as rape rather than it should simultaneously include the penetration of the finger, toes, thumb, or relative any other foreign object inserted in one body.[16]

However, the legislation has passed the ratified 'Criminal Law Amendment Act' which was later changed according to the S. 376 of IPC that are defined as the offence related to the rape as "a forcefully or nonconsensual penetrating into a woman's vagina, mouth, anus, or urethra by a penis, any other part of the body, or any foreign object." Since, it was categorised as new, discovered, and wider of the definition which included the terms that are likely to be of any other part of the human body that have an inclusion of any finger or even toe that also have defined under the explanation of any other foreign object related to sexual assault, hence there is an urgent need for making of the foundation towards the original concept of Digital Rape that came into the existence.

State v. Pankaj Choudhary, 2011[17] – "A 6-year-old girl was raped by the accused by putting the finger into her vagina after sometime he started to put the finger into anus of the girl child. The claim of the prosecutor was that the accused should be tried and convicted for offence of rape. But at that time definition of rape was not wide enough to include penetration of finger into woman's vagina or anus amounts to rape. Hence, the court held that the accused should be convicted for indecent assault given in section 354 of IPC. In this case one can see that if the court would have relied on current definition of rape and section 376 of IPC. If we see the judgement from current provisions of law, the accused should have convicted for offence of digital rape under section 376 of IPC but instead of this he was convicted for outraging the modesty of woman under section 354 of IPC."

The Nirbhaya case ('Mukesh & Anr vs State for Nct of Delhi & Ors') [18]is ultimately considered as one of the most hilarious and horrific offence which was done in the mere history of India, other shocking and malafide mentality for the entire nation. Therein it was a serious question that was raised - about the enforcement of law, wherein it was settled that this brutal kind of crime. however, this incident has prompted the lawmakers for seeking on the either way for protecting the women from all type of harassment. Herein the case has brought several different anomalies in the legal judiciary system for lighting which led to a significant change. As the

[16] Tanishka Tiwari, "What is the concept of Digital Rape," Law Insider (26th Feb. 2024, 14:50 P.M.), https://www.lawinsider.in/columns/what-is-the-concept-of-digital-rape-in-india
[17] Criminal Appeal No.2298 of 2009
[18] 24679 of 2019

Criminal Amendment Act (this was introduced for Anti-Rape Act), wherein it was initiated for the offenses like stalking, acid attacks, and even in voyeurism.

Akbar Ali v state of UP, 2022 – "A 65-year-old who was also categorised as Akbar Ali was being accused for the crime of digital rape of a minor aged of three and half year-old girl child in Salarpur Noida. After going through the examining evidences, the court analysed the indictment towards digital rape wherein it should be corrected in the part of accused as he used his fingers to penetrate the vagina. As a part of Analysis was that - in the case mentioned above the court based his judgement on definition of rape given by Criminal Law Amendment Act, 2013. If court would not have relied on definition before 2013 then Akbar Ali would have been convicted for outraging modesty of woman under section 354 of IPC rather than offence of digital rape as defined in section 376 of IPC."

Suggestions & Recommendations

- Proper psychiatric treatment and counselling to the people for removing the filthy mentality.
- Educating the children about sex education wherein it should be published in a societal level as well which can assist the children to know about good touch or bad.
- There cannot be absolute eradication or ban of the pornography but at some extent there should be restriction according to the limitation of the content they are creating.
- The authority should delegate the authority so that there can be proper functioning of the same.

Conclusion

After the Nirbhaya rape case, an immediate need was recognized to change the rape laws in India. Before 2013, digital rape was not incorporated under the definition of rape. But after multiple horrendous rape cases, as stated above, the Supreme Court had to make a few revisions to its definition of rape, understanding that there are other ways that a man can employ to violate a woman or child's dignity. Hence, maintaining all these incidents and horrible instances of crime, the definition of rape was enlarged in 2013, and rape is now described as "forcefully penetrating a woman's vagina, mouth, anus, or urethra by a penis, any foreign object, or any other part of the body." There was an identification as well as well comprehension matter on

digital rape that epitomized as a pivotal advancement towards the evolutionary trajectory onto the legal framework in India.

Through there has been efficacious quantum of legislation and law enforcement, that conjunct within the heightened awareness towards education, it can be only hoped that the developing nation like India, will achieve the strides within the battle against such types of offenses and eventually will provide with an assurance towards justice to those who are affected.

POWER OF COURTS TO REMOVE AN ELECTED REPRESENTATIVE: THE ENIGMA OF AN ELECTED CHIEF MINISTER

Saket Agarwal*

Introduction

India is considered as the land of elections. The elections are celebrated as festivals with much fanfare and preparations. The elections of Lok Sabha to that of municipalities can be witnessed throughout the year. The voters and the contestants both participate with much fanfare with the former in a mood to change the lawmakers while the latter in the hope of getting the plum post of the elected representatives. Out of these elected representatives, few get the chance to become the ministers in the newly formed government. However, the means employed to get to these top jobs are often shady in nature. This includes using coercion to voters to cast vote in favour of a particular candidate, employing black money and resources collected through *hawala* etc. Therefore, it becomes all the more necessary to prevent any such instances in the interests of the democracy. The judiciary plays an important role here by keeping a check on any misuse of the power by any of the government bodies and the people actually running the show behind the veil. However, at times the situations become complicated where the people involved in the shady business are the elected representatives who are given certain protections and privileges by a house as per the constitution. In these cases, taking actions against these individuals become a bit complicated especially actions such as removing them from their positions. This controversial issue has been in limelight for quite a while with the recent case of Delhi chief minister Arvind Kejriwal.[1] A petition was filed in the Delhi High Court and later in the Supreme Court seeking directions for his removal from the position of the chief minister. Both the courts rejected the petitions claiming it as a publicity stunt and beyond their powers at that stage.[2] The reason provided by the courts might appear to be sound; however still it remains a question on the powers of the courts to remove the elected representatives. In fact, this is not a sole case of elected representatives involved in legal matters. There have been

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[1] SC refuses to entertain plea seeking removal of Arvind Kejriwal as Delhi CM, The Economic Times, https://economictimes.indiatimes.com/news/india/sc-refuses-to-entertain-plea-seeking-removal-of-arvind-kejriwal-as-delhi-cm/articleshow/110074402.cms?from=mdr.

[2] Petition seeking Kejriwal's removal from the CM post filed for publicity, says court, The Hindu, https://www.thehindu.com/news/cities/Delhi/petition-seeking-kejriwals-removal-from-cm-post-filed-for-publicity-says-court/article68043138.ece.

instances where the elected representatives grappled with legal issues in courts with the legislature also coming into picture in favour of the accused elected representative.

Relevant Provisions

The constitution does not explicitly define the term 'elected representative'. These elected members, however can be the members of parliament and members of state legislature in case of parliament and state legislature respectively. Article 84 and 173 are considered as one of the initial articles on members/ elected representatives. The qualifications contained herein requires the individual to be the citizen of India along with the minimum age of twenty-five years among others. Article 105 and article 194 considered as one of the most important provisions with respect to the parliamentary/ legislative privileges. It provides that there shall be a freedom of speech to the members where anything said or done by them in exercise of parliamentary privilege shall not make them liable in any manner. These articles ensure that the members of the house are able to work in a most efficient manner in a protected environment where their actions in the house will not incur any liability outside. Further, as per article 103 and 192, the question as to the disqualification of the members of the parliament and state legislature is decided by the President and the Governor respectively. Further, chapter-III of the Representation of People's Act provides for the 'disqualifications for membership of parliament and state legislature. Here, the act defines the term 'disqualified' as disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State.[3] The act further provides that the disqualification can be done on conviction for certain offences such as section 153A IPC, Foreign Exchange Regulation Act, 1973, Narcotic Drugs and Psychotropic Substances Act, 1985 etc.[4] Moreover, disqualification can also be made for committing corruption or disloyalty to the state.[5]

Position taken by the Courts

The position of the courts on the issue of eligibility of elected representatives and ministers in the government has always been settled. The courts generally observe restraint in case of internal policy matters of the other two organs unless otherwise required in the public interest. This cautious approach of the courts is based on the three-pronged arguments. The first being that the constitution has divided the powers of the state into the legislature, the executive and

[3] Section 7, The Representation of the People Act, 1951.
[4] Section 8, The Representation of the People Act, 1951.
[5] Section 9, The Representation of the People Act, 1951.

the judiciary with each organ expected to work within its well-defined ambit. This in no way leads to the suggestion that the separation of powers is strictly followed in India as long held by the courts in India.[6] The courts with the duties of dispensing justice can obviously call for an explanation for an allegedly arbitrary action. This power has to be balanced with the *laxman-rekha* drawn by the constitution.

The second reason is somewhat an extension to the first argument. These organs are expected to respect each other within their respective domain where any deviation from the original position is bound to give rise to conflicts. Nonetheless, situations frequently arise where the judiciary is at loggerheads with one or the other organ due to the inevitable circumstances. The first incident appeared in 1964 when the state legislature of Uttar Pradesh ordered the arrest of two judges of High Court.[7] The issue arose because the high court had granted bail to an accused who was ordered to be arrested by the state legislature. Ultimately, the Apex Court had to intervene in order to resolve this issue. The court throughout the case maintained that the matter should not have occurred and this tussle could have been prevented.[8] The court further honestly accepted that this case deliberately does not address all the issues raised by the parties; thus avoiding the circumstances to aggravate between the legislature and judiciary. In the words of the hon'ble court "*it is often much better that theoretical disputes should be allowed to lie buried in learned tracts and not be permitted to soil our daily lives.*"[9] A probable case of conflict further arose where the Hon'ble Rajasthan High Court issued notice of contempt against five sitting MLAs of legislative assembly of Rajasthan. The legislative assembly unanimously decided that the assembly would not take such notice. On the failure of acknowledgment of notices for the first time, again notices were issues but still the result was the same. The matter was not taken up further and both the parties have maintained status quo since then.[10] The courts have accepted in a number of cases that the legislative assembly is free to regulate its own procedure under article 194 of the constitution with the ultimate power to

[6] Supreme Court Advocates-on-Record-Association and another v. Union of India, (2016) 5 SCC 808.
[7] Justice Mirza Hameedullah Beg, 'A Case of Constitutional Conflict between the State Legislative Assembly and the High Court' Supremacy of the Constitution, https://www.allahabadhighcourt.in/event/CaseConstitutional ConflictMHBeg.pdf.
[8] Special Reference No. 1 of 1964
[9] *Id.*
[10] Govind Choudhary, Battle in courts and assemblies for 4 rights: Why are the Vice President, Lok Sabha and Assembly Speakers and CMs angry with the Supreme Court and High Court?, https://www-bhaskar-com.translate.goog/local/rajasthan/news/supreme-court-why-are-angry-with-the-high-court-from-the-vice-president-to-the-lok-sabha-assembly-speaker-and-cm-130790458.html?_x_tr_sl=hi&_x_tr_tl=en&_x_tr_hl=en&_x_tr pto=sc.

judicial review with the courts.[11] Until, the legislative assembly decide on the contempt proceedings, any interference by the courts is called 'premature' and hence is largely avoided.[12]

The third argument which is the most important of all the arguments is the principle of 'will of the people'. This concept is enshrined in our constitution as well and is considered as the major restraint for the courts to interfere in the political matters where the people directly are involved including the matters of election as well. The preamble correctly specifies the source of the power of the constitution which is '*We, the people of India…*'.[13] The constitution is considered as supreme in the country which derives its validity from its people. This ultimately means that anything to which the sanctity is ensured by the common people is considered sacrosanct (to say the least). If a member of a body with the legislative functions has to be elected, it can only be done through the Universal adult franchise. Similarly, their removal can only be done through the 'right to recall'. This seems to be the rationale behind the courts approach towards the legislature and legislative matters. This philosophy is accepted by and large, though a line has been drawn by the courts here to prevent any misuse of the power by the legislators. This includes the removal of an elected representative from his position in case he/ she is convicted for more than 2 years of imprisonment.[14] Further, any elected representative who has attained victory in an election by employing unfair means can also be removed from his position. This happened in the famous case of *Raj Narain v. Indira Nehru Gandhi*[15] where the court set aside the election of Mrs. Gandhi on the ground of her using the state machinery for the purpose of winning the election which goes against the Representation of People's Act, 1951.

An observation pertinent to point out here is that there is also a difference in the approach of the courts to judge the election of an individual on the allegations based on pre-election acts ['pre-stage'] and post-election acts [post-stage]. It is important to note here that disqualifications for both pre-stage and post-stage is prescribed under the Representation of the People Act;[16] with some additions as laid down by the respective state governments for the elections of panchayat and municipalities. Generally, the courts have not been as inclined in setting aside the election in the post- stage as in the pre-stage. The pre-stage includes disqualifications such as failing to submit election related accounts,[17] submitting false

[11] Ratna Gupta v. Secretary, Rajasthan Legislative Assembly & Ors., S.B. Civil Writ Petition No. 13751/2012.
[12] *Id.*
[13] Preamble, The Constitution of India, 1950.
[14] Section 8, The Representation of the People Act, 1951.
[15] Raj Narain v. Indira Nehru Gandhi,
[16] The Representation of the People Act, 1951.
[17] Section 10A, The Representation of the People Act, 1951.

affidavits etc.[18] On the other hand, the post-stage grounds of disqualification include indulging in corrupt practices,[19] conviction for 2 years or more etc.[20] This difference in approach might arise due to the fact that the process of election causes a huge burden on public exchequer. As per the reply of the government in the Parliament, a staggering amount of Rs 11,14,35,45,000 crore was spent in conducting Lok Sabha elections in 2009 which is nearly eleven hundred crore rupees.[21] For the recently concluded general elections, it is estimated that approximately one lakh crore rupees were spent.[22] Any removal of a candidate post assumption of office will again result into re-election which will not lead to draining of public money but will also result in public works being put to halt. However, this is not the hard and fast rule. The Apex Court can always resort to its power to do complete justice as provided under Article 142 of the constitution in cases where the courts observe a gross misuse of the powers or failure of constitution. The prime example is the case of *Thounaojam Shyamkumar Singh*, a minister in the government of Manipur who was removed from his position and further restrained from attending the legislative proceedings as the disqualification petition was pending against him with the speaker of the house.[23] Now this seems rather interesting as the courts generally tend to avoid a head on with the legislature and is clear from the discussion above. However, in this case pro-actively removed the person concerned from his position as minister.

Conclusion

The paper makes an attempt to delineates the grey area of power of courts to remove the elected representatives. This issue especially assumes importance since this is a grey area where the two organs of the state have always found themselves at the loggerheads since independence. Although, there are provisions in the Representation of People's Act for the removal of the elected representatives; the constitution is largely silent in this regard. There are provisions which suggests that the questions relating to disqualification of the members of the house shall be decided by the President and Governor; the role of courts in this regard in not very clear.

[18] Section 125A, The Representation of the People Act, 1951.
[19] Section 8A, The Representation of the People Act, 1951.
[20] Section 8, The Representation of the People Act, 1951.
[21] Expenditure on Holding Elections, Government of India, Ministry of Law & Justice Rajya Sabha Question No. 2870 (29.08.2011), https://sansad.in/getFile/annex/223/Au2870.pdf?source=pqars.
[22] Lok Sabha elections 2024: How much does it cost to conduct the poll?, https://www.firstpost.com/explainers/lok-sabha-elections-cost-election-commission-history-13761205.html.
[23] Supreme Court invokes special powers, removes Manipur minister, https://indianexpress.com/article/india/supreme-court-invokes-special-powers-removes-manipur-minister-thounaojam-shyamkumar-singh-6320920/.

Nevertheless, the courts have made attempts to bring the accused to the justice even if the person is a member of the house; the courts have observed restraint at the same time so as not to appear as an entity transgressing in the jurisdiction of another organ. This approach of the court; in the kind opinion of the researcher seems to be backed by strong reasons. The constitution of which the court is the guardian has granted the same kind of independence as it has to the courts. The power to conduct its business and to lay down necessary rules in this regard has been given equally to both the legislature and the parliament. It means any attempt to question the powers of the legislature working within its sphere would be nothing short of undermining the constitution. Further, the 'will of the people' is considered supreme in the constitution. The elected representatives represent the will of the people and it is ultimately they who are capable of removing the chosen ones. The court cannot exercise its powers against such a will without the elected representative falling under any one of the disqualifications specified by the legislature. Additionally, the approach the courts have adopted in the case is also different in case of pre-stage disqualification than the post-stage disqualification. The restraint in taking a harsh action in post-election disqualification has been higher than the pre-election disqualification. This is a situation which requires more and more discussion and deliberations as the legislature and the judiciary are just like the two wheels of a vehicle where problem occurring in one is bound to affect the other.

EXPEDITING JUSTICE AT PANCHAYAT-LEVEL: ASSESSING THE CHALLENGES AND POTENTIAL OF GRAM NYAYALAYAS

Mohd. Rameez Raza*

Sariyah Khan**

Access Struggle and Delayed Justice

India has one of the most comprehensive judicial frameworks in the world, but delayed justice delivery is a profound challenge that continues to undermine the credibility and effectiveness of the judiciary. (Davis & Trebilcock, 1999) Timely and effective delivery of verdicts is fundamental in cementing the system's credibility, (Sen, 2020) but delays in dispensing justice erode public trust in the judicial framework and adversely impact economic endeavors and social cohesion which has serious repercussions, (Pandey & Tripathi, 2022) including the infringement of fundamental rights, economic losses, and social instability. (OECD, 2015)

Delayed justice most disproportionately affects vulnerable groups – who often lack the resources and support to navigate the complexities of a prolonged legal battle. Articles 14, 19, and 21 commit to ensuring the timely delivery of justice, and the Supreme Court also held a firm position on this, as expressed in the matter of *P. Ramachandra Rao v. State of Karnataka* (2002). However, the nation's global ranking in the Rule of Law Index, at a lowly 77th among 140 countries, (Saran, 2022) underscores its subpar performance. This Index underscores the pressing need to address the alarming impact of court delays in the Country. (TN, 2023) Further, the Access Inequality Index published by the Centre for New Economics Studies underlines how difficult it is for vulnerable groups to access justice in the country. (Padmanabhan & Raza, 2021)

As of 2024, India continues to grapple with a significant backlog of pending cases, (Pedia, 2023) with over 70,000 cases at the Supreme Court, and around 5.9 million cases in various High Courts. The Allahabad High Court, for instance, has the highest number of pending cases among all High Courts, (Sinha, 2018) with over one million pending cases. The District and Trail courts (TNN, 2023) which handle almost 87% of the total caseload in India, and bear millions of pending cases. This includes more than 180,000 cases that have been unresolved

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for over 30 years, of which 66% are land dispute cases. Whether India has a solution to this pendency, can we alleviate the burden of the courts, at least of the District and Trail Courts? Yes, the answer to this is – Gram Nyayalayas.

Integrating the panchayat-level justice delivery system could significantly enhance the country's justice delivery system, especially for the rural population who struggle with access issues. Gram Nyayalayas will provide a more accessible, quicker, and cost-effective form of justice that can alleviate the heavy burden on courts by resolving minor civil and criminal matters locally. Also, their proximity to the community allows for decisions that are culturally sensitive and better understood by the local population, fostering acceptance and reducing the likelihood of prolonged litigation.

What is Gram Nyayalaya?

Gram Nyayalayas are panchayat-level courts established through the Gram Nyayalaya Act (2008) that represents a significant legislative initiative by the Government of India to decentralize the judicial system operating at the grassroots level, bringing justice closer to where people live and work. (Siddiqui, 2019) The primary intent of this Act is to ensure that justice is available to all the people at grassroots levels regardless of their socioeconomic background.

This Act not only aims to establish Gram Nyayalayas at the panchayat levels for resolving minor civil and criminal cases but also mandates the disposal of cases within six months, thereby addressing the issue of backlogs and delays in the judicial system. (Bail, 2022) Gram Nyayalayas ensures that justice is delivered at the doorstep of villagers through a decentralized system that is simple, formal, and people-friendly. Further, they facilitate smooth relations between the communities and the judicial system which helps demystify legal processes and encourages citizens to exercise their legal rights.

The Gram Nayaylaya Act (2008) consists of forty sections, divided into eight chapters and two schedules, each composed of three parts, and it governs the entire country, including the regions of Nagaland, Arunachal Pradesh, Sikkim, as well as the tribal areas of the country. They have jurisdiction over both criminal and civil cases, specifically those related to minor offenses and disputes under certain Acts such as the Indian Penal Code (1860), and other Central and State laws.

The Nyayadhikari of Gram Nyayalayas has the competence of a first-class judicial magistrate for criminal cases and a civil judge for civil matters. Nyayadhikari has the power to preside over matters of theft, assault, and disputes related to property, land, water, and tenancy. They have the authority to issue directives for restitution, compensation, and relief in civil matters.

Gram Nyayalayas has tasted Success!

Gram Nyayalayas have adjudicated some very significant matters in the past, that demonstrate the Gram Nyayalayas' promising role in justice delivery – *Shobha Janardhan Masram v. Ganpat Gulamrao Thakre* (2015) was pending in the civil court for five years and was later transferred to the Gram Nyayalayas. The Nyayadhikari concluded that the plaintiff was entitled to the decree for the specific performance of the contract and for permanent injunction and therefore entitled to possession of the suit filed by the plaintiff.

In *Ramjanam v. State of Uttar Pradesh* (2023) Gram Nyayalaya, the Gram Nyayalaya adjudicated the matter of family dispute and maintenance and directed to pay rupees ₹2500 per month as maintenance for the best interest. In *Laxmi v. State of Rajasthan*, Gram Nyayalaya established its potential in dealing with domestic violence by taking swift action that helped the victim gain immediate protection. These matters highlighted the Gram Nyayalaya's role in safeguarding vulnerable populations.

In *Mahaveer Prasad v. State of Rajasthan* (2020), the Gram Nyayalaya convicted the petitioner for an offense under Section 279 Indian Penal Code (1860) and sentenced him to undergo simple imprisonment for six months and a fine of ₹1,000 – this matter underscores that Gram Nyayalayas successfully adjudicated criminal matter too.

Examining the Gram Nyayalayas Act's Implementation in India

The implementation of the Gram Nyayalayas Act (2008) began with the Central Government urging the State governments to set up Gram Nyayalayas at the panchayat level – this was an approach toward ensuring access to justice among the last-mile population. However, the impact of the Act has been restricted due to implementation challenges and execution has been uneven across the country due to several reasons – and only a few states have set up Gram Nyayalayas in the country.

The Gram Nyaylayas Act (2008) intended to promote access to justice and speed up court backlogs but their current status reflects substantial gaps between policy intentions and ground

realities. The operational Gram Nyayalayas are spread across only a few states, such as Madhya Pradesh, Maharashtra, Odisha, Jharkhand, and Rajasthan. In contrast, many states, including, larger ones like Uttar Pradesh and Bihar, have been slow or reluctant in establishing these courts.

While 5000 Gram Nyayalayas were supposed to be established in India, only around 250 Gram Nyayalayas are currently operational. (Waghmare, 2011) As of July 16, 2024, 15 states and union territories have notified 476 Gram Nyayalayas and only 257 of them are operational in 10 states.

The National Federation of Societies for Fast Justice filed a writ petition, *National Federation of Societies for Fast Justice v. Union of India* (2019) in the Supreme Court to establish Gram Nyayalayas – the petition claimed that 16,000 Gram Nyayalayas were needed, and not even 10% of them were operational. According to reports, Uttar Pradesh, which intended to set up 822 Gram Nyayalayas, had just notified 113 at the time the hearing was taking place. Out of which just 14 of them were operational.

Likewise, Goa had notified two Gram Nyayalayas, both of which were non-operational. Concerned about the ineffective implementation of Gram Nyayalayas, the Supreme Court of India instructed the High Courts to submit detailed reports on the creation and operation of Gram Nyayalayas. (PTI, 2020) The States were also asked to submit affidavits regarding the status and the development of the Gram Nyayalaya. (Jain, 2024) Since then, four and a half years have passed, and neither the State governments nor the High Courts have submitted any affidavits. (Rajagopal, 2024) Only about half of the Gram Nyayalayas were in operation, even in those states that had sent out notifications.

Furthermore, the Supreme Court was made aware that, even sixteen years after the legislature introduced the Act, Gram Nyayalayas continued to be limited and far in number. The State governments and High Courts have demonstrated a lack of dedication and adherence by neglecting to submit the necessary affidavits outlining the condition of Gram Nyayalayas. Some regions like Bihar and Jharkhand, have opposed its formation due to concerns over the transfer of judicial power from conventional courts to these newly established courts, and the perceived duplications of the judicial process.

What are the Barriers to the Success of Gram Nyayalayas?

Despite its promising framework and objectives, the Gram Nyayalaya Act has largely failed to achieve its intended outcomes. The reasons for its failure are multifaceted, encompassing issues of implementation, awareness, resources, and integration with the broader judicial system.

Lack of Awareness: Alleviating the burden on the courts was one of the main objectives behind the formation of Gram Nyayalayas. However, due to the frequent appeals against the verdict of Gram Nyayalayas, district courts continue to be overloaded with a number of unresolved cases which also signifies an absence of lack of faith from the perspective of the people. People at the grassroots level are not very aware of the existence, processes, and operation of Gram Nyayalayas due to which people continue to rely on the decisions given by the higher courts.

Inadequate Infrastructure: The Gram Nyayalayas Act (2008) aimed to establish panchayat-level courts to promote justice but the states those that have established them do not have proper courtrooms, staff, or technological support. This inadequacy restricts their functioning and undermines the objective of delivering swift and prompt justice. (Agrawal, 2021) Also, Gram Nyayalayas have largely failed to adopt technologies, which could streamline their functioning, facilitate better record-keeping, and improve access to justice. (Anumeha, 2016)

*Insufficient Funds***:** The Central and the State governments have not allocated sufficient funds and resources to carry out the implementation and functioning of the Gram Nyayalayas which has resulted in operational challenges, such as procedural delays and inadequate facilities.

*Untrained Cadre***:** Nyayadhikaris are the judicial officers who are appointed at the Gram Nyayalayas does not have the proper training and experience to handle a variety of cases. This not only hampers the standard of justice rendered but also a lack of belief in these institutions by the last-mile population.

*Jurisdiction Demur***:** Gram Nyayalayas has limited jurisdiction over specific civil and criminal cases. Certain cases are of significant importance to last-mile communities, such as land disputes, which are either outside of their jurisdiction or too complicated for them to deal with efficiently. Also, when any order or directive is issued by them, their implementation is delayed due to the absence of appropriate enforcement mechanisms and assistance from local administration and police.

*Bar-Bench's Resistance***:** Traditional bar and bench believe that the Gram Nyayalayas pose a threat judicial system of the country. The bar frequently claims that there is an absence of procedural safeguards in these courts. The bench is not willing to delegate powers to these

courts because of serious concerns over the standard of justice delivered and procedural compliance with the law.

Administrative Ambiguity: The State Judicial Service Authority has direct control over the functioning of the Gram Nyayalayas which results in bureaucratic bottlenecks and a lack of autonomy. This centralized control conflicts with the decentralized justice model envisaged by the Act. The ambiguity in defining the roles and duties of various stakeholders has led to confusion and uneven implementation in several parts of the country.

Even seeing some successful implementations, the Gram Nyayalayas Act (2008) is facing challenges in implementation, and has long way to go before it starts delivering significant results. However, to maximize Gram Nyayalayas' potential, there must be ongoing efforts to address the systemic challenges and ensure its fair and impartial functioning.

Policy and Legal Reforms Gram Nyayalayas Need

"*Very often our justice delivery poses multiple barriers for the common people. The working and the style of courts do not sit well with the complexities of India. Our systems practice rules being colonial in origin may not be best suited to the needs of the Indian population. The need of the hour is the Indianization of our legal system.*"

- N.V. Ramana, former Chief Justice of India (Ananthakrishnan, 2021)

Despite its intent to provide accessible and speedy justice to last-mile populations, the Gram Nyayalayas Act (2008) has several loopholes and implementation challenges that undermine its effectiveness. To enhance its ability to deliver justice and meet its intended objectives, it is essential to bring modifications that address these deficiencies and strengthen the framework and operational efficiency of Gram Nyayalayas, ensuring they function more effectively and fairly.

Firstly, State governments need to raise awareness among rural and last-mile populations, about Gram Nyayalayas – through comprehensive outreach programs on the existence, purpose, and benefits of Gram Nyayalayas. This can be achieved through community meetings, local media, social campaigns, and cooperation with the surrounding area and grassroots organizations.

Further, engaging local communities in the functioning of Gram Nyayalayas can foster trust and encourage people's trust in Gram Nyayalayas. (Kiruthika, 2023) Establishing local advisory committees comprising community leaders, local non-governmental organizations, and experts can help in overseeing the operations and ensuring the Gram Nyayalayas remain aligned with the needs of the rural populace.

Secondly, special cadre and training programs should be developed to enhance efficiency and skills. The Nyayadhikaris cadre should cover not only legal procedures but also sensitization to local customs, alternative dispute resolution techniques, and effective communication skills. Also, the Gram Nyayalayas Act (2008) mandates the appointment of conciliators under Section 27, therefore neither the police nor the advocates or judicial officers should undertake their role which is based on specialized training and practical experience.

The *third*, and most significant step is fund allocation. Gram Nyayalayas currently lack sufficient funding which hampers their ability to function effectively, (Kumar, 2012) therefore the Central and State governments should collaborate to allocate dedicated funds to establish and maintain Gram Nyayalayas by providing adequate financial resources which is essential for building necessary infrastructure, acquiring legal resources, and ensuring the smooth functioning of these courts.

The *fourth* step should be bringing the Digital India movement to Gram Nyayalayas too. Leveraging technology such as video conferencing and online case management systems can help in overcoming geographical barriers and resource limitations. This would also make it easier to conduct hearings and manage case files efficiently.

Lastly, the provision of plea-bargaining provision under Section 20 of the Gram Nyayalayas Act (2008) has been created to assist the parties. However, the Nyayadhikaris are undermining the purposeful objectives of this Act by not implementing and utilizing such provisions. (Siddiqui, 2019)

Also, the current Act has vague provisions regarding the territorial and subject matter jurisdiction of Gram Nyayalayas, leading to confusion and inconsistency- and giving rise to conflicts between Gram Nyayalayas and other higher courts.

The Gram Nyayalayas Act (2008) can be significantly strengthened to fulfill its promise of providing accessible, speedy, and fair justice to rural and last-mile communities, by implementing these proposed modifications. These changes, aim at addressing current

loopholes, engaging communities, enhancing resources, training judicial officers, and clarifying ambiguous jurisdiction – that are essential steps toward a more effective and equitable justice system.

Final Thoughts on the Future of Gram Nyayalayas

A revitalized panchayat-level justice delivery system has the potential to revolutionize the last-mile justice system in India. The Gram Nyayalayas Act (2008) was conceived to decentralize the judicial process and provide swift and affordable justice at the village level, representing a significant step towards democratizing access to justice for the rural populace.

However, the Gram Nyayalayas Act (2008) faced several barriers and obstacles in its implementation. Therefore, there is an immediate need of coordinated effort between the Central Government and the State governments, as well as High Courts along with active participation from the local communities – is the need of the hour.

An efficient and revitalized panchayat-level justice delivery system could act as a catalyst for bringing about a social transformation in society and thereby promoting legal awareness and empowerment among the rural population. Gram Nyayalayas has the potential to bridge the gap between rural and urban areas which will help in ensuring that access to justice is not only available but also delivered efficiently.

Over time, this could lead to a more equitable and balanced distribution of resources and opportunities which will not only help in creating peaceful societies but also lessen the instances of crime, violence, and unrest. Furthermore, the Gram Nyayalayas also can improve and enhance the framework to address the needs and aspirations of the people by incorporating them in the administration of justice, which will directly result in alleviating the burden of judiciary by reducing the number of pending cases.

To accomplish these goals, further initiatives should concrete a multifaceted approach that combines awareness campaigns, capacity building, legislative changes, and improvements of the infrastructure. Ultimately, the success of the Gram Nyayalayas Act (2008) depends upon the political capacity and bureaucratic dedication to ensure that justice is available to all people including those at the grassroots level. This implies not only framing policies but also ensuring that they are applied correctly in practice. The next phase should emphasize creating a robust

support system for Gram Nyayalayas, facilitating collaborations between various stakeholders, including the judiciary, government agencies, civil society, and local communities. The journey towards revitalizing Gram Nyayalayas does not only involve systematic reform but it is about reaffirming our commitment to the constitutional mandate of ensuring justice for all, especially the marginalized and vulnerable sections of society.

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