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The Editorial Board of Trinity Institute of Professional Studies, Dwarka, has been established under the aegis of the Law Department of TIPS, Dwarka. The main purpose of this board is to publish its Law Journal with the view of becoming an alarming instrument in taking the level up of legal research in India. Trinity law review is an academic periodical that covers a wide range of legal topics. Typically, the editorial board members will begin the publication of journals by publishing papers written by legal faculties and researchers. In the areas covered in the reviews, the law students provide references, notes and comments. Our law reviews are a source of research, with analysed and reference legal topics; we also provide scholarly analysis of emerging law concepts from a variety of topics, including Administrative Law, Animal Welfare, Antitrust and Competition Law, Common Law, and Torts and Insurance Law, to name a few. Hence, the Journal will serve as the platform for creative thought sharing and its main aim is to contribute towards the effective growth of legal knowledge.

Trinity Law Review

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MISSED OPPORTUNITIES AND HASTY DECISIONS: CRITICAL ANALYSIS OF CRIMINAL LAW AMENDMENT ACT, 2018

By Abhishek Sharma[1]

ABSTRACT

The two barbaric rape cases in Kathua and Unnao shook the conscience of the entire nation. There was a huge public demand for stringent rape laws, which ultimately led to the birth of Criminal law Amendment Act, 2018. Keeping in mind the accelerating rate of sexual offences against women and to ensure women safety, the amendment was the need of the hour, still the amendment missed certain opportunities which were much needed in India and it is high time to acknowledge some changes which are much needed in Indian Criminal Law system dealing with sexual offences in India. This study would focus upon some missed opportunities and some hasty and ill-conceived decisions of the Legislature while dealing with the sexual offences in India in the said amendment.

Some of the missed opportunities and hasty and ill-conceived decisions in Criminal Law Amendment Act, 2018: Whether introduction of death penalty in rape cases involving child below 12 years of age is deterrent or is just a myth? Is increasing the punishment from 10 to 20 years, when victim is of age between 12-16 years is justified even if the sexual intercourse is consensual? Punishment under 376(1) is increased from 7 years minimum to 10 years minimum making no difference with cases involving aggravated rape. Is it justified to not give anticipatory bail to a person accused of an offence of rape when victim is below 16 years of age?

1. EMERGENCE OF CRIMINAL LAW (AMENDMENT) ACT, 2018

The two barbaric cases in Kathua[2] and Unnao[3] show, how the existing laws dealing with the offence of rape were not enough. This Criminal Law (Amendment) Act, 2018 hereinafter referred as "2018 Amendment" is a reactionary action of the Parliament of these two barbaric cases. This amendment though is not too old to be critically evaluated

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[2] See, https://www.hindustantimes.com/india-news/kathua-rape-victim-was-sexually-assaulted-died-of-asphyxia-doctors-tell-court/story-4nOgLfG4v65R6ZAPJA93UI.html (Accessed on 12 April 2021)

[3] See,https://timesofindia.indiatimes.com/india/unnao-rape-case-fear-forced-me-to-hide-in-delhi-all-this-while/articleshow/63754632.cms (Accessed on 12 April 2021)

but there are some changes in the substantive and procedural parts after the 2018 Amendment which on very face of it seems to be hasty decisions of the Parliament.

Criminal Law (Amendment) Act, 2013 (hereinafter referred as "2013 Amendment") was considered as an amendment which contains stringent provisions. Still within the next five years of its birth, cases like Kathua rape case, in which an 8 year old baby girl was brutally gang raped and murdered. The worst part was the political support given to the alleged perpetrators in this case. These kathua and Unnao rape cases were extensively reported by the media which resulted in the public outrage. Consequently, government decided to take some measures.

Criminal Law (Amendment) Ordinance, 2018 was approved by the Cabinet and it was signed by the President of India. The Ordinance came into force on 21st April 2018, this ordinance introduced "Capital Punishment" for those offenders who have committed the offence of Child Rape. To fulfill the Constitutional requirements, the Criminal Law (Amendment) Bill, 2018 was introduced in the Parliament.

On 30th July 2018, Lok Sabha passed the said Bill and on 6th August 2018 Rajya Sabha Passed the Bill. President assented on 11th August 2018 and the 2018 Amendment came into force from 21st April 2018.[4] Changes were made in Indian Penal Code,1860, the Code of Criminal Procedure, 1973, The Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

This paper would deal with the critical analysis of 2018 Amendment; some hasty decisions of the legislature would be analyzed in the paper such as the introduction of death penalty in child rape. No difference in the punishment for the rape and aggravated rape etc. There are various changes introduced by the 2018 Amendment in substantive and procedural criminal law in India.

2. BLURRING CLASSIFICATION OF RAPE AND AGGRAVATED RAPE

There are two classifications of rape according to the provisions of section 375 and section 376 of the Indian Penal Code, 1860: a. Simple Rape- which is punishable under

[4]Criminal Law (Amendment) Act, 2018; Available at– https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf.

section 376(1) of the IPC and b. Aggravated Rape- which is Punishable under section 376(2) of the IPC. There are basically 14 situations in section 376(2), under which rape is said to be aggravated because in these aggravated situations[5] victim is more vulnerable as compared to simple rape punishable under Section 376(1). Prior to 2018 amendment, aggravated rape cases used to have higher punishment than simple rape cases.

Minimum punishment for the perpetrators who have committed an offence of aggravated rape is 10 years, whereas if a perpetrator who has committed an offence which falls under the purview of section 375 of the Indian Penal Code is punished under section 376(1), earlier the minimum punishment was 7 years and maximum was life imprisonment.

After 2018 Amendment, the minimum punishment for simple rape has been increased from seven to ten years.[6] Although, it appears that increase in the punishment is deterrent and pleasing, but a plain understanding of the recent amendment shows some of its shortcomings. For example, the distinction between the simple rape and aggravated rape has been vanished. For both, the minimum punishment is 10 years imprisonment, clauses under section 376(2) from (a) to (n) have no aggravated punishment as compared to simple rape. There seems to be no justification for the same punishment for simple and aggravated rape. Indian Penal Code when makes a distinction between the two classification of rape, punishment for the same should also be different. Although it seems to be a result of 'ham-fisted drafting', but it would definitely have serious consequences.

Prior to 2018 Amendment, Section 376 (2) clause (i)[7] used to deal with those cases in which a woman under sixteen years of age has been raped, this clause has been deleted now and a new sub section (3) to section 376[8] has been added under which a minimum

[5] I.P.C. Sec. 376(2)- there were fourteen circumstances which would make a case of rape an aggravated rape. Some of these circumstances are: a police officer committing an offence of rape, pubic servant committing a rape on woman who is in his custody, member of the armed force deployed in area, commission of rape in communal violence, committing rape on a woman with the knowledge of her pregnancy, raping woman who is incapable of giving consent.

[6] I.P.C. Sec. 376(1), 2018- the amendment has basically enhanced the punishment under this section, now the minimum punishment prescribed under this section is 10 years of imprisonment.

[7] I.P.C. Sec. 376(2)(i)- *"commit rape on a woman when she is under 16 years of age."*

[8] I.P.C. Sec. 376(3)- this is a new sub-section added by the 2018 amendment. This sub-section has replaced section 376(2)(i) of the Indian Penal Code. Enhanced Punishment of minimum twenty years is

of 20 years imprisonment and maximum life imprisonment has been given in cases under which perpetrator has committed an offence of rape on woman under 16 years of age.

Adolescents engaging in sexual experiments is not a new concept and is not uncommon specially in urban areas. 20 years imprisonment in those cases in which youths engage in consensual sexual experimentation seems to be unreasonable and unfair. Especially in India, as after 2013 amendment there is even no judicial discretion to limit the sentence if there are any mitigating factors for the same. For instance, a 15 years old girl and an 18 years old man engages in a 'consensual sexual activity', which is not uncommon, it becomes a case of statutory rape, moreover it becomes aggravated rape, once it has been proved that the girl was under the age of 18 years, the question of consent does not come into picture and it becomes the case of statutory rape, the man would undergo minimum 20 years of imprisonment at age of 18 years and comes back to his normal life at the age of 38 years. There is no doubt in saying that to avoid underage pregnancies and underage sexual activities and to save young woman from getting coerced and manipulated into sexual activities, there is a need of the State in providing statutory protections, but at the same time when consenting adolescent couples engage in these sexual experimentation and then the man has to undergo 20 years of imprisonment seems harsh and unwarranted. The impact of this amendment also affects juveniles. For example, a perpetrator who is 17 years old would now be treated as an adult after the Juvenile Justice (Care and Protection of Children), 2015[9], and he might be punished according to the provisions of the Indian Penal Code[10]. This shows how inconsistency in one statute can affect the principles of other statute; a 17 year old Juvenile can be sentenced for 20 years of imprisonment. The Impact of this would definitely make juvenile frustrated and under no circumstances he can be "reformed". The minimum sentence after 2013 amendment was 10 years imprisonment and after 2018 amendment, parliament has increased that minimum sentence to 20 years without any justification or research. Indira Jai Singh a senior advocate stated that, *"the mandatory nature of the offence takes away the discretion of the judge. Every sentence*

given to the perpetrators committing an offence of statutory rape.

[9] Juvenile Justice Act (Care and Protection of Children), 2015 (Act 2 of 2016)

[10] After the amendment in Juvenile Justice (Care and Protection of Children) Act, now a juvenile(16-18 age group) can be treated as an adult, if he commits a 'heinous offence' and can be punished accordingly except with death and life imprisonment.

must fit the crime".[11] One of the worst decisions by the Parliament after 2013 amendment was to remove judicial discretion from sentencing process using mitigating factors, this would surely affect now as it would make sentencing process rigid.

3. NEW OFFENCES FOR RAPE AND GANG-RAPE OF MINORS

Three new offences have been added after 2018 Amendment, these offences are specified in Section 376AB, 376DA and 376DB. These offences have been added because of the rising number of cases of child rapes. The minimum punishment prescribed for the offender under section 376AB[11] for raping a woman below 12 years age is imprisonment for not less than 20 years which may extend to life imprisonment and maximum punishment is death. Section 376DA[12] and 376DB[13] are the provisions which relate to the offence of gang rape. These sections were added to have a deterrent effect on cases of gang rape of girls below sixteen years of age and below twelve years of age. According to section 376DA IPC, if gang rape has been committed on a woman under 16 years of age, then the perpetrators would be mandatory imprisoned for life. As far as section 376DB is concerned, if the offence of gang rape is committed against a woman who is under 12 years of age, then the punishment is life imprisonment (remainder of that person's natural life) or Death.

Mandatory sentence of life imprisonment as given under section 376DA needs some attention. Mandatory sentence of life imprisonment without judicial discretion could lead to situations of miscarriage of justice; judges my hesitate for conviction may demand strict proof because mandatory life sentence is in question, this would definitely affect the conviction rate and in genuine cases it would lead to miscarriage of justice.

It seems that no check on ground social realities were took into consideration while making these stringent laws to deal with the problem of rape of girl child. It is a well-established fact that child marriage in India is a social problem which exists. Though

[11] I.P.C. Sec. 376AB- Maximum punishment prescribed under this section is death and it is invoked in those cases where a man commits an offence of rape on woman below the age of 12 years of age.
[12] I.P.C. Sec. 376DA - Mandatory life imprisonment (remainder of man's natural life) is awarded to each perpetrator involved in the cases of gang rape on a woman below the age of 16 years.
[13] I.P.C. Sec. 376DB - Maximum death penalty and minimum life imprisonment (remainder of man's natural life) is awarded to each perpetrator involved in the cases of gang rape on a woman below the age of 12 years.

these marriages are punished, but keeping in mind the numbers, which shows the number of child marriages, these marriages are valid. The maximum number of Child marriages in India exist in North East states such as Assam, Meghalaya and Tripura as well as in West Bengal Bihar, Haryana and Rajasthan.[14] 10-14 years is the age group which is highly affected by the problem of child marriages in India. 2.9%[15] of the National Population of girls were married in this specific age group. Rajasthan (4.2%) alone is a state which was largely affected by the incidences of child marriages followed by Maharashtra (4.2%) and Goa (3.9%)[16].

Capital punishment has been now prescribed in rape cases of woman under 12 years of age. This would lead to the cases of rape where victim of rape would not report the cases because of harsh punishments. For instance, any married woman under the age of 16 or 12 would not file a case of rape against her own husband because punishments are mandatory imprisonment and death. It would ultimately affect the life of victim only.

One of the issues which still remains in the 2018 Amendment is the issue of gender neutrality in cases of gang rape. Similar problem was in 2013 amendment as well. It is justified to held woman perpetrators who have the common intention to rape with their male counterparts on a victim. But a woman whether she is a participating member or facilitates the commission of gang rape cannot be held liable for the offence of gang rape. Supreme Court in *Priya Patel vs State of Madhya Pradesh*[17] held that it is "inconceivable that woman can rape another woman".

4. CAPITAL PUNISHMENT IN RAPE CASES: DETERRENT OR NOT?

Monica C bell in her article argues that, "capital child rape statutes can be attributed to three movements: the popular movement to shame, fear, and isolate sex offenders; the feminist movement for harsher punishment of sexual and intra-familial violence; and the legal and political movement to punish attacks against vulnerable victims with

[14] Census of India, 2011: *As quoted in*: National Commission for Protection of Child Rights "A Statistical Analysis of Child Marriage in India Based on Census 2011" (2017) p.42-43.
[15] Ibid
[16] ibid
[17] *Priya Patel* v. *State of Madhya Pradesh* (2006) 6 SCC 263

death"[18]

Introduction of death penalty in child rape cases is considered as one of the most astonishing features of the Amendment 2018. Before the amendment, there were only two aggravated cases under which death penalty used to be given i.e. under section 376A[19] and under section 376E[20] of the Indian Penal Code, 1860. Section 376A deals with those cases wherein the course of commission of rape, death or vegetative state of victim took place. Section 376E dealt with the habitual offenders. The scope was very less and only these two sections dealt with death sentences in the cases of rape. There was a huge public demand for the introduction of death penalty in the cases of rape.

India is a country where it is still felt that death penalty plays an important role in deterrence of a crime. So, the demand was that when death penalty would be introduced in cases of rape, there would be a decrease in the ongoing problem of rape prevalent in India. 2018 Amendment introduced death penalty in all those rape cases in which woman is under the age of twelve years.

Whether death penalty is deterrent enough or not should be seen objectively. Any harsh punishment should be seen objectively, it should be analyzed, whether the punishment plays any role in the deterrence of crime, if not then why there is a need of these strict punishments and making those people vulnerable who might get trapped in fake cases. A progressive nation never talks about 'retribution' in their sentencing policy. Isn't death penalty in aggravated rape cases is a classic example of 'retribution'. Execution of death penalty cannot be reversed, if a person is wrongfully accused and his death penalty is executed, nothing can bring his life back. There could be cases in which wrong evidences have been appreciated by a judge and death penalty is awarded. It is natural any person can commit a mistake so does a judge, but in this case one mistake would take the life of an innocent.

The other disturbing argument can be that when judge knows that one wrong decision can take away the life of an accused, a judge may hesitate and ask for stringent proof to

[18]Monica C. Bell, *Grassroots Death Sentences? : The Social Movement for Capital Child Rape Laws*, The Journal of Criminal Law and Criminology (1973-), Vol. 98, No. 1 (Fall, 2007), pp. 1-29 Published by: Northwestern University Pritzker School of Law

[19] Section 376A Indian Penal Code, 1860-maximum punishment prescribed under this section is death given to those perpetrators who cause death or results in persistent vegetative state of victim while committing the offence of rape.

[20] Section 376E Indian Penal Code, 1860- maximum punishment prescribed under this section is death given to habitual offenders.

secure conviction for the accused from the prosecution. Consequently, it would affect the rate of conviction.

The other argument can be that the wrongdoer may kill the victim as he may fear that the victim would give evidence for the offence of rape and fearing the death penalty, accused may kill the victim. The Malimath committee[21] suggested that there is a need of procedural changes in the criminal justice system rather than awarding death penalty in rape cases. It suggested that procedural amendments result in certainty of punishment and it would be a real deterrence rather than death penalty[22]. Large number of rape cases anyhow turned into acquittals.

One of the most striking and shocking factors which definitely exists in contemporary India is that in cases of rape involving minor, the perpetrators are from family or close relations only. There is no denying that there is an increase in number of rape cases in which the perpetrators are either family or lives in neighborhood. One of the NCRB data stated that in 2016 only, out of 38,947 cases of rape, 3891 cases were those in which rapist was either blood relative such as father, brother, grandfather, son or any relative or neighbor etc.[23] This again is a factor which would lead to the under-reporting of rape cases. Senior advocate Indira Jai Singh argued: "in most of the rape cases, perpetrators belongs to the family of victim, this factor could lead to a situation in which either victim would not prefer to report the crime or she would be forced to not report the crime, since the punishment could result in death, victims might think not to report the case specially in cases where rapist is within the family."[24]

5. PROVISIONS REGARDING COMPENSATION FOR MINOR VICTIMS

One of the progressive and celebrated steps taken by the legislators while making 2018 Amendment was the idea of compensation to minor victims. These provisions provide that the fine imposed to the perpetrator should be paid to the victim. And the amount should be sufficient and reasonable enough to take care of medical expenses and

[21] https://mha.gov.in/sites/default/files/criminal_justice_system.pdf (Accessed on 5th May, 2021)
[22] ibid
[23] National Crime Records Bureau, Report on Crime in India 2016 (Ministry of Home Affairs, 2017) p.153. As of 2016
[24] Indira Jai Singh "Stringent punishment to score political points" *Deccan Herald*, April 28, 2018 *available at*: https://www.deccanherald.com/national/sunday-spotlight/stringent-punishments-score-political-points-667220.html (accessed on 7th May 2021)

rehabilitation of victim into the society. Prior to 2018 Amendment, such provision was only present in gang rape cases and no specific provision was there for minor victims. Code of criminal Procedure is also amended and procedural provisions now have been added for the compensation to the minor victims below the age of twelve years and sixteen years. It has been claimed in a case study of rape prosecutions in Delhi by the Ministry of Law and Justice that, although there are adequate compensatory provisions in the criminal justice system, but lack of knowledge and awareness about availing the compensation by the prosecutrix is an issue.[25] It was reported that there was this case where victim was directed by the court to DLSA[26] for availing compensation, but due to lack of guidance she was unable to avail that.[27]

One other critique of this compensation provision is by the contemporary feminist movement, it is claimed that giving compensation to the rape victims for their violation by the culprit is like giving money for sexual intercourse which is highly disturbing.

6. AMENDMENTS IN BAIL PROVISIONS

Provisions regarding anticipatory bail are mentioned under Section 438 of the Code of Criminal Procedure. 2018 amendment now added a clause[28] due to which, no court is empowered to give anticipatory bail to those accused involved in cases of rape on woman below the age of 16 years. Though the legislature has a habit of making such stringent laws such as giving no provisions for the anticipatory bail to those accused of raping minor girls, courts on the other hand do not hesitate to have a liberal approach. Constitutional courts after Maneka Gandhi[29] case is using the "doctrine of proportionality" to determine the reasonableness in laws.

So, it can be said that this stringent provision of not granting anticipatory bail to those who are accused of committing a rape on woman below the age of 16 years is not absolute in its true sense. It is an established fact that whenever there is an excessive

[25] http://doj.gov.in/page/towards-victim-friendly-responses-and-procedures-prosecuting-rape-study-pre-trial-and-trial (Accessed on 7th May 2021)
[26] Delhi State Legal Service Authority.
[27] *Supra*, note 65
[28] Cr. P.C. Sec. 438(4) this is the new provision added by the 2018 amendment according to which a person would not be allowed to take anticipatory bail if he has a reasonable apprehension of being arrest for the crime committed under section 376AB, 376DA and 376DB of Indian Penal Code.
[29] *Maneka Gandhi* v. *Union of India* (1977) 1 SCC 248.

legislative interference in the basic rights of the accused, courts have always exercised their inherent powers to give interim bail to the accused. Ultimately, constitutional courts are getting overburdened by the introductions of provisions like such, because non granting of anticipatory bails to those accused of committing a rape on woman below the age of 16 years would not stop the advocates to find a way out.

7. AMENDMENT IN INDIAN EVIDENCE ACT.

Section 114 A of the Indian Evidence Act states: a presumption in favor of prosecutrix about the absence of consent for the sexual intercourse.[30] Cases of aggravated rape under section 367(2) of the IPC was brought under the purview of section 114A of the Indian Evidence Act. But due to the lack of proper drafting of 2013 Amendment, cases of gang rape were not included under section 114A of the Indian Evidence Act and statutory presumption of no consent was not given to the prosecutrix of gang rape. So, in cases of gang rape, non-consent of prosecutrix is not presumed even today. Instead of solving this problem, 2018 Amendment has even expanded the classes of cases which are not protected by this statutory presumption. 2018 Amendment has deleted the clause (i) of section 376 (2) of the Indian Penal Code, 1860 and it was replaced by a separate new sub-section (3) to section 376 Indian Penal Code. To benefit the victims of rape under the age of 16 years or in fact 12 years also, section 114A of the Indian Evidence Act should have been amended also and the presumption of statutory rape should have been extended to minor rape victims as well. Similar problem arises for section 376DA and 376DB of the Indian Penal Code. There is no doubt in saying that "consent" of the victim plays an important part in the proceedings of rape cases. And non-availability of statutory presumption mentioned under Section 114A of the Indian Evidence Act indeed affects the rights of the prosecutrix. This repeated absence of not including gang rape under the purview of Section 114A shows the reality of hasty decisions taken by the Parliament.

[30] I.E.A. sec. 114A

8. CONCLUSION AND SUGGESTIONS

The idea of the researcher was to engage in the critical analysis of the Criminal Law (Amendment), 2018 in such a way so as to find some missed opportunities and hasty decisions of the Parliament. Criminal Law (Amendment) Act, 2018, researcher has carved out following missed opportunities and hasty decisions of the Indian legislature:

8.1. Blurring Classification of Rape And Aggravated Rape

The major blunder of the legislators in drafting Criminal Law (Amendment) Act, 2018 is that now there is no distinction between the punishment of *simpler* rape and *aggravated* rape. After the 2018 Amendment, the punishment for the *simple* rape has been enhanced and now for both simple and aggravated rape, the punishment is same, this creates confusion, this fails the test of proportionality, this creates unnecessary classification of different cases under section 376(2), the only rationale solution is to amend further and make a distinction between the simple rape and aggravated rape once more. Suggestion is to first check whether there was an actual need to increase the punishment for *simpler* rape, on what grounds it has been enhanced, whether it is deterrent or just an appeasement policy of the legislature. This is a classic example of hasty decision taken by the Indian legislature.

8.2. Creation of New Offences under Section 376AB, 376DA and 376DB

2018 Amendment added three more sections to deal with the prevalent problem of child rapes in India. On the very face of it, the decision seems fine and just, but when these sections are analyzed properly, it can be concluded that there are various shortcomings in these sections. Section 376AB provides that whoever commits a rape on a woman under the age of 12 years, would be punished with minimum sentence of 20 years which can be converted into life sentence and maximum with death also with no judicial discretion. So, no justification whatsoever has been given on how this quantum of punishment of 20 years has been fixed. Whether it passed the proportionality test? What kind of research was conducted to come up with 20 years of Punishment? Section 376DA and Section 376DB are the extended versions of the gang rape. Again no reasonable justification has been given with this classification of sentencing policy, no

grounded social reality was taken into consideration while making these amendments, such as the social problem of child marriages etc., inconsistencies with Juvenile Justice Act was also not taken into consideration. All these decisions of introduction of new offences with enhanced punishment to appease public can said to be the hasty decisions took by the parliament as well as the idea of introducing judicial discretion again for the sentencing policy was a missed opportunity in 2018 Amendment. It is suggested that the only reasonable solution is to re-add the judicial discretion of judge in the sentencing policy while dealing with the rape cases, which was there before 2013 Amendment.

8.3. Does Death Penalty Have Deterrence In Rape Cases?

Death penalty in the cases of rape, where the victim is a minor, has been introduced by the Parliament, what research can the parliament claim that it has done to come up with this conclusion? Just to appease the general public, capital punishment is prescribed for aggravated offences involving minors. No grounded social reality has been taken into consideration. There are number of NCRB's data which shows that in most of the cases of rape, the perpetrator is either from within the family or is a relative or from neighborhood. Now, with these stringent punishments, either there would be under-reporting of the cases, as the perpetrator is family, either the victim would not report herself or she would be forced to not file a complaint.

The other scenario could be that from fearing that the child victim could be a valuable witness, perpetrator may murder the child victim, and this makes the child victims more vulnerable. This shows that again no ground reality was checked, no comparative analysis was done by the legislators and just to appease the demand of public, this hasty decision of introduction of death penalty was taken.

It is suggested to procedural change in the criminal law that would be more efficient.

ALTERNATIVE DISPUTE RESOLUTION: JUSTICE WITHOUT TRIAL

By Akshita Gupta[1]

1. INTRODUCTION

India having one of the largest democracy and widest Judicial system, it has often been found that the courts in India have failed to show their competence in coming up with a quick resolution. Even though the Constitution of India and the Apex court of India, the Supreme Court, has given its consent and full support to the establishment and execution of Alternative Dispute Resolution (ADR) protocols that are meant for providing quick solutions to cases. But despite the presence of a statutory ADR system in India, many cases like matrimonial and family disputes are still considered as troublesome affairs taking enormous time to get any sort of satisfactory resolution as quite often the ADR system's presence and functioning remains hidden to the appellants. The primary objective of this research paper is to concentrate on the functioning and limitations of the ADR system, particularly in terms of providing satisfactory resolution cases (including divorce, domestic violence, and child custody cases).

1.1. Historical Background

The Alternative Dispute Resolution (ADR) system had been introduced in the realm of Indian judiciary with some particular aims and objectives as well as purposes. But before assessing the importance of the purposes, aims and objectives of the ADR, it is essential to understand the concept of ADR. But prior to that, it is an imperative to have a fair idea of the Indian judicial system. Just like any civilized society, the Indian society is based on the concept of fair justice for all. In this respect, it should be noted that the Preamble to the Constitution of India reflects the primary aspiration for provision of social, economic, and political justice in the true meaning of the term. In this regard, it has to be taken into account that Article 39-A of the Indian Constitution (hereby to be addressed as the Constitution) embodies the voice of the citizenry in respect of

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accessing equal justice, and drawing on this line the Indian judiciary is meant for conducting processes that involves protection of the innocent, punitive measures against the guilty, and satisfactory resolution of myriads of disputes, including disputes arising from matrimonial relationships that include not only divorces of domestic violence but also child custody. But it has been observed for long that pan-India wise there is an accumulation of dissatisfaction towards the judiciary primary due to the fact that justice is not provided in a timely manner and because; components of resolutions and their existence are often concealed before to the appellants for the sake of personal benefits of the lawyers, the advocates, and other pillars of the judicial system.

1.2. Conceptual Definition of ADR

Alternative Dispute Resolution (ADR) is an umbrella term which encompasses under its shed some of the important and significant processes of mediation and arbitration that propels a quick resolution to any legal problem in an effective way. ADR refers to the set of legal practices and techniques that are meant for permitting the resolution of legal disputes primarily outside the courts.[2] In most of the countries where ADR is considered to be an active part of the judicial system, several components like arbitration, mediation, and variety of other hybrid processes (embodying neutrality towards a dispute without the application of formal adjudication).[3]It has been observed that such alternatives are practiced in the course of dispute resolution in many types of litigations, but quite interestingly when transferred to the ADR system the term litigation may become unfitted because the issue then is meant for getting resolved outside the court. In the context of the Indian judicial system the presence of ADR is primarily due to alleviating the burden on the courts and on the parties to any legal dispute.[4] In this respect, it should be said that, in India, the ADR mechanism is meant for providing scientifically developed strategies and techniques (that are legally and politically correct too) to the parties in a legal conflict in order to reduce the burden on the parties and the courts. Such burdens include burden of elongated period of time of trial and budgetary burdens which are mainly financial burdens that the parties to a

[2] Robert Mnookin, "Alternative Dispute Resolution" 232 Harvard Law School John M. Olin Center for Law, Economics and Business (1998)
[3] Ibid
[4] Ibid

conflict have to bear in the name of consulting and appointing lawyers and advocates to fight for their cases and their issues. In India, ADR is meant to provide different

means of settlement outside the court including conciliation, arbitration, mediation, negotiation, and the Lok Adalat.[5]

1.3. Different Components of ADR practiced in India

Specifically, there are four different processes or components of the justice process that constitute the ADR system in the realm of the Indian judicial system. These processes include Arbitration, Mediation, Negotiation, and Lok Adalat. It should be noted that the concerned processes are broadly divided into two categories, viz. court-annexed options (encompassing mediation and conciliation) and community based dispute resolution mechanism (the Lok Adalat).[6] It has to be taken into account that, arbitration is a private, and generally informed non-judicial procedure that is implemented primarily for adjudicating disputes, and for this process there are four specific requirements including an arbitration agreement, a dispute, a reference to a third party for dispute resolution determination, and an award by the third party to resolve the dispute.[7]

There are different types of arbitration, viz. Ad Hoc arbitration, institutional arbitration, statutory arbitration, and fast track arbitration. Ad Hoc arbitration means the process of arbitration in which the process is not administered by an institution and hence, the parties are required to determine all aspects of the arbitration process, including the number of arbitrators, manner of appointment, etc. It should also be noted that in such process of arbitration, the parties much approach the arbitration with an objective of cooperation which makes the process more flexible, cost effective and faster.

The primary advantage of this type of arbitration is that, the process is agreed to and

[5] Madhu Sweta, "Alternative dispute resolution in India: a brief overview" Lexology, available at: https://www.lexology.com/library/detail.aspx?g=18bee885-018c-49bb-abee-b949c77ae85c (Visited on September 11, 2020)

[6] S. Chaitanya Shashank, T. Madhavan, "ADR in India: Legislations and Practices", Academike, available at: https://www.lawctopus.com/academike/arbitration-adr-in-india/#:~:text=ADR%20can%20be%20broadly%20classified,Mediation (Visited on September 11, 2020).

[7] Chaitanya Shashank, T. Madhavan, "ADR in India: Legislations and Practices", Academike, available at: https://www.lawctopus.com/academike/arbitration-adr-in-india/#:~:text=ADR%20can%20be%20broadly%20classified,Mediation (Visited on September 11, 2020).

arranged by the parties themselves.[8] Then there is the genre of institutional arbitration which denotes the process of arbitration in which a specialized institution with certain permanent characters intervenes and assumes the function of providing aid and administration to the arbitral process in a thorough manner according to the rules of the institution. Though these institutions do not arbitrate and it is the arbitrator/s that arbitrates, the term arbitration institution becomes a bit inept because only the institutional rules are applied. But it should be taken into account that, the incorporation of the rules in the arbitration agreement should be considered as the pivotal advantage of institutional arbitration.[9] Moreover, expert scrutiny prior to providing the award is also an important advantage of this type of arbitration.[10] Then there is the statutory arbitration. In this respect, it should be said that, whenever a law specifies that in the course of emergence of any particular case the same should be referred to arbitration, the proceedings then become statutory arbitration.

1.4 Analysis of Arbitration and Conciliation Act 1996

Section 24(4) of the Arbitration and Conciliation Act 1996 states that, with exception of section 40(1), section 41 and section 43, provisions of Part I shall be applicable to arbitrations under any other act for the time being in force in India.[11] The other form of arbitration is fast track arbitration in which a time-bound arbitration is in process that adheres to stringent rules of procedure that do not allow any lapse of time spent in undue extensions of time and resulting delays of arbitration. It should be noted that Sections 11(2) and 13(2) of the 1996 Act provide for the parties a more free to agree procedure for appointing arbitrator so that the fastest way could be chosen in a wise manner. In this respect, it should be said that the Indian Council of Arbitration (ICA) has mastered the concept and process of fast track arbitration in India under its rules and that's one reason why myriads of parties to disputes resort to such form of arbitration.

Apart from arbitration, there is mediation, which is an ADR process in which there is a

[8] Chaitanya Shashank, T. Madhavan, "ADR in India: Legislations and Practices", Academike, available at: https://www.lawctopus.com/academike/arbitration-adr-in-india/#:~:text=ADR%20can%20be%20broadly%20classified,Mediation (Visited on September 11, 2020).
[9] A Consultation Paper, Proposed Amendments to the Arbitration and Conciliation Act, 1996, Ministry of Law and Justice, Government of India, at 18.
[10] Sriram Panchu, LexisNexis, Mediation: Practice and Law, at 9, (2011).
[11] Goldberg, et al Aspen Publishers, Dispute Resolution: Negotiation, Mediation, and Other Processes, at 107 (5th ed., 2007).

mediator, who is an external person, neutral to the dispute, working with the parties to the dispute for finding a solution that is deemed acceptable by all the parties.[12] It should be taken into account that the primary objective of the process of mediation is to provide the parties to the dispute with the opportunity to explore and determine, with the help of the mediator, the most effective settlement possible.[13] Conciliation, on the other hand, is yet another ADR component practiced in India that denotes a process in which a neutral individual meets with the parties to the dispute for the purpose of resolving the same, and this method is unstructured because in such case the dispute resolution process is about third party facilitation of communication between disputing parties for settling the differences in a flexible manner.[14] It has to be taken into account that, section 61 of the 1996 Act has provided for conciliation as a dispute resolution process arising out of legal relationship either in a contractual or non-contractual way, aimed at triggering an effective proceeding. It is noteworthy that, post- enactment of this process paves the way for emergence of no objection for not permitting the parties from entering into a conciliation agreement in future dispute settlement proceedings.[15] Finally, there is the process of arranging for Lok Adalat, another important ADR process, which caters to the needs of the weaker sections of the Indian society. It should be noted that the Legal Services Authorities Act of 1987 that was brought into force on November 19, 1995, gave rise to the efficacy of the Lok Adalat to ensure that the weaker sections of the society gain access to proper justice delivered without delay. It should be noted that the concept of Lok Adalat is a revolutionary evolution of resolution of disputes in India.

2. INTERNATIONAL PERSPECTIVE ON ADR

From an international perspective, when judged and analyzed, ADR has gained prominence in numerous developed and developing nations as an alternative to the complicated legal procedures that are both time consuming and expensive. The idea of effective implementation of the ADR mechanisms is considered to be an effective and integral part of the global justice system of the 21st century in its entirety.[16] It has been

[12] Supra 11.
[13] Goldberg, et al Aspen Publishers, Dispute Resolution: Negotiation, Mediation, and Other Processes, at 107 (5th ed., 2007).
[14] Ibid
[15] Government of India, Law Commission of India, 222nd report, 'Need for Justice-dispensation through ADR etc.', at 1.69
[16] Esplugues Carlos, S.B. Vilar, Interstia, Global Perspectives on ADR, (1st ed, 2013).

observed that both national and international legislators have been quite keen in offering new responses in the area of ADR and its efficacy with the aim of providing the citizenry with the opportunity to resolve disputes outside the state courts in a cost-effective and timely manner. It should also be taken into account that the global notion of the ADR mechanism includes a multitude of institutions having in common certain specific purposes and objectives, appeasing which can eventually facilitate effective settlement of disputes outside courts.[17] But having said so, it should also be taken into account that, such generic references to the ADR mechanisms and the centrality of the European approach, in specific, in this regard, has ushered obscurity among important differences in the use, regulation, and underlying philosophy of ADR in many countries across the globe. In this respect, a stark difference in tendency is observable in the context of appreciating the importance of ADR mechanism in American nations and in European nations. But the prominence of the system is gradually becoming noticeable in Asia Pacific regions and in the Indian sub-continent as well. And owing to such popularity on a worldwide basis, the urge on the part of the judiciary systems in myriads of nations in the context of embracing ADR mechanisms as effective dispute resolution procedure is surging day by day.

The United Nations (UN) has also put much emphasis on the importance of ADR and the significance of its implementation in resolving international disputes. In this respect, the UN has identified ADR as a system of justice constituted of various approaches meant for resolving disputes in non-confrontational way, and such approaches comprise negotiation between two or multiple parties, mediation between parties, consensus building, arbitration, and adjudication. Moreover, in recognizing the importance and significance of ADR as a quality means of resolving international disputes, the UN's "Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) deserves special mention. This is because; hinting on the importance of ADR and acknowledging its significance, through the concerned convention, the UN eventually endorsed the legitimacy of the ADR mechanism in resolving international disputes in a potential manner. Besides, granting legitimacy to the process of implementing ADR in resolving international disputes, the UN, in Article I of the Convention has made it clear that, ADR's legitimacy is valid and it is applicable to enforcement of arbitral awards that are made in the territory of a State other than the

[17] Ibid

State where the recognition and enforcement of such awards have been actually sought, and that, the demand has arisen out of the differences between parties either physically or legally. Moreover, Article I has clearly stated that, such arbitral rewards should not be considered as domestic as they are results of international implementation of ADR mechanisms.

3. NATIONAL PERSPECTIVE ON ADR

While addressing to the emerging needs of arranging for alternative dispute resolution mechanisms in the country for enhancing the efficacy and time and cost-effectiveness of the dispute resolution mechanisms as a whole, the government of India and the Indian judiciary has put much emphasis on the ways of delivering an effective ADR mechanism across the country. From the Indian perspective, ADR is a mechanism to resolve dispute in different aspects of life outside the courts and it has gained wide acceptance in India.[18] The Indian government and the Indian judiciary has been working for long for enhancing the understanding of the key players within the legal system of India about the importance and significance of ADR mechanisms as means of easing the access of people from different socio-economic background to effective dispute resolution processes that are efficient and within their budget. The keenness of the government and the judiciary as well as the entire legal system of the country towards promoting ADR mechanisms as cost-effective and efficient alternatives to conventional legal mechanisms of dispute resolution is evident from the fact that, both the executive and the legislative organs of the government has been apt in incorporating the Arbitration and Conciliation (Amendment) Act of 2015.[19]

4. THE ROLE OF INDIAN JUDICIARY

The constitution and the nature of the Indian judiciary has been conducive to the effective implementation of the ADR mechanisms across different jurisdictions within the country. It is noteworthy that, under the influence of the British political and legal system, the Indian judicial system's functioning can be broadly divided into three broad

[18] Garg Shashank, Oxford University Press, Alternative Dispute Resolution: The Indian Perspective, (2018).
[19] Ibid.

categories, viz. traditional dispute resolution, alternative dispute resolution, and hybrid methods of dispute resolution (the crossover of the other two dispute resolution techniques).[20] Hence, in the Indian judicial context, unlike the judicial system of the United States, ADR should not be considered as an umbrella term for hybrid methods of dispute resolution because in such processes the traditional dispute resolution mechanisms are also involved. The primary advantage of ADR, in the Indian legal context, is that, it provides quick resolution to legal issues outside the court and are more flexible in nature in terms of being party-oriented and hence, includes processes mainly like negotiation, mediation, conciliation and of course arbitration.[21] Moreover, from the historical perspectives it should be taken into account that, there had always been a need to bring about the emergence and evolution of an alternative mechanism for reducing the burden of the courts so that the judiciary can provide speedy access to justice to those who cannot afford traditional dispute resolution methods. Moreover, the urge for introducing ADR was also felt by the leaders in the judiciary owing to the fact that such system was essential to revive and strengthen the traditional systems of dispute resolution that had always been present in the social and cultural context of India.[22] It was with the aim of lessening the burdens on the courts and strengthening and evolving the traditional dispute resolution systems that the Indian judiciary was compelled to introduce

Section 89 in the Code of Civil Procedure (CPC) in 1908, and this paved the way for the development and enactment of the Arbitration and Conciliation Act of 1996. [23]The introduction of the Arbitration and Conciliation Act of 1996 opened the door of statutory reference to ADR, either by the courts or the parties themselves, was opened in India. In this context, it should be noted that, under the provisions of Section 89 of the CCP it was endorsed by the Indian judiciary that some specific methods of dispute resolution could be referred to as ADR, including, arbitration and conciliation, reference to the Lok Adalat (under section 20(1) of the Legal Services Authorities Act, 1987) and judicial system that is referred by a court to a suitable institution or person who or which

[20] Madhu Sweta, "Alternative dispute resolution in India: a brief overview" Lexology, available at: https://www.lexology.com/library/detail.aspx?g=18bee885-018c-49bb-abee-b949c77ae85c (Visited on September 11, 2020)
[21] Ibid.
[22] Ibid.
[23] Madhu Sweta, "Alternative dispute resolution in India: a brief overview" Lexology, available at: https://www.lexology.com/library/detail.aspx?g=18bee885-018c-49bb-abee-b949c77ae85c (Visited on September 11, 2020).

shall be thoroughly redeemed to be a Lok Adalat in itself applying all other provisions of the 1987 Act in a pronounced manner. [24]Then there is the mediation court or third party involvement that influences largely the compromising techniques and strategies between the parties to a particular dispute that has been meant for settling outside the court. It should also be remembered that the inception and effective implementation of ADR in India has always been meant for sufficing the clauses of Article 39-A of the Indian Constitution that instructs for the provision of ensuring equal access to justice.

Different landmark cases and the verdicts given in those cases emphasize the importance of ADR and the role of judiciary in promoting effective implementation of the ADR mechanisms. Signifying the importance of arbitration, in the landmark case, Uttarakhand Purv Sainik Kalyan Ltd. Vs. Northern Coal Field Ltd, the Supreme Court, upholding Section 16 of the Arbitration & Conciliation Act, 1996 (Arbitration Act) ruled that the issue of limitation of arbitration should be decided by the arbitrator and that, the primary intent of the Arbitration Act is party autonomy and minimal judicial interference in the process of arbitration.[25]

In yet another landmark case, Hindustan Construction Company Limited & Anr. Vs. Union India & Ors.[26], the three member bench of honourable justices of the Supreme Court struck down section 87 of the Arbitration and Conciliation Act to make arbitration more pronounced and effective in terms of cost-effective and timely dispute resolution. As the concerned section acted against the primary intent of arbitration, the landmark case did strike down the section, making arbitration more effective.

Moreover, in another landmark Supreme Court case, The Oriental Insurance Co. Ltd. and Ors. Vs. Dicitex Furnishing Ltd[27], the Supreme Court upholding the efficacy of arbitration ruled that the arbitration clause can be invoked by an aggrieved party who is pursuing to the execution of no objection certificates or discharge vouches in terms of insurance coverage or in terms of repayment of loans meant for covering insurance policies.

[24] Supra 50.
[25] Order dated 27 November 2019 in Special Leave Petition (C) No. 11476 of 2018
[26] Judgment dated 27 November 2019 in Writ Petition (Civil) No. 1074 of 2019
[27] Judgment dated 13 November 2019 in Civil Appeal No. 8550 of 2019.

Furthermore, ensuring the legitimacy and potency of the ADR mechanism of arbitration, in Rashid Raza Vs. Sadaf Akhtar[28], the Supreme Court, signifying the importance of the ADR mechanisms, ruled that, mere "simple allegation" of fraud should not be considered as a potential force of vitiating the effectiveness of any arbitration agreement. This ruling strengthened the base of ADR mechanisms in India further.

Finally, in Tulsi Narayan Garg Vs. The M.P. Road Development Authority, Bhopal and Ors.[29], the Supreme Court, proving the impartiality of ADR mechanisms, and particularly that of the arbitration process, ruled that, a party to an agreement cannot be an arbiter in his own cause. This ensured the impartiality and legitimacy of arbitration as one of the primary components of ADR.

5. CONCLUSION

Globally, Alternative Dispute Resolution is slowly and steadily becoming the preferred and the prescribed mode for fix discrutes outside the court of law. Even many multinational corporates including large conglomerates business are seriously looking into the advantages of solving disputes through mediation and have also started consideration in India Many multi levels of appeal also tend to promote parties and make them a burden on the system of courts. The Indian Legislature, promoting the mediation route, used attempting to connect bridges so as to fall in conjunction with evolving global jurisprudence.

Law Commission of India have successfully built a bridge between the personal laws variety of various religions prevalent in India in a short period of time during the resolving disputes related to a family. Even the 129th Law Commission Report has recommended that the alternative dispute resolution methods must be made obligatory on the courts after the issues have been framed.

This paper discussed about the disputes that occur in family matters especially in matrimonial matters. The Matrimonial Disputes should be considered for mediation because mediation is a private process, the mediator simply has to send a report to the

[28] Judgment dated 04 September 2019 in Civil Appeal No. 7005 of 2019
[29] Order dated 30 August 2019 in Civil Appeal Nos. 6726 – 6729 of 2019.

court stating that if mediation is successful or not. There is a no need to mention the happenings of the mediation that occurred between the parties which means that parties can state their problems without any hesitations and work on the probable solutions.

In fact that whole mediation process is completely confidential makes parties to dispute/s comfortable enough to open up and talk about their problems freely without any hesitation or without even gave a thought that information related to personal matters may not be dealt sensitively . That is, unrestricted mediation can be effectively prevented if it is found that solving is infringing internationally well. The Social obligation of the judge dismisses the case of matter calls for a sincere attempt to be made for reconciliation and the initial part of the mediation process must be completely devoted towards securing the relationships of whatsoever nature by way of reconciliation.

Therefore, although not compulsory, giving alternate modes of dispute resolution a chance in the resolution of family matters is the norm of Indian legal system. This practice should actually be given all the support that it can be given. Opting for out of court settlements proves beneficial not only to the parties but also to the general public. The parties are benefitted through reduced costs and time lost, while the courts are a little less burdened. This allows for the speedy redress of other suits as well.

COMPETITION ADVOCACY:

COMPLIANCE THROUGH PERSUASION NOT FORCE

By Sonakshi Kashyap[1]

ABSTRACT

Our constitution guarantees to all citizens of India, the right to freely conduct any trade or commerce. To realize this fundamental right, the state is required to ensure free markets that run on principles of fair competition. The Competition Act, 2002 deals with the regulation of competition in Indian markets, and the Competition Commission of India (CCI) is the nodal agency which undertakes the enforcement of this Act. One of the thrust areas of the Competition Act is 'Competition Advocacy', which aims at building a competition friendly environment by creating awareness about the importance of fair competition amongst the different stakeholders in a market place. Competition advocacy, therefore, helps in creation of healthy markets, aware consumers, ready compliance with competition law, and thereby reduces the burden of CCI. Competition advocacy in foreign jurisdictions is usually carried out by autonomous bodies through their involvement in early stages of policy making and assessment of their potential impact on competition. The Indian law provides that it is the duty of CCI to promote competition advocacy, and give its opinion on policy matters affecting competition if the same is requested by governments at Central or State levels. The CCI has undertaken various initiatives, like, research programmes, collaboration with different institutions, etc. to effectively create awareness around fair business practices. However, the Indian law is insufficient to adequately achieve the goal of competition advocacy. The law, therefore, needs to be amended by giving more power to CCI. CCI should be allowed to offer suo-moto opinions on policies that in its belief affect competition, further such opinion should be given due significance and not rejected without legitimate grounds being recorded for the same. Competition advocacy, can also be improved by ensuring autonomy and transparency in functioning of CCI, use of social media in creating public awareness, carrying out Regulatory Impact Assessment (RIA) of policies etc.

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1. INTRODUCTION

The advent of privatization, liberalization and globalization, necessitated the enactment of an independent legislation to regulate and foster competition in our markets, giving birth to the enactment of The Competition Act, 2002[2] (hereinafter called 'the Act'). However, mere enactment of laws is incomplete, and the effectiveness of any legislation is deciphered from its compliance by the public. This compliance of law can be ensured either through implementation of enforcement mechanisms or by use of non-enforcement mechanisms. 'Competition Advocacy' is often termed as a tool to promote competition culture through non-enforcement mechanisms. This article attempts to explain the concept of competition advocacy, its rationale and objectives. It also discusses the legal provisions dealing with competition advocacy in India, the initiatives undertaken by Competition Commission of India (hereinafter called the 'CCI') in implementation of advocacy measures to stimulate competition, and draws certain suggestions that can be adopted to strengthen the non-enforcement mechanisms of compliance under the competition law.

2. MEANING

Advocacy means, "public support of an idea, plan, or way of doing something"[3]. Competition Advocacy, henceforth, is the means to ensure compliance with the Competition law by gaining public support for competition laws and policies. The International Competition Network defines Competition Advocacy as "activities conducted by the competition agency, that are related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness in regard to the benefits of competition."[4] Therefore, CCI has to deliver two roles, first, of a consultant to government and other regulatory agencies concerning legislations and regulations that implicate the competition policy, and second, as a proponent for

[2] Competition Act, 2002 (Act 12 of 2002).
[3] Cambridge Dictionary, *available at*: https://dictionary.cambridge.org/dictionary/english/advocacy (last visited on May 1, 2021).
[4] Advocacy and Competition Policy, ICN's Advocacy working Group, available at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_AdvocacyReport2002.pdf (last visited on May 1, 2021).

increased public understanding and acceptance of competition principles.

According to the Organisation for Economic Co-operation and Development (OECD), the need for Competition Advocacy measures is more so important for developing nations, like India, due to the "fundamental changes"[5] faced by the economies of developing nations because of privatization, liberalization etc. Since, the economic policies and markets are constantly undergoing changes, it is crucial to consider competition aspect of our laws and policies so that we do not tend to over-regulate our markets.

3. RATIONALE OF COMPETITION ADVOCACY

The rationale for adopting Competition Advocacy measures can be ascertained from the underlining reasons:

(i) Reduces harm of regulation on competition- Government intervention in the marketplace often hampers competition, such as by creating barriers to entry and exit, or by providing subsidies or tax rebates to a few firms. Competition Advocacy, hence becomes necessary "to bring about government policies that lower barriers to entry, promote deregulation and trade liberalization, and otherwise minimize intervention in the marketplace."[6]

(ii) Awareness- It is expedient to create awareness regarding the importance of fair competition in our markets and the benefits it entails, both amongst the business community as well as the public at large. This will ensure ready compliance with the competition law and policies by the business community, and at the same time, the public which is a major stakeholder in markets being the consumer of goods and services would be able to help in law enforcement as well as contribute towards policy making.

(iii) Persuasive- Another benefit of competition advocacy measures is that they are persuasive rather than coercive in nature, and therefore, help in obtaining easy

[5] Jhon Clark, Competition Advocacy: Challenges for developing countries, 69 OECD Journal of Competition Law and Policy 70 (2005).
[6] R.S. Khemani, Robert Anderson, *et. al., A Framework for the Design and Implementation of Competition Law and Policy* 93 (World Bank Publications, 1999).

acquiescence to policies, laws and regulations pertaining to competition matters.

(iv) Discourages lobbying- Private firms often influence government regulations in a manner that suits them, although it may be harmful to healthy competition. Competition Advocacy may discourage lobbying by such influential groups.

(v) Consumer welfare- The ultimate beneficiary of competition advocacy methods are the consumers, who benefit from low marginal costs, higher efficiencies, and fine quality goods and services made available at best prices.

(vi) Commercial Policies- In its report, the Working Group on competition policies had explained that although the competition law covers major areas affecting competition, but certain laws such as "consumer protection law, unfair trade practices laws like anti-dumping, government policies on registration of new business, taxation, corporate governance oversight, trade and FDI policies etc., fall outside the purview of the Act but have profound impact on the state of competition in the economy."[7] Hence, it is but essential, that the competition agency is enabled to participate in policy making in these areas so that the competition dimension of those policies is not ignored.

(vii) Competition Advocacy and Competition Enforcement- The aim of both competition advocacy and competition enforcement is to ensure compliance with laws and policies affecting competition, just the means to attain the common end are different. Both the concepts are therefore, complementary rather than nugatory. Competition advocacy aids competition enforcement by reducing the burden of CCI. As explained, by the Raghavan Committee in its report, "There is a direct relationship between competition advocacy and enforcement of competition law. The aim of competition advocacy is to foster conditions that will lead to a more competitive market structure and business behavior without the direct intervention of the Competition Law Authority, namely, the CCI."[8] This competitive market structure, will thereby reduce future abuses and collision amongst competitors. Furthermore, businesses are more likely to willingly abide by the competition law as well as assist in its implementation and execution, the general public is also

[7] Planning Commission, Government of India, Report of the Working Group on Competition Policy (February 2007).
[8] Report of the High Level Committee on Competition Policy and Law (2000).

inclined to co-operate with administrative agencies and contribute in execution of policies and laws by providing evidence etc., CCI will also garner support and grant of resources from policy makers.[9]

(viii) Since, competition enforcement and competition advocacy are two sides of the same coin, competition enforcement also assists in competition advocacy by establishing the credibility of the institution through highlighting the successful enforcement of competition law in vital cases.

4. OBJECTIVES OF COMPETITION ADVOCACY

The objectives of Competition Advocacy, therefore are:

(i) Spreading awareness and familiarizing business enterprises, government departments, ministries, and Public Sector Undertakings (PSUs) regarding the importance of fair competition, thereby ensuring observance of law by them.

(ii) Sensitizing the different departments and ministries of Central and State governments about the nuances of competition law, to facilitate in competition audits of their respective laws on different subjects.

(iii) It also aims at enactment of pro-competition legislations and regulations. This can be attained by "involving competition agencies in hearing before sector regulators, parliamentary committees, or as amicus curiae in court proceeding."[10] The intent of Competition Advocacy is participation of competition agencies from the earliest stages in formulation of economic policies which may influence competition, thus, reducing possibility of anti-competitive policies from being framed.

(iv) Confidence building measures should be undertaken amongst the various stakeholders associated with competition. Credibility is an important element to garner people's support for any organization and the activities it carries. Therefore, it is an objective of CCI to built its reputation amongst the stakeholders by showcasing its efficiency and achievements.

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[9] Clark, s*upra* note 4 at 78.

[10] Divakar Babu, *The competition act 2002: A critical study* (2010) (PhD Thesis, Sri Venkateswara University) .

(v) The foundation of fair competition lies in providing equality of opportunity to various competitors in the market at the starting level. Hence, it is the duty of government to enable a level playing field to all the competitors in the market.

5. LEGAL PROVISIONS

The Raghavan Committee in its report had suggested that:

"The mandate of the CCI needs to extend beyond merely enforcing the Competition Law. It needs to participate more broadly in the formulation of the country's economic policies, which may adversely affect competitive market structure, business conduct and economic performance. The CCI therefore, needs to assume the role of competition advocate, acting proactively to bring about Governmental policies, that lower barriers to entry, promote de-regulation and trade liberalization and promote competition in the market place."[11]

The Competition Act, 2002, also recognizes the role of CCI as a competition advocate. It has been provided that the commission is duty-bound "to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India."[12]

Furthermore, Section 49 of the Act, lays down that the Central and State governments may refer a competition policy or any other matter to the CCI in order to obtain its opinion as to any probable effects that such policy/matter may have on competition. In case of such reference being made, the CCI is bound to give its opinion to the appropriate government within 60 days of the reference.[13] However, sub-section (2) of Section 49 clarifies that such opinion of CCI does not have a binding effect on the government.[14] Such a provision negates the very purpose of obtaining the opinion of CCI, thus diminishing the value of its opinion in policy making. Also, the law does not enable CCI (which is an autonomous body dealing specifically with competition matters in the country) to give suo-moto opinion on matters that it may believe are capable of affecting competition. Rather, it can only give an opinion if requested by the Central or State governments which are already overburdened with a plethora of matters to

[11] *Supra* note 7.
[12] *Supra* note 1, s. 18.
[13] *Id.*, s.49.
[14] *Id.*, s. 49(2).

address, competition being only one of them. The fact that till date no reference has been made by any government to the CCI under this provision points towards the ineffectiveness of this provision.

As stated under sub-section (3) of section 49, CCI is duty bound to "take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues."[15] The Act also makes it mandatory to have a 'Competition Fund'[16] to enable CCI to effectively discharge its functions and achieve the objectives laid out in the Act.

A complete reading of section 49, therefore suggests that the Act stresses upon competition advocacy by CCI at 'three levels'[17]:

(i) the policy makers (Central and State Governments);
(ii) sectoral regulators; and
(iii)the public.

6. INITIATIVES BY COMPETITION COMMISSION

Several initiatives have been undertaken by CCI in its endeavor to foster competition culture in our economy. Some of its initiatives are highlighted hereunder:

(i) **Booklet on competition advocacy**- CCI has published a booklet on Competition Advocacy on its official website. The booklet explains in detail the various aspects of the Competition Act, thus generating awareness regarding the same.

(ii) **Collaboration with academia**- CCI, in its efforts has also made an attempt to collaborate with the academia, by conducting seminars, essay competitions, moot court competitions etc. in reputed colleges and universities. Under its scheme, it also endeavors to invite proposals from universities/educational institutions for conducting such programs and competitions in their campus.

(iii) **Internships**- The Commission also undertakes to provide internship to hundred students every year belonging to the fields of economics, law, management, and

[15] *Id.*, s. 49 (3).
[16] *Id.*, s. 51.
[17] *Supra* note 7 at 40.

finance. This effort would go a long way in building a competition friendly marketplace, as these young minds would become our future leaders, economists, entrepreneurs, lawyers and administrators.

(iv) Media- CCI has launched a **r**adio campaign against cartelisation and also has a Youtube Channel[18].

(v) National Conferences- It has successfully organized six National Conferences on Economics of Competition Law, which included addresses from various eminent personalities, and also paper presentations by researchers. Such initiatives are important to constantly analyze the performance of CCI, the status of competition awareness & understanding in the country, and to work upon areas demanding improvement.

(vi) Collaboration with Government- CCI works with governments at both Central and State levels by conducting meetings and workshops with various departments and ministries of government, and also carries training programs for public officers.

(vii) Collaboration with business organizations- CCI has also organized workshops for executive committees of some Trade Unions, like, Automative Tyre Manufacturer's Association (ATMA), to create awareness amongst these powerful lobbying groups.

(viii) Collaboration with investigative agencies- It has also conducted meetings with some investigative agencies, like with the Director General of Income Tax, Central Excise etc.

(ix) Research & Development- In October 2012, the India development Foundation had set up a Dedicated Research Unit for competition advocacy purposes.[19] Also, various studies on competition issues are conducted from time to time in collaboration with different organizations.

(x) International engagements- CCI has also had various international engagements to improve domestic conditions. It has participated in workshops, conferences etc.

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[18] Competition Commission of India Channel, *available at*: https://www.youtube.com/channel/UCl8kNu7mBymD7jxfSmIxiPQ (last visited May 1, 2021).

[19] Newsletter, MCA (October, 2012), *available at:* https://www.mca.gov.in/Ministry/pdf/Monthly_News_Letter_Oct_2012.pdf (last visited May 1, 2021).

with international bodies like, the OECD, BRICS, The United Nations Conference on Trade and Development (UNCTAD), Global Competition Forum. Also it has has signed Memorandum of Understanding (MoU) with some other countries anti trust agencies.

7. SUGGESTIONS

The Raghavan Committee report, had suggested some ways in which the CCI could achieve success in competition advocacy:

"1. CCI must develop ***relationship with the Ministries and Departments of the Government****, regulatory agencies and other bodies that formulate and administer policies affecting demand and supply positions in various markets. Such relationships will facilitate communication and a search for alternatives that are less harmful to competition and consumer welfare.*

2. CCI should ***encourage debate*** *on competition and promote a better and more informed economic decision making.*

3. Competition advocacy must be ***open and transparent*** *to safeguard the integrity and capability of the CCI. When confidentiality is required, CCI should publish news releases explaining why.*

4. Competition advocacy can be enhanced by the CCI establishing ***good media relations*** *and explaining the role and importance of Competition Policy/Law as an integral part of the Government's economic framework."*[20]

Acknowledging the suggestions made by the Committee, the existing legal provisions relating to Competition Advocacy, and the initiatives undertaken by the CCI to deliver its functions, the following measures may be adopted to boost and refine Competition Advocacy mechanism in India:

(i) Amendment of law- As discussed earlier, making the opinion of CCI to be non-binding on the government ultimately renders the whole purpose of seeking its opinion in the first place under Section 49(1) of the Act nugatory. Therefore, the law should be amended to give more power to the CCI in policy making. CCI's opinion should not be discarded by the government without any due cause. In case the government does not accept the opinion given by the CCI, it should record reasons for the same in writing. This will eliminate any arbitrary exercise of power

[20] *Supra* note 6 at 64.

by the government.

(ii) Suo-moto participation by CCI- Allowing CCI to give its opinion on matters influencing competition only subject to reference made by the Central or State governments hampers rather than encourages the cause of competition. A proactive role by CCI is requisite if we aim to build a society where competition prospers. Therefore, CCI should be enabled to have a free say if it opines that an economic policy can impact competition even though no reference is made to it.

(iii) Reduce Political interference- Institutional autonomy is a prerequisite for efficient functioning of any agency, such as the CCI. Political interference undermines the purposes of CCI. In most foreign jurisdictions like- US, UK, EU etc., competition advocacy is carried out by independent bodies, which is one of the reasons for success of these measures in those countries.

(iv) Financial Autonomy of CCI- Real autonomy comes with financial independence i.e. when the commission is not dependent upon other authorities for approval of funds before it can execute its policies. Therefore, the Commission must have sufficient resources to carry out the functions and duties assigned to it. This will enable smooth execution of functions, and also reduce any possible delay which may arise if it is dependent on other authorities.

(v) Benches of CCI at State level- CCI should endeavor to constitute its benches at the Sate level, so that it is able to directly engage and create awareness at grassroots level. Higher accessibility will obviously make information dispersal much easier, convenient and effective.

(vi) Mass Media- Media is the fourth pillar of democracy, and the most effective means of communication in the 21st century. CCI makes extensive use of media to create awareness through its official website, it also makes use of both traditional media platforms like, radio as well as social media platforms like, YouTube to reach mass audience. However, there is still scope for more optimal utilization of media resources in fulfillment of CCI's functions. Effective use of media can go a long way in promoting a pro-competition society, and creating awareness in every nook and corner of the country.

(vii) Civil Society Organizations- India is a vast country. It is therefore, difficult for CCI to carry on competition advocacy measures solely. Civil Society Organizations, Consumer Organizations, business enterprises, Universities etc. can play a vital role in spreading awareness about benefits of fair competition, hence assisting CCI in its task.

(viii) Regulatory Impact Assessment (RIA)- RIA is a study of the costs, benefits and risks of the proposed regulations and thus, helps policy makers to think through the consequences of the proposals before approving them and also encourages informed public debate. RIA will thus help in assessment of proposed laws and policies keeping the competition dimension in view, thereby preventing anti-competitive enactments from coming into force.

(ix) Public participation- Public participation in formulation of pro-competitive legislation and regulation as well as their enforcement has a gainful impact on competition culture. Laws are enacted for people, therefore it is also important that they are involved in the process of making them as well.

(x) Transparency- Transparency in functioning of any institution brings credibility to the institution and increases public faith in such institution. The stakeholders who have belief in the institution are more likely to accept its decisions.

8. CONCLUSION

It is always better to secure ready compliance of law rather than taking aid of enforcement procedures, as they say "prevention is better than cure". Competition Advocacy is, thus, the best way to ensure compliance with competition law by creating a pro-competition environment. In India, CCI has been bestowed with the duty to promote competition advocacy. CCI has taken several initiatives to achieve this goal, but still there remain areas in which CCI can pull up its socks, such as, establishing benches at State level, conducting RIA, collaborating with other organizations and most importantly ensuring transparency in its operations at all times. Also, it is high time that the law should be amended to give more autonomy to CCI in rendering its opinion on competition concerns and contribute towards a competition friendly nation.

ROLE OF FORENSIC SCIENCE IN THE CRIMINAL JUSTICE SYSTEM

By Chahat Abrol[1]

ABSTRACT

With all the growth and development in the society, crime and criminals present themselves in ingenious forms and novel modes. Thus, the manoeuvre of modern forensic techniques is seminal to effective criminal investigative and judicial process. The use of techniques such as DNA related testing, lie-detector test, brain-mapping and narco-analysis helps in deciding the case. This article aims to throw light upon the type of techniques that are utilised in forensic analysis and how forensic science is applied to different laws and statues in the country.

The paper also tries to find the question as to whether different areas of forensic science like narco-analysis and brain mapping infringe the fundamental rights of the accused such as the right against self-incrimination under Article 20(3) of the Constitution, privacy and health of the accused. Also, the article delineates the different classes of cases in which forensic science is used, especially establishing the corpus delicti, identification of the instrument of crime, nature of injuries, fingerprints and DNA testing.

1. INTRODUCTION

Forensic Science can be is expounded as the application of the laws of the nature to the laws of the men. Etymologically, the word "forensic" is derived from the Latin word *forensics* that means public. This Latin word is similar to the word "forum" which means a 'market place where the Roman Courts originally used to conduct their sessions'. The term can be referred to as "related to court procedures". It covers all the physical, biological, chemical and most importantly medical techniques employed in the crime investigation, in the appraisal of civil disputes and also in the non-litigious matters such as the investigation of sudden natural death.

Forensic science is the supplication of science in answering questions that are of legal

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importance. *In specie*, forensic experts employ techniques and tools to interpret crime scene evidence, and use the information in criminal investigations.[2] In ancient times as there were no standardised forensic practises, criminals easily escaped the punishment. The conviction completely relied on the accused's confessions and witness testimony. This made it very difficult to prove the guilt of the accused in some cases. With the advancement of the scientific techniques, it was also applied in the field of law.

In today's world, Forensic Science has developed into an advanced scientific technique which is used in both the civil and criminal justice system. Forensic laboratories assist police, courts and private parties are assisted by the forensic labs during investigation, fact finding process or cross-examination process. It is helpful in answering those lacunae in the investigation that are incapable of being understood by the use of traditional evidentiary methods.

2. AREAS OF FORENSIC SCIENCE

Forensic Medicine

Forensic medicine is one of the blooming and poignant areas of forensic science. Also known as legal medicine or medical jurisprudence, it applies medical knowledge to judicial cases. Areas of medicine that are commonly involved in forensic medicine are anatomy, pathology, pharmacology, dentistry and psychiatry. Forensic medicine's practitioners are doctors of medicine who are specialised in forensic pathology. Forensic pathology is the legal branch of pathology dealing with determining the cause of death (such as bullet wound to the head, exsanguinations, strangulation, etc.) and manner of death (including murder, accident, natural, or suicide).

Narco-analysis

The term *narco*-analysis is used to delineate diagnostic and psychotherapeutic technique that uses psychotropic drugs, particularly specific drugs, to induce a stupor in which mental elements with strong associated affects come to the surface, where they can be exploited by the narco-analyst.

[2] Randolph N. Jonakait, "*Forensic Science: The need for regulation*", 4 Harvard Journal of Law & Technology 110 (1991).

The *narco*-analysis test is based on the fact that a person in his conscious state is able to lie using his imagination, however, under the influence of certain drugs, this capacity for imagination is blocked or neutralised by the leading the person into a semi-conscious state.[3]

In *Selvi v. State of Karnataka*[4], the SC has laid down the principle about conducting of Narco-Analysis that Narco-Analysis test cannot be conducted on the accused person without taking the consent from the accused person. If such test conducted on the accused person, it would be violative of Article 20(3) of the Indian Constitution. It was further held by the Court that this test should be conducted in the presence of the expert.

In case of *State of Bombay v. Kali Kathu Oghad*[5], it was held by the Supreme Court that taking a thump impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body from an accused person for purpose of identification is constitutionally valid. In this case it was further held by the Supreme Court that the self-incriminating statement given without threat would not attract Article 20(3) of the Constitution of India because it was not given under compulsion. It was also said by the court that mere fact that the accused was in police custody does not by itself imply that compulsion was used for obtaining the specimen hand writing. Even if there is compulsion, it does not amount to testimonial compulsion.

In case of *M.P. Sharma v. Satish Chandra*[6], the decision was delivered by a Constitutional Bench of 11 judges of Supreme Court. It was observed by the SC that protection under Article 20(3) of the Indian Constitution is available to an accused person against whom a formal accusation relating to an offence is pending. It would mean that if FIR has lodged against a person, then the protection would be available. It was contented before the Supreme Court that the protection in Article 20(3) of the Constitution against testimonial compulsion is confined only to oral evidence of a person on trial for an offence when he is called upon to give evidence in a witness-stand. Rejecting this contention, the Supreme Court has said that there is no reason to confine the content of the constitutional guarantee to its barely literal import and therefore, to limit it would be to rob the guarantee of its substantial purpose and to miss

[3] C.B. Hanscom, "*Narco Interrogation*", 4 Journal of Forensic Sciences 37-45 (1956).
[4] AIR 2010 SC 340.
[5] AIR 1951 SC 808.
[6] AIR 1954 SC 300.

the substance for the sound as stated in a certain American ruling.

In *Nandini Sathpathi v. P.L.Dani*[7], it was observed by the Hon'ble Court that in order to bring the evidence within the self-consciousness of clause (3) of Article 20, it must be proved that not only the person making the statement was an accused at the time he made it and it had a material bearing on the criminality of the maker of the statement ,but also that he was compelled to make that statement under compulsion in the context that has the meaning of duress under law.The dictionary meaning by Eart Jawitt duress is as follows-:

"Duress is where a man is compelled to do an act by injury, by beating or unlawful imprisonment (sometimes called duress in strict sense) or by the threat of being killed, suffering some grievous bodily harm or being unlawfully imprisonment (sometime called menace or duress per minas). Duress also includes treating, beating or imprisonment of the wife, parents or child of a person."

In the infamous case of *Mohinder Singh Pandher and Surender Singh Koli v. State of U.P.*[8], which is also known as *Nithari Murder case*, Narco-Analysis test was conducted on Surender Koli and Mohinder Singh Pandher in January 2007, who were the main accused in the famous Nithari Murder case. This test was basically conducted in the Forensic Science Laboratory in Gandhinagar, to ascertain the veracity of their statement during their custodial interrogation. During this test, the accused person disclosed the name of various females and children who had been murdered by them and also revealed they raped them after murdering them. By conducting this test, many relevant information were disclosed to the investigating authorities.

In *Dr. Rajesh Talwar and Another v. Central Bureau Investigation through its Director and Other*[9], which commonly known as *Arushi Murder case*, the question of Narco analysis again emerged. In this case Arushi, a 14-year girl was found to be dead in the home on 16-05-2008. The report was made by the parents of Arushi in the police station .In this case Hemraj, who was a domestic servant in the house of Arushi, was suspected of murder of Arushi .But after two days the dead body of Hemraj was also found on the terrace of the house of Arushi .The parents of Arushi were arrested by the police. In this

[7] AIR 1978 SC 1025.
[8] AIR 2011 SC 970.
[9] AIR 2011 SC 970.

case Narco-Analysis test, Polygraph test and Brain mapping test was conducted on the accused person.

It was pleaded before the court that the report of these tests cannot be taken as an evidence in the court of law .It was held by the court on behalf of the judgement of *Selvi v. State of Karnataka*[10] that such tests cannot be conducted by the authority if the consent has not been given by the accused person .Trial court held that the result of tests cannot be admitted as an evidence because the subject does not exercise conscious control over the responses during the conducting of the test.

Lie detection or polygraph

The lie detection or the polygraph test involves attachment of paraphernalia externally to the body which measures several variables such as the pulse, blood pressure, perspiration rate, etc.[11]

Fingerprint Examination

Fingerprint analysis has been used to identify suspects and solve crimes for more than 100 years. One of the most important uses for fingerprints is to help investigators link one crime scene to another involving the same person. No two people have the same finger print, even identical twins have same DNA, but not the same fingerprint. Fingerprint identification also helps investigators to track a criminal's record, the previous arrests and convictions, to aid in sentencing, probation, parole and pardoning decisions.

Cheiloscopy

It refers to the utilization of the lip prints as a means of personal identification. Lip prints on drinking glasses and facial tissues have been used as evidence in actual court cases. They are used as the identification processes because they are unique. The lip prints are of great use in criminal cases, similar to fingerprints.

[10] *Supra,* No. 5.
[11] Abhyudaya Agarwal and Prithwijit Gangopadhyay, "*Use of Modern Scientific Tests in Investigation and Evidence: Mere Desperation or Justifiable in Public Interest?"* 2 NUJS L Rev 31 (2009).

Forensic Geology

Forensic Geology is also known as Geo forensics or forensic Geosciences. It is the application of geology to criminal investigations. Forensic geologists may assist the police in some types of crimes to help determine what happened, where and when it occurred, or to help search for homicide graves or other objects buried in the ground. In a law enforcement context, forensic geology specialists may support the police in two broad fields- geological or trace evidence and search for burials.

Voice analysis

Each voice has its own unique quality. There is a slight possibility that two individuals will have the same voice mechanism. In this era of technology voice analysis of the human voice may prove to be a valuable evidence for associating an individual with a criminal act. A voiceprint is simply a graphic display of unique characteristics of voice. Sound spectrogram is an instrument which converts speech into visual graphic display. Sound spectrograms or voiceprint could provide for a valuable means of personal identification.

3. FORENSIC SCIENCE AND OTHER STATUTES

In India, law regarding evidence has its application in both civil and criminal cases. The degree of proof required may be somewhat different in civil and criminal cases but mode of giving evidence is governed by same legislation. In India, we have adversarial system of justice administration and ordinarily medical evidence is admitted only when the expert gives oral evidence under oath in the court of law except under special circumstances like:

- When evidence has already been admitted in a lower court;
- Expert opinions expressed in a treatise;
- Evidence given in a previous judicial proceeding and
- Expert cannot be called as witness[12]

[12] Alexander J. Roberts, "*Everything new is Old again- Brain fingerprinting and Evidentiary Analogy*" 9 Yale J.L. & Tech 234 (2007).

In India a large number of medical professions does not like to involve in the medico legal cases reason being that the hospital formalities require a lot of effort and time. Apart from undue time consumption, repeated adjournments are also another reason because of which experts avoid testifying.

Constitution of India

Article 20(3)[13] of the Constitution of India provides for right against self-incrimination. But commonly the question arises that whether 'taking of fingerprints, footprints, photographs, measurements, handwriting etc.' amount to self-incrimination. The Supreme Court in *State of Bombay v. Kathikalu*[14] held that, 'the above types of cue materials become evidence only after their evaluation and the evaluation instead of helping the prosecution may help the accused.

Criminal Procedure Code, 1973 and Indian Evidence Act, 1872

Criminal Procedure Code, 1973 and Indian Evidence Act, 1872 are the parent procedural laws which govern criminal trials in India, while Criminal Procedure Code prescribes the procedure from the point of taking cognizance of crime by appropriate judicial Magistrates till the delivery of final order of conviction or acquittal or any appropriate order looking into the fact of the case. Indian Evidence Act is limited in its scope of leading evidences in civil or criminal cases either by the prosecution or defendant, applicant or respondent. The Act also deals with the kind of evidences and relevancy of any fact which can be brought as evidence in any case.[15] Section 313 of the Criminal Procedure Code must also be amended so as to draw adverse inference against the accused if he fails to answer any relevant material against him thereby making it easy for the law enforcers to use DNA tests against him.

So far as criminal jurisprudence in India is concerned doctrine of *onus probandi* is in the field and therefore one shall be presumed innocent till his crime is proved beyond reasonable doubt and this has restricted the use of forensic science in criminal trials in India. It is very difficult to say anything beyond reasonable doubt so far as techniques of ascertaining fact with the help of forensic science is concerned. But with the advent

[13] No person accused of any offence should be compelled to be a witness against himself.
[14] 1961 (2) CrLJ 856.
[15] A. Jesani, " *Medical Professionals and interrogation: lies about finding the truth"*, Indian Journal of Medical Ethics (2006).

of the modern and novel techniques, the field of forensic science is becoming capable of ascertaining facts beyond reasonable doubt.

4. FORENSIC EVIDENCE IN DIFFERENT CLASSES OF CASES

There is literally no limit to the possibilities of enlarging and widening the data of judicial proof by use of person's expertise in occupational or scientific knowledge. The most encouraging feature of judicial enquires in the present generation is the increasing application of science of proof.

Conduct of scientific tests like the Polygraph, *Narco* Analysis and Brain Mapping is not an intrusion into the constitutional right of the accused to be silent under Article 20(3).[16] Though a man could not be tortured to give evidence consciously against self by using modern scientific methods, the police are trying to cull out what is there in the subconscious mind of the accused. On the one hand, the law prohibits third degree methods being perpetrated on the accused in extorting confessions and information, the same law should not shut out the modern technology being adopted by the Investigating Officer which would amount to completely putting an embargo in making headway in investigation.

Establish corpus delicti

Corpus delicti means 'the body of crime' or the material substance on which the criminal act was committed. In the case of homicide, the '*corpus delicti'* is the body of the victim who has been killed by the unlawful act of another human being. Under the old English law, the recovery of the dead body was must, but in India, as laid down by the Apex Court in a plethora of judgements, the recovery of the dead body is not material but the death of the person alleged to have been killed by the accused, must be proved.[17] In certain cases, even where the dead body of the deceases person is not recovered or seized, but if there is positive evidence to connect the culprit, it cannot be said that the offence of murder is not established. Thus the *corpus delicti* or the fact of homicidal death can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been

[16] *Dinesh Dalmia v. State*, (2006) 4 Crimes 351 (Mad).
[17] *Rama Nand v. State of HP* AIR 1981 SC 738.

murdered by the accused concerned.[18]

Identification of the instrument of crime

Yet another field of forensic necessity for expert evidence is the identification of the instrument of crime. From the identification of the instrument of crime, the inference as to the guilt of its possessor is not generally fraught with much difficulty since there is usually other confirmatory evidence, though possession of the instrument of crime by itself does not exclude the possibility of another having used it to commit the offence. Nevertheless, it is an important link in the chain of circumstantial evidence, and evidence as to the identification of the instrument of crime is the province of the concerned expert.

Nature of injuries

There are many different types of injuries. Their examination forms a large part of medical jurisprudence. The medical jurist has firstly to determine 'whether injuries were caused during life or after death'; an injury might be the result of an attack just before death, or the result of a fall when life was extinct. It is not uncommon also to inflict wounds on a dead body with a view to support a false charge against an enemy, or to mislead and give a false complexion to the case. The distinction between *ante mortem* and *post mortem* injuries is pretty clear and a medical witness ought to be able to give a definite opinion on the question. Text-books are categorical on the distinction.

But expert evidence alone can clear up the matter. It was observed in *State v. Ramachandra*[19], "We cannot part with this case without making reference to certain defect in the investigation and on the conduct of the doctor (P.W.64) who held the post-mortem examination of the dead body of Pravakar. According to the post-mortem report, there were gunshot wounds. The entrance wound was noticeable but not the exit wound. It was the duty of the Medical Officer to have directed x-ray examination of the dead body to determine if bullets were located in the body. It was the duty of the Investigating Officer to see if bullets were inside the dead body and if those bullets, if recovered, were proved by ballistic examination to have shot from the revolver which admittedly belonged to Srinivas (one of the accused) and from whose possession it was recovered. This omission was clearly deliberate and the matter was so patent that no

[18] *Shakti Singh v. State of Rajasthan*, (2006) CrLJ 3017 (Raj).
[19] AIR 1965 Ori 175: (1965) 2 CrLJ 520 (DB)

Investigating Officer would ignore it.

In *Marachalil Chandra Tukaram Talekar v. State of Gujarat*[20], it was argued with great vehemence in the High Court as well in the Sessions Court that there was trial of blood from the front door of the house of the *vakil* into the corridor rooms marked H and H-1 in the plan and that supported the defense theory that the deceased Kannan received stab injuries not in or near the house in question but somewhere far away near the railway station. The High Court took the view that if Kannan had received the injuries somewhere outside the house it was impossible for him to have come into the room in view of the doctor's evidence. It was concluded on the material placed on record that there could be no room for doubt that Kannan received injuries in the room itself and no outside, and that he carried out of the room while life was still lingering and therefore, there would be dripping of the blood from the body during the course of transit as the injuries were very serious and vital arteries had been cut.

Fingerprints

Bazari Hajam v. King Emperor[21], the question arose whether it will be safe to act on the uncorroborated testimony of the fingerprints and declare the guilt of the accused. On this point Bucknill J., observed that, " I think that apart from the fact that I should be rather sorry without any corroborative circumstances to convict a person of a serious crime solely and entirely upon similarity of thumb marks or finger prints, the very fact of the taking of a thumb-impression from an accused person is for the purpose of possible manufacture of the evidence by which he could be incriminated is in itself sufficient to warrant one in setting aside the conviction upon the understanding and upon the assumption that such was not really a fair trial." Similar view was given by the courts in the case of *Din Muhammad v. Emperor*[22].

In the case of *Pritam Singh v. State of Punjab*[23], there is an observation to the effect that the science of identification by footprints is a rudimentary science and much reliance cannot be placed on the result of such identification. The above view was disapproved in *Public Prosecutor v. Kandasami Thevan*[24]. The thumb impression of the accused was

[20] 1980 Cri.L.J.5 (Gujarat).
[21] AIR 1922 Patna.
[22] Central Provinces Police Gazette dated 27th May, 1914 pp. 125-130.
[23] AIR 1956 SC 415.
[24] AIR 1927 Mad. 696.

considered to be admissible although the point did not directly arise in the case as there were thumb impressions of the accused in evidence other than that taken by the judge in court for comparison with the thumb impressions in the document alleged to have been forged.

There is no authentic and safe data to show that chance fingerprints were properly lifted from the scene and were made available for examination by the expert. The chance or specified fingerprints have not been proved in any manner known by law. The report does not reveal the nature of the comparison affected for the basis of the opinion of the expert as to how he reached the conclusion that the chance fingerprints were of the petitioner. In these circumstances the evidence of the expert and his report cannot also be of any crucial help to the prosecution. They cannot be made the foundation for the conviction.[25]

It is a known fact that a majority of fingerprints found at crime scenes or crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say whether a mark is usable as fingerprint evidence. Similarly, it is for a competent technician to examine and give his opinion whether the identity can be established. As has been pointed out that the opinion of the Director of the Finger Print Bureau in this case is clear and categorical and has been supported by adequate reasons.

DNA Testing

In the case of *Vasu v. Santha*[26], the Court has laid down certain guidelines regarding DNA tests and their admissibility to prove parentage.

- That courts in India cannot order blood test as a matter of course
- Wherever applications are made for such prayers in order to have a roving inquiry, the forensic evidences in Criminal trial is the need of the hour. Therefore, the prayer for the blood test cannot be entertained.
- There must be a strong *prima facie* case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.
- The court must carefully examine as to what would be the consequence of ordering the

[25] *Ayyappan v. State of Kerala*, 2005 CrLJ 57 (Ker).
[26] AIR [1986] M.P. 57.

blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

- No one can be compelled to give sample of blood for analysis. Further the court said Blood-grouping test is a useful test to determine the question of disputed paternity. It can be relied upon by courts as a circumstantial evidence, which ultimately excludes a certain individual as a father of the child. However, it requires to be carefully noted no person can be compelled to give sample of blood for analysis against his/her will and no adverse inference can be drawn against him/her for this refusal.

Sushil Sharma v. The State of NCT of Delhi[27]

This case is commonly known as the "*Tandoor Murder case*". This was the first criminal case in India solved by the help of forensics. In this case Sushil Sharma murdered his wife at home by firing three bullets in to his wife Naina Sahni's body. He killed his wife believing that she had her love affair with her classmate and fellow congress worker Matloob Karim. After murdering his wife Sharma took her body in his car to the Bagiya restaurant, where he and restaurant manager Keshav Kumar attempted to burn her in a tandoor there. Police recovered Sharma's revolver and blood-stained clothes and sent them to Lodhi Road forensic laboratory.

They also took blood sample of Sahni's parents, Harbhajan Singh and Jaswant Kaur and sent them to Hyderabad for a DNA test. According to the lab report, "Blood sample preserved by the doctor while conducting the post mortem and the blood stains on two leads recovered from the skull and the neck of the body of deceased Naina are of 'B' blood group." Confirming that the body was that of Sahni, the DNA report stated, "The tests prove beyond any reasonable doubt that the charred body is that of Naina Sahni who is the biological offspring of Mr. Harbhajan Singh and Jaswant Kaur." Eventually, Mr. Shusil Sharma was found guilty with the help of forensic evidences.

[27] 1996 Cri. L.J. 3944. (Delhi).

5. CONCLUSION

There is not an iota of doubt that the forensic evidence plays a second to none role in filling the gap in criminal investigations and helps the courts in reaching congruous conclusions. Thus, the medical and forensic evidence should be encouraged by improving the level of medico-legal experts, so that they can help the court. Also, the legislature needs to bring in new laws and amend the Evidence Act. The Information Technology Act, The Criminal Procedure Code to make it more forensic friendly and also to keep in pace with the technological advancement of the day. The author cannot press more of the need of a Forensic Council to regulate and homogenise the entire forensic testimony system.

THE ROLE OF SOCIETY IN CONTROLLING JUVENILE DELINQUENCY

By Rashima Sharma[1]

1. INTRODUCTION

One of the most important issues in today's society is juvenile delinquency. It's virtually a by-product of modern times' fast urbanisation and industry. The family pattern has been influenced by the social conditions connected with these two processes. As a result, an environment conducive to the emergence of adolescent delinquency has emerged. A huge number of people moving from rural areas to the cities or living in slums in cities are found to be highly vulnerable to this process. Delinquency is a rare occurrence. The term "delinquency" refers to a person's behaviour that deviates from the normal flow of social life. A juvenile delinquent is a young person under the age of 18 who engages in behaviour that could endanger society or oneself.[2]

Definitions of Juvenile delinquency:

"Wayward, incorrigible or habitually disobedient child is called a juvenile delinquent."

--Robinson

"The offences included under delinquency comprise for the most part such breaches of law as would be punishable in an adult by penal servitude or imprisonment."

--Cyril Burt

2. JUVENILE DELINQUENT CHARACTERISTICS:

The following are some of the characteristics of delinquents:

(i) They are agitated. Impulsive, vivacious, outgoing, forceful, and disruptive.

(ii)They are defiant, suspicious, and disobedient to authority and rules.

(iii)They are less methodical in their approach to problems and are more inclined to direct and focus rather than symbolic intellectual expression

(iv)They are cold, unyielding, and devoid of moral principles. Parents are frequently unfit to serve as good guides for their children.

(v)They act in such an antisocial manner.

(vi)They defy society's established norms.

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[2] C.N. Shankar Rao, *Principles of sociology with an introduction to social thought* (Nirja Publishers & Printers Pvt. Ltd., 2018)

(vii)They depict major law violations.

(vii)They have a low level of intelligence.

(ix)They demonstrate a proclivity for mental disorders.

(x)They are incapable of distinguishing between the correct and erroneous sides of a problem.

3. THE REASON FOR JUVENILE DELINQUENCY[3]

The following are some of the causes of juvenile delinquency:

(i) Scattered Household

From his family members, a youngster learns ethical and moral ideals. Family members have a vital influence in shaping a teen's personality and changing his or her behaviour. However, in some families, kids only become angry, violent, or display indicators of juvenile delinquency when they are confronted with any form of conflict.

(ii) Factors of social and economic development

The negative repercussions of social and economic development, particularly economic crises, political instability, and the collapse of major institutions, promote juvenile misbehaviour (including the State, systems of public education and public assistance, and the family). Unemployment and poor salaries are frequently linked to socio-economic instability.

(iii) Communication Defects

Lack of engagement in the family might lead to youngsters seeking refuge in places other than their homes. When they don't communicate with their parents or other family members at home, they may lose unity, trust, and understanding, which can lead to low self-esteem and confidence. They tend to do things they shouldn't when they believe they're losing their identity.

(iv) Factors of culture

Delinquent behaviour is common in social environments where acceptable behaviour norms have broken down. Many of the common principles that prohibit people from engaging in socially unacceptable behaviour may lose their significance for some members of society in such circumstances. They engage in rebellious behaviour in response to the distressing and damaging changes in social reality.

[3] *Ibid.*

(v) Migration

Because immigrants frequently find themselves on the periphery of society and the economy, with little possibility of success within the existing legal framework, they typically seek solace in their own environment and culture. Cultural conflicts arise as a result of differences in norms and values, as well as varied degrees of acceptability of certain activities in different ethnic subcultures.

(vi) Urbanisation

In emerging countries, the continual process of urbanisation is contributing to youth criminal behaviour. The basic characteristics of the urban environment encourage the development of new forms of social behaviour, primarily as a result of the deterioration of primary social relations and control, increased reliance on the media at the expense of informal communication, and the tendency to rely on the media at the expense of informal communication.

(vii) The News Media

The "religion of heroes," which supports justice through the violent eradication of foes, has become ubiquitous thanks to television and movies. Many studies have found that young people who see violence are more aggressive or violent themselves, especially when prompted. This is most common in males aged 8 to 12, who are more susceptible to such effects.

(viii) Exclusion

The widening wealth disparity has resulted in the rise of "unwanted people." With the accumulation of hurdles, broken social relationships, unemployment, and identity difficulties, some people's marginalisation is gradually increasing. Welfare regimes that have offered respite but not removed certain groups' low socioeconomic status, together with low-income families' greater reliance on social security services, have contributed to the emergence of a "new poor" class in many regions. Juveniles who have committed even small offences face symbolic exile from society, which has significant repercussions for the development of delinquent careers. According to research, Labelling can lead to self-adoption of a delinquent image, which can then lead to delinquent behaviour.

4. INFLUENCE OF OTHER PEOPLE[4]

Membership in a delinquent gang, like membership in any other natural organisation, can be a natural part of the maturation process. An individual develops a sense of safety and security as a result of such primary connections, as well as a knowledge of social interaction and the ability to display attributes like loyalty and leadership. Quite often, deviant groups can compensate for or balance out the flaws in family and school. According to several studies, adolescent gang members perceive their gang to be a family. Belonging to a gang can give protection inside the neighbourhood for kids who are regularly exposed to violence. Those who are not active in gangs coexist in some locations.

(i) Financial constraints

Young or old, they may take the wrong way to better their financial situation. Due to a lack of funds, teenagers become juvenile delinquents. When they are faced with difficult economic circumstances, they begin to engage in the wrong behaviours. To improve their financial situation, they may start selling narcotics or stealing.

(ii) There is a lack of social and moral education

Juvenile delinquency is sometimes caused by teenagers who have had little social or moral training. It is the responsibility of parents to instil moral and ethical principles in their children. They should educate kids on the distinction between appropriate and inappropriate behaviour. Children with a lack of social and moral standards may have difficulty interacting with others and may be less confident. They could become egotistical and haughty. They would have no idea how to follow the state's laws. Parents frequently ignore their children in favour of working hard to provide for them. However, many overlook the significance of spending quality time with their children while doing so. Children prefer to spend time with someone who pays attention to them while their parents are not present. While seeking attention from someone other than their parents, they may fall into the wrong hands or become involved in a terrible company.

[4] World youth report, 2003 *available at:* https://www.un.org/esa/socdev/unyin/documents/worldyouthreport.pdf (Last visited on 27 Aug, 2021).

5. ACT OF 2000 ON JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN)

The Act aims to consolidate and modify the law relating to juveniles in conflict with the law and children in need of care and protection, by ensuring proper care, protection, and treatment while also catering to their developmental needs, and by taking a child-friendly approach to adjudication and disposition of matters affecting children's best interests.
Sections 9 to 12 of the Juvenile Justice Act make it easier for the government to set up Juvenile Homes, Special Homes, Observation Homes, and After Care Organizations for minors.
The Juvenile Justice Act of 2000 established the Special Trial Process for the benefit of children.

Section 3: If an investigation has been opened into a juvenile and he ceases to be a juvenile during the investigation, the investigation may be continued as if he had been a juvenile.

Section 4: The state government may establish one or more juvenile welfare boards to carry out the duties entrusted to them by this Act in connection to neglected juveniles.

Section 5: The state government shall establish one or more juvenile courts to exercise the powers conferred on such courts by this Act in relation to delinquent juveniles.

Section 6: A person appointed as a member of the Board or as a Magistrate must have specific understanding of child psychology and welfare, according to this section.

Section 7: This section requests that the Board or the Juvenile Court hold their proceedings in a room that is not the same as a civil or criminal court.

Section 29: This section permits a guardian or parents with a certain level of influence over the child to be present in court, providing the youngster with the mental support he requires and preventing the youngster from feeling lonely.

Juvenile delinquency is a major threat to our society and nation's future. This problem cannot be attributed to any single individual or authority. Youth criminality is caused in part by parents, schools, society, and local and federal government organisations. Rather than merely passing the blame, it is preferable to accept responsibility and work together to solve the problem.

6. SOCIETY'S PART

(i) Take a stand against teen violence

Youth violence is one of numerous causes of juvenile delinquency offences, according to recent research studies. Teens who are exposed to violence at a young age, whether at home, school, or elsewhere, are more prone to commit a crime in order to exact revenge or avoid difficulty. To address, confront, and counter teenage violence, everyone in society should work together. Begin with your own residence. It's time to put an end to youth violence if you or anyone in your family is engaged. Take note of your surroundings as well. Before it eats our society's roots, the wicked must be condemned.

(ii) Consider alternatives to social, ethnic, and class divisions

There is a substantial link between teenage crime and variations in social, ethnic, and economic status. These are the distinctions that make teenagers feel inadequate. They are unable to benefit from society's trust, sense of belonging, and empathy. They revolt when they believe they are being rejected by a specific social group or class. They decide to teach everyone a lesson by breaching the rules and breaking the laws after being rejected. As parents and society, we must be mindful not to force our children down this destructive path. Recognize them for who they are, celebrate their differences, and embrace their individuality.

7. PARENTAL RESPONSIBILITIES SPEND QUALITY TIME WITH TEENAGERS

In many circumstances, teenagers engage in illegal activity in order to attract attention from their family, particularly their parents. They are desperate for their existence to be recognised. It's critical that you set aside time each day to sit down and talk with your children. Give them the attention they want so they won't feel compelled to look for it elsewhere.

Guidance and supervision are provided

Increased height or shoe size does not imply that teenagers are mature enough to handle all situations on their own. Your supervision and advice are still required at all times. Parents must be on the watch for symptoms of stress and turmoil in their children's lives at all times. When they make a mistake, guide them. Stealing, bullying, and other similar behaviours should be addressed seriously because they can lead to serious criminal charges. Keep an eye on how your teen interacts with others. Also, keep in touch with his teachers so you may stay informed about their behaviour at school.

8. THE TEACHER'S PART IN JUVENILE DELINQUENTS' EDUCATIONAL PROGRAMS

- The instructor should turn the classroom into a miniature community for the children's socialisation.
- Great people from many social streams should be called by the teacher to provide lectures and speeches in order to help youngsters build their social and moral character.
- The teacher should place a premium on the students' mental health.
- To handle their concerns, the instructor should be cooperative, helpful, and compassionate.
- The instructor should be concerned about the physical, mental, and emotional well-being of the students, and should contact concerned doctors and psychologists if any problems occur.
- The teacher should motivate the students to acquire a fire character.
- Following the intelligence exam, students may be classified.
- The teacher should give all necessary accommodations for the mentally challenged students.
- The teacher should have a close relationship with the parents and provide specific information on their children on a regular basis.
- The teacher should gain knowledge about juvenile delinquents by participating in various training programmes that are held on a regular basis.

9. EDUCATION PROGRAMS FOR JUVENILE DELINQUENTS:

- The school should be located outside of the society's immediate vicinity.
- The school building should be elegant and appealing, and it should be kept nice and tidy at all times.
- Proper seating arrangements for each youngster should be made.
- All classrooms should be furnished with photographs of notable people from the past, as well as religious and historical artworks on the walls.
- Large fields close to the school building should be available for delinquent sports and games.
- Flower gardens should be provided on campus to make it more pleasing to the children, and a gardener should be in charge of them.

- Teachers should use an appropriate curriculum and instructional approaches.
- The inclusion of religious historical and moral instruction in the curriculum should be maintained.
- Organizing debates, dramas, music programmes, and recitations should be part of the school day so that students can participate in a variety of cultural events.

- Physical education should be prioritised by the headmaster, and children should be encouraged to participate in a variety of sports and games based on their interests and talents.
- The school authorities should pay special attention in the school programme to ensure that the children's leisure time is properly utilised.
- The teacher should keep adequate track of the students' cumulative records.
- Assignments should be given more weight in the evaluation of practicals than theory papers.
- Include a meditation yoga session in your regular regimen.
- The importance of moral lessons in the curriculum should be emphasised.
- Specially trained professors should be available to assist students in resolving personal issues.
- Delinquent children should be encouraged to make good acquaintances at school and socialise with them.
- Muscle activities should be a part of their daily routine.
- Any delinquent behaviour observed in a child should be reported to the counsellor, and the problem should be addressed through an interview or a standardised test.
- The relationship between parents and teachers should be strong, and regular ideas should be adequately relayed to the parents.

10. CONCLUSION

The present analytical research delineates that the conventional opinion about family impact on juveniles is flawed: parental absence is *not* poignantly related to juvenile delinquency. Family interactions have a greater influence on delinquency than the parental absence. Children reared by competent, affectionate parents who avoid using corporal forms of punishment are less likely to commit heinous crimes either as juveniles or as adults. Whereas, in case of neglecting or absent parents, striplings are likely to be influenced to a greater degree by their community environments, especially close relatives, which may offer opportunities and encouragement for learning criminal behaviour.

AI PRODUCED INVENTIONS AND IPR POLICY DURING COVID-19

By Nikita Arora[1]

ABSTRACT

The disease has spread to approximately 214 nations and areas, according to the World Health Organisation's (WHO) official website of Coronavirus. While diseases spread ruthlessly over the world, science and technology are fighting back in equal measure. The pandemic puts nations 'medical capabilities and political will to the test. It also poses several philosophical issues. It is a test of humanity as a whole. Artificial Intelligence (AI) aims to mimic human cognition. It will result in considerable changes in health care, owing to the increasing accessibility of healthcare data and the quick advancement of analytical procedures. During the present COVID-19 pandemic, AI is being utilized to aid and advice doctors in making a diagnosis, assist radiologists in refining image explanation, and help enhance drug development research. There is still a lot of uncertainty in the realm of AI-generated intellectual property (IP) protection. The goal of this research is to determine the impact of international and national laws and treaties on IP rights for AI-generated pandemic solutions.

1. INTRODUCTION

Since the first case of Coronavirus[2] (COVID-19)[3] case in Wuhan, China, the virus has spread around 216 other locations and countries. As the government began to respond to the virus, they relied significantly on technology, notably artificial intelligence (AI), data science, and technology, to detect and combat the pandemic. As the virus spreads, tech start-ups are becoming increasingly connected with academics, medics, and government agencies around the world to stimulate technology. Globally, technology and medical business are stepping up their efforts to combat the COVID-19 pandemic. Artificial intelligence (AI) and supercomputers are being used to discover life-saving cures for the condition. The White House[4] announced the COVID-19 high-performance computing consortium in late March 2020

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[2] Corona viruses are a large family of viruses which may cause illness in animals or humans. In humans, several coronaviruses are known to cause respiratory infections ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).

[3] The most recently discovered coronavirus causes coronavirus disease COVID-19.

[4] White House Announces New Partnership to Unleash U.S. Supercomputing Resources to Fight COVID-19. Available at: https://www.whitehouse.gov/briefings-statements/white-house- announces-

intending to bring together business experts in AI, national laboratories, and academia to "significantly advance the rate of scientific discovery in the fight to stop the virus"[5]. Against the backdrop of COVID-19, industries are turning to artificial intelligence (AI) for predictive modeling, tracking, diagnostics, and prediction. While the application of AI will undoubtedly result from incredible inventions, data, test results, and any inventions that come from its use will raise problems about how effectively protect these ideas and who will be credited as an inventor.

2. COVID-19 IN INDIA

The first COVID-19 case was discovered in India on January 30, the same day WHO proclaimed it a public health emergency of worldwide significance. Nearly two months later, India went into lockdown. After a 10-week lockdown, India began a phased restoration of its economy on June 8. With unlock 1.0, the country was attempting to strike a balance between efforts to revive the economy and coping with increased caseloads and new hotspots. On June 30, the official COVID-19 case count was over 585,000, with over 17,500 deaths. While recovery rates have increased to 60% and the death rate is surprisingly modest given that India is the fourth most affected country in the world COVID-19 in India was reaching its peak.
Outside of health policy, India's slow economic reaction is a major issue. The stimulus plan unveiled in May, Atmanirbhar Bharat ("Self-Reliant India"), is not tiny at $110 billion; this is equal to 10% of India's GDP. However, it consists mostly of monetary interventions to supply liquidity with a longer-term goal of stimulating the economy. The $23 billion Pradhan Mantri Garib Kalyan Yojana relief package falls short in terms of funding responses and relief measures targeted at the poor and vulnerable because it mostly reallocates funding across existing budgets or allows people to make advance withdrawals on their social benefits rather than mobilizing additional funding.

new-partnership-unleash-u-s-supercomputing-resources-fight-covid-19/

[5] White House Announces New Partnership to Unleash U.S. Supercomputing Resources to Fight COVID-19. Available at: https://www.whitehouse.gov/briefings-statements/white-house-announces-new-partnership-unleash-u-s-supercomputing-resources-fight-covid-19/

3. ARTIFICIAL INTELLIGENCE

Artificial intelligence refers to computer systems that are capable of doing activities that would otherwise need human intelligence, such as speech recognition, visual perception, decision-making, and translation. Weak AI systems are incapable of reasoning for themselves, yet they can return to specified circumstances. Robust AI systems are being built in a method that involves learning from earlier experiences as well as reasoning and behaving like humans[6]. AI is evolving at such a rapid pace that relevant legal legislation is slipping behind. This radical technology[7], which is creating radical innovations, will be incorporated into practically every aspect of life, and the demand for legal advice on this topic is growing dramatically, particularly in terms of intellectual property law. Developers and innovators have developed the ability to construct machine learning systems that can develop inventions on their own.

4. ROLE OF AI IN COVID-19

The pandemic of coronavirus illness 2019 (COVID-19) has irreversibly impacted our personal and professional lives. More than a million people have died as a result of the virus worldwide. As I write this piece, new outbreaks of illnesses are breaking out over the world. The economic impact has been devastating.

In January 2020, the pandemic arrived in the United States. Manuscripts utilizing artificial intelligence (AI) for COVID-19 evaluation on chest radiographs and CT scans began to appear on preprint websites such as arXiv by March 2020. There were almost a dozen similar manuscripts within a month. Concurrently, major publications such as Radiology began publishing AI articles on COVID-19. Most researchers discovered that these AI systems have a high sensitivity for detecting lung opacities caused by COVID-19. Subsequent research demonstrated that AI could differentiate COVID-19 from other kinds of pneumonia.

Even the data required for training and testing AI systems is not always a limiting constraint. The availability of free online COVID-19 radiology data sets is increasing. The Cancer Imaging Archive, the British National COVID-19 Chest Imaging Database, and the Valencia Region Medical ImageBank are among the online data collections. The RSNA has created the

[5] White House Announces New Partnership...

[7] Occasionally a technology dislocates established framework events; the technology has the capacity to redesign and refine the space and the boundary. This is a radical technology that causes radical innovations.

Medical Imaging and Data Resource Center, or MIDRC, and the RSNA International COVID-19 Open Radiology Database resources, as well as gotten radiology departments, to agree to donate images from COVID-19 patients. IDRC data are not yet available online at the time of writing.

COVID-19 AI research is divided into three categories: binary diagnosis (COVID-19 present or absence), segmentation and measurement of aberrant lung opacities, and separating COVID-19 from non-COVID-19 pneumonia. One of the earliest applications that were thoroughly researched was a binary diagnosis. Prediction of future need for oxygen therapy or intubation, prediction of acute respiratory distress syndrome development, generalizability to multinational patient populations, integration of imaging and clinical information, analysis of serial imaging, tailoring steroid treatment, and mortality prediction is more limited areas of investigation. Opacities on radiology pictures were included in machine learning models to predict the requirement for intensive care unit admission using natural language processing of clinical data.

It is time to go past research demonstrating that AI can detect opacities in CT or chest radiography, which is now well-proven. Instead, there is a tremendous demand for AI systems that use a mixture of imaging, laboratory, and clinical data to make actionable predictions that would otherwise be inaccessible or inaccurate without AI.

5. AI APPLICATIONS IN COVID-19

The applications are classified as follows:

1. Infection Detection and diagnosis Treatment vigilance
2. Individual contact tracing
3. Case and fatality prediction
4. Aid in the development of medications and vaccines
5. reducing healthcare professionals' workload
6. Preventing the occurrence of disease

Artificial intelligence is a tool that can aid with the early detection of coronavirus infections as well as the intense care of sick patients. By building effective algorithms, it can promote stable therapy and decision making. AI aids in the treatment of COVID-19-infected patients and ensures regular health monitoring for them. It can track the COVID-19 outbreak at multiple levels, including molecular, medicinal, and epidemiological applications. It also makes research on this virus easier by analyzing accessible data. AI can aid in the creation of effective

treatment regimens, prevention techniques, and medications and vaccines. The disadvantages of adopting AI are legal and intellectual property rights difficulties.

6. INTELLECTUAL PROPERTY

Intellectual property (IP)[8] refers to mental creations such as inventions, literary and creative works, designs, and commercial symbols, names, and pictures. Patents, copyright, and trademarks, for example, are legal mechanisms that allow people to get recognition or financial benefit from what they innovate or create. The IP system attempts to establish an environment in which innovation and creativity can flourish by striking the right balance between the rewards of innovators and the larger public interest.

7. AI-GENERATED WORK AND COPYRIGHT LAW

AI-generated works and copyright law have been heavily debated. The United Kingdom was the first jurisdiction to provide specific copyright protection for AI or "computer-generated" works in 1988. When a copyrightable work is made but no natural humans are identified to be suitable writers, the work's "producer" is assumed to be the author. The United States Copyright Office (USCO), on the other hand, has taken the opposite approach. Since 1973, the office has effectively implemented a "human authorship policy[9]." [J. Ginsburg, 2018: 131–135].

The Monkey selfies case Naruto v.Slate[10]r demonstrated the human authorship policy. This case involved a series of pictures taken by Naruto, an Indonesian crested macaque. People for the Ethical Treatment of Animals (PETA) filed a lawsuit on Naruto's behalf, claiming that he should have the copyright to the images. However, the case was dismissed because the United States Congress did not authorize animals to sue under the Copyright Act. As a result, the benefits of the human authorship requirement have never been tested in court.

[8]What is Intellectual Property. Available at: https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

[9] This policy forbids copyright protection in case the works are not generated by a human author

[10] Naruto v. Slater, No. 16-15469 (9th Cir. 2018).

8. AI-GENERATED WORK ARE ELIGIBLE FOR PATENT PROTECTION

Patent protection for AI-generated works should be available since it will stimulate innovation. The vision of owning a patent will not unquestionably motivate AI, but it will incentivize some of those who build, own, and utilize AI. Allowing patents for AI-generated works will, as a result, encourage the development of inventive AI, which will eventually lead to increased innovation for society.

Patents can foster knowledge disclosure and the commercialization of socially valuable items. Patents for AI-generated works, like any other patent, will achieve these goals. On the other hand, not allowing protection for AI-generated ideas will prevent businesses from using AI to develop. The inability to file a patent application based on an AI-generated invention would result in situational gamesmanship with patent offices.

Aside from fortifying AI-generated inventions, AI should be listed as an inventor when inventing, as this would protect the rights of human inventors. Listing a person as the inventor of an AI-generated invention would not harm AI, which is not interested in being recognized in the end. Allowing someone to claim credit for work they did not undertake, on the other hand, would diminish the value of human ingenuity[11]. It would equalize the efforts of someone who just requests AI to solve a problem with that of someone who is legitimately and justifiably inventing something new. AI will never be able to obtain a patent. AI systems lack both moral and legal rights, and so do not have the power to own property[12].

Technology tends to advance faster than the law. As AI-based technologies and machine learning become more prevalent in other industries, the demand for legal oversight on the subject will grow dramatically[13]. The field of intellectual property is the primary subject of legal research that is devoted to the variety of legal complexities related to this technology (IP). While much has been written about the consequences of computer-authored work on copyright law, nothing has been written on how related technology would disrupt patent law.

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[11] Inventorship is an important concept in patent law. Inventors are those who contribute the ingenuity necessary to create an invention. Quinn G. Inventorship 101: Who are Inventors and Joint Inventors? Available at: https://www.ipwatchdog.com/2018/03/09/inventorship-joint-inventors-co- inventors/id=94592/

[12] Abott R. The Artificial Inventor Project. Available at : https://www.wipo.int/wipo_magazine/en/2019/06/article_0002.html#:~:text=People%20have%20claimed%20to%20have,in%20such%20a%20patent%20application.&text=However%2C%20these%20laws%20were%20created,of%20 inventive%20activity%20by%20machines

[13] Heath N. What is AI? Everything you need to know about Artificial Intelligence. Available at: https://www.zdnet.com/article/what-is-ai-everything-you-need-to-know-about-artificial-intelligence

As society looks toward the predictable depths of the «artificial invention age, » a critical knowledge of inventor-ship will be reviewed to establish if inventions that are computer-assisted or computer-generated and developed with the aid of AI should result in patents. Two aspects must be considered when evaluating this subject. First, a range will be constructed for analyzing the degree of human intervention that happens throughout a certain innovative process. Machine learning could be a very useful tool for assisting inventors. Furthermore, it would allow computers to create inventions without the need for human interaction or influence. Computer-assisted and computer-generated inventions could also be studied philosophically to establish where on the spectrum human interaction is so low that the right to a patent is relinquished.

9. WAIVER OF IPR ON COVID-19 VACCINE

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1995 is a significant legal instrument that harmonizes intellectual property (IP) protection by putting binding responsibilities on member countries to maintain a minimum level of IP protection and enforcement in their territory[14]. The TRIPS agreement, as part of the World Trade Organization's (WTO) legal regime, polices the enforcement of intellectual property rights through a mandatory and enforceable dispute settlement procedure[15]. It is generally known that the debates on the TRIPS agreement were heated during the Uruguay Round of negotiations, which took place from 1986 to 1994 and led to the foundation of the WTO in 1995[16]. Developed countries, particularly the United States (US), pushed for the TRIPS agreement forcefully, backed by major pharmaceutical transnational businesses. These countries believed that stronger cross-border intellectual property protection, which could be adequately managed by a multilateral agreement, would result in higher rents for national pharmaceutical businesses[17]. On the other hand, developing countries were opposed to a WTO deal on intellectual

[14] Peter Van den Bossche and Werner Zdouc, The Law and Policy of the World Trade Organization (Cambridge: Cambridge University Press, 2013), pp. 952.
[15] Susan Sells, Private Power, Public Law: The Globalization of Intellectual Property Rights (Cambridge University Press: Cambridge, 2003); Peter Drahos and John Braithwaite, Information Feudalism: Who Owns the Knowledge Economy? (London: Earthscan, 2002).
[16] See Peter Drahos (2007), "Four Lessons for Developing Countries From the Trade Negotiations Over Access to Medicines", Liverpool Law Review, 28, no.1 (April 2007): 15-16.
[17] See Piragibe dos Santos Tarragô, "Negotiating for Brazil" in The Making of the TRIPS Agreement Personal Insights from the Uruguay Round Negotiations, ed. Jayashree Watal and Antony Taubman (Geneva: World Trade Organization, 2015), 240-241.

property[18].

Article IX.3 of the Marrakesh Agreement establishing the WTO (or the WTO Agreement) states that the Ministerial Conference may waive an obligation imposed on a WTO member nation by the WTO Agreement or any other multilateral trade agreement in "exceptional circumstances."[19] According to the same article, such a waiver must be supported by three-quarters of the members[20]. Formalized paraphrase According to Article IX.3 (b), if the request for a waiver involves the multilateral trade agreements listed in Annexes 1A, 1B, or 1C, the request must first be made to the Council for Trade in Goods, Council for Trade in Services, and Council for TRIPS, in that order. In the current situation, the TRIPS Council has authority over the waiver request because it relates to the TRIPS Agreement. Furthermore, Article IX.4 of the WTO Agreement says that the Ministerial Conference, in granting the waiver, must identify the "extraordinary circumstances" justifying the decision as well as the terms and conditions under which the waiver will operate. If granted for longer than a year, the waiver shall have an expiration date and be reviewed annually by the ministerial conference.

10. CONCLUSION

Despite having been established by R&D and related investments, artificial intelligence technologies utilize both primary and secondary open knowledge sources, as well as public domain knowledge, for machine learning and so serve as a data-centric technology. AI technical applications are only virtual platforms for aggregating knowledge, which is at the heart of big data.

As a result, the data analyzed by AI technologies are not the intellectual property of the AI machine as such, but of the human creators of the related information (COVID-19 in this case). They are an algorithmic compilation of information extracted from the literature that has been published by scientists, research academics, medical practitioners, survey analysts, pharmaceutical experts, and others into a dataset of filtered and enriched knowledge. This

[18] This was for several reasons with one of the prominent reasons being that a stringent intellectual property system will have an impact on the prices of pharmaceutical products. See Daniel Gervais, The TRIPS Agreement: Drafting, History and Analysis (London: Sweet and Maxwell, 1998), pp. 19.

[19] For a detailed discussion on WTO's Waiver power, See Isabel Feichtner, "The Waiver Power of the WTO: Opening the WTO for Political Debate on the Reconciliation of Competing Interests", European Journal of International Law, 20, no. 3, (August 2009): 615-645.

[20] On 15 November 1995, the General Council of the WTO decided that although support of three-fourths is needed to adopt a waiver, it would first try to decide by consensus. If consensus cannot be reached, then the matter shall be decided by the three-quarters majority – WTO, Decision Making Procedures under Article IX and XII of the WTO Agreement, WT/L/93.

expanded dataset has the potential to provide AI domain holders (individuals or public institutions) with a wide range of scientific knowledge domains and deeper insights into COVID-19 viral strains to eventually produce a vaccine, which is in the public interest.

This year, the international community set out with the sole goal of putting an end to the Covid-19 pandemic. This would only be conceivable if as many people as feasible around the world were vaccinated as soon as feasible. Given the large demand, vaccine manufacturing must be greatly boosted, followed by broader and more fair distribution. Such a task cannot be accomplished just through an IP waiver. Increasing vaccine production and ensuring fair access will also necessitate the development of institutional capacity in various countries, the removal of systemic obstacles, and the implementation of appropriate administrative and legal reforms. Nonetheless, a TRIPS waiver might be a significant step toward increasing vaccine manufacturing.

CONSTITUTION OF INDIA AND RESERVATION IN PROMOTIONS

By Prerna Tyagi[1]

ABSTRACT

Fundamental rights are provided with in Part III of the Constitution of India. According to Article 16.4, in the interest of any 'backward class' of people not sufficiently represented in the state's public authorities, the State may reserve appointments or offices. Explaining the nature of this article, A.C in Mohan Kumar Singhania v. Union of India stated that it is indeed "an enabling provision" which conferred a discretionary discretion on the State, in favor of any backwards citizens' class that is not sufficiently represented at the state's service, to provide, or reserve, appointees or positions. However, in a recent judgment the Supreme Court explained the reservation in promotion as a non-fundamental right.

In this paper, I will provide a quick overview of the constitutional history of reservations in public job promotions and its current state of affairs.

1. INTRODUCTION

Reservations in public employment have been a sensitive subject under the Constitution's basic rights chapter, which has been modified and interpreted by the Supreme Court several times over the previous seven decades. From the plethora of concerns that fall within the reserve umbrella. Promotions to Scheduled Castes and Scheduled Tribes (SCs/STs) in government employment are referred to as reservations in promotion. This has been a controversial issue seen between Supreme Court and Parliament. The Court ruled in the Indra Sawhney case from 1992 that Article 16(4) does not allow for quota in promotion. Then, between 1995 and 2000, Parliament enacted a series of constitutional amendments that allowed for promotion reservation. The Supreme Court's Nagaraj judgment, delivered in 2006, established clear rules for when the state might give a SC/ST promotion reserve.

On September 21, 1947, shortly after the British left, instructions were issued reserving 12- 1/2 % of open system leadership roles for Cs. This percentage was set at 16-2/3 percent for non-open competitive recruiting. MUA authorized a 5% reserve in its Resolution once the Constitution was adopted. SCs constituted 15.05 percent of the total population in the 1951

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Census, while STs composed 6.31 percent. The percentages were not modified since acomplete bill revising the lists of SCs and STs was being discussed at the time.

Another reason for not changing the figure was that a 16.66 percent quota for SCs in posts not filled through competitive tendering had already been created, and instructions for establishing a regional and local proportion for Class III and IV had also been given. Applicants for Class IV jobs come from a certain location or region.

The matter of promotion in reservation revolves around four Articles of the Constitution of India:

1) Article 16 for equality of opportunity in matters of public employment, There shall be equality of opportunity for all citizens in matters of public employment or appointment to any office under the State. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
2) Article 335 for claims of Scheduled Castes and Scheduled Tribes to services and posts while maintaining administrative efficiency, claims of Scheduled Castes and Scheduled Tribes to services and posts The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
3) Article 341 for identification of Scheduled Castes and Article 342 for identification of Scheduled Tribes.

   The President of India is empowered under Articles 341 and 342 to compile a list of these castes and tribes, Scheduled castes, scheduled castes, and scheduled tribes, as well as any further castes or tribes that the President may announce publicly.

2. CASE STUDY TIMELINE

1991: Indira Sawhney v UOI

The S.C found that reservations in promotions were undesirable, and that reservations in promotions were not permitted under Article 16(4). Article 16(4) does not provide reservation in promotion, according to a nine-judge panel, because it only applies to reservations in appointments. All reservations in promotion provided to SCs/STs in government employment are now in jeopardy as a result of the ruling.This was taken into consideration by the Court.

After the 16th of November, 1992, the court's decision permitted reservation in promotion to continue for another five years.

1995: Article 16(4A): 77th Amendment

Indra Sawhney's impact was negated in 1995 when the government enacted Article 16(4A) aspart of the 77th Constitutional amendment. Indra Sawhney was overturned on this issue when the Indian Parliament passed the Constitution (Seventy-Seventh Amendment) Act, 1995, which provided for reservation in elevation. Article 16(4A) of the 77th Constitutional Amendment was introduced, making reservation in promotion a basic right. This clause, however, is only applicable to SC and ST. Article 16(4), on the other hand, pertains to reservations in appointments and positions for "backward classes," without distinguishing between Scheduled Castes and Scheduled Tribe Article 16(4A) allowed the State to provide reservations to a SC/ST in matters of promotion, as long as the State believes that the SC/ST is not adequately represented in government services. 1996: Introduction of Catch up Rule - Ajit Singh v State of Punjab Following the constitutional recognition of reservation in promotion, it led to a situation where reserved categories applicants who were promoted ahead of general class rivals became their senior due to the prior promotion.

Two judgements, Virpal Singh (1995) and Ajit Singh (1996), addressed this issue by introducing the notion of a Catch Up Rule. Senior general candidates who were elevated afterSC/ST applicants regained seniority over general candidates who were promoted earlier, according to the regulation.

2000: Article 16(4B) & Carry Forward Rule – 81st Amendment

In the year 2000, two modifications were introduced to make reservation in promotion for SC/STs more smooth. The 81st Amendment was the very first.

Through 81st Amendment, the government introduced Article 16(4B), which allowed reservation in promotion to breach the 50% ceiling set on regular reservations. The Amendment allowed theState to carry forward unfilled vacancies from previous years. This came to be known as the Carry Forward Rule.

“[The State may examine] any positions available of a year which are earmarked for filling up in that year...,” reads part of Article 16(4B). as a special group of vacant posts to be filled in any subsequent year or years, and such class of job openings shall not be considered in conjunction with the vacancies of the year in which they are getting filled in evaluating the ceiling of 50% reservation on a total number of job opportunities of the same year.

Proviso to Article 335 – 82nd Amendment

In 2000, the State amended the Constitution Second time. In the 82nd Amendment, the State added a proviso to Article 335. According to Article 335, the claims of SCs/STs to services and posts have to be consistent with overall administrative efficiency.

The 82nd Amendment, in a sense, obliterated the efficiency requirement. It included a proviso that said that nothing in Article 335 prevented the State from reducing the level of evaluation for reservation in matters of promotion for members of the SC and STs.

The addendum to Article 335 overturned the Supreme Court's Vinod Kumar decision from 1996, which expressly prohibited relaxations in qualifying marks in cases of promotion reservation.

2001: Article 16(4A) & Consequential Seniority for SC/STs – 85th Amendment

The Catch-Up Rule, which the Supreme Court had established in the cases of Virpal Singh (1995) and Ajit Singh (2001), was repealed by Parliament in 2001. (1996). Parliament modified Article 16(4A) of the Constitution in the 85th Amendment, introducing the idea of Consequential Seniority for promoted SC/ST candidates. Consequential seniority" indicates that promotions to SC/ST people made through reservations will automatically result in seniority in the public sector. The wording of Article 16 (4A) was then changed to read: "in cases of promotion to any class" instead of "in circumstances of promotion, with concomitant seniority to any class."

2006: Nagaraj v UOI[2]

The appellants in Nagaraj took the 77th, 81st, 82nd, and 85th Amendments to the Supreme Court. In the end, the Court decided that the Amendments were constitutionally lawful. It did, however, add some regulating criteria, making it more difficult to issue reservations in promotion concerns.

Reservation in Promotion to SCs/STs was affirmed by a five-judge panel as constitutionally sound. It maintained the Article 16(4A) Consequential Seniority Rule, the Article 16(4B) Carry Forward Rule, as well as the Article 335 Proviso.

The court did emphasize, however, that Articles 164A and 4B are enabling laws, and that SC/STs do not have an automatic right to reservation in promotion. The Court concluded that

[2] 77th, 81, 82and 85amendmentcase.

the State must fulfil three compelling conditions in order for reservation in promotion to be valid:

1. Demonstrate the SC/backwardness. ST's
2. Demonstrate that the SC/ST is underrepresented in relevant government jobs.
3. Maintain regime's overall efficiency

2011: Effect of reservation in administrative emergency

Having followed Nagaraj, which established the three governing requirements, a number of High Courts and the Supreme Court overturned statutes and rules expanding reservation practices in promotion. The state had not provided enough data to fulfil the governing requirements, according to the several courts. The judges specifically reprimanded the State for failing to show backwardness and/or inadequate depiction.

2017: Challenge to Nagaraj - ***State of Tripura v Jayanta Chakraborty***

Several states have petitioned the Supreme Court to reconsider the Nagaraj decision. Nagaraj's three regulating requirements make it extremely difficult to promote reservation rules in promotion plans.

2018: *Jarnail Singh v. Lacchmi Narain Gupta*[3]

Since the Mandal Commission's implementation in the 1990s, reservations for the backward classes have had an influence on Indian politics. On September 26, 2018, a five-judge Constitution bench in the case of Jarnail Singh & Ors vs Lachmi Narani Gupta & Ors established several principles on reservation in public job promotion, which has far-reaching implications. The question before the bench in this case was whether the judgement in M. Nagaraj v. Union of India on the three- point criteria for granting reservation under Article 16 4-A was valid. The Supreme Court's five-judge bench unanimously decided that the Nagaraj verdict, which dealt with reservations in promotions for SC/ST people, did not need to be reconsidered by a bigger seven-judge bench. Nagaraj's showing of greater backwardness was likewise struck by the Bench.

On the one hand, the Court abolished the further backwardness criteria, but on the other, it established the creamy layer exclusion concept. It was held that creamy layer exclusion applies to SC/STs, and that the State cannot provide reservations in promotion to SC/STs who are

[3] Supreme Court five judge bench case

members of their community's creamy layer. The Creamy Layer concept has been determined to be an element of equal treatment predicated on Article 14 and Article 16, which is a ground-breaking line of argument (1). The Creamy Layer Theorem is more than just a way of identifying SCs and STs. This is a new addition to the equality jurisprudence that the Supreme Court has determined is a part of the Constitution's core framework and thuscannot be altered by Parliament. This merely means that unequals in the same class cannot betreated equally, and if they are, the wider concept of equality contained in the Constitution would be undermined.

2019: BK Pavitra v. Union of India – II

The Supreme Court affirmed a reservation in promotion policy in 2019. The Supreme Court ruled 2018 Karnataka Reservation Act, finding that the state had provided sufficient evidenceto show both that SC/STs are underrepresented and that the legislation will not have a negative impact on efficiency. In State Government Services, the 2018 Act establishes consequential seniority for SC/STs.

Under Article 335 of the Constitution, the Court adopted a more inclusive meaning of administrative efficiency in its decision. The revised definition strikes a balance between merit and sufficient representation. It's also worth noting that the Court sustained the Act notwithstanding the State's failure to apply the creamy layer test established in Jarnail Singh. The criteria may only be applied at the level of reservation in promotion, not at the point of consequential seniority, the Supreme court ruled.

2020-2021: Present Scenario

The court ruled that Articles 16 (4) and 16 (4-A) of the Constitution did not grant persons a basic right to seek reservations in promotion, citing precedent.

After a series of appeals, the Uttarakhand Public Works Department decided to create reservations for Scheduled Castes and Scheduled Tribes in promotions to the level of Assistant Engineer (Civil). Reservation in public advertising cannot be asserted as a basic right, according to the Supreme Court.

As per the bench of Justices L. Nageswara Rao and Hemant Gupta, state governments are not required to create reservations. The courts, too, were unable to issue a mandamus requiring states to make reservations.

3. MY OBSERVATIONS AND RECOMMENDATIONS

The risk of an unequal system: Some may see this as an inescapable government obligation to give reservation to those who demand it, lest the system become unequal if it is not provided. A visible imbalance in social representation in public services may result if no quotas are set and no evaluation of backwardness and extent of representation is undertaken, for example.

Treating everyone the same and allocating resources equally is what formal equality involves. On the other hand, someone who is at a disadvantage will require more support than those who are in a better position. Substantive equality recognizes this clear distinction. Rather than formal equality, it separates potential beneficiaries based on their need and the possible degree of benefit to them. It takes into account people's preferences on a scale of advantages and negatives. If substantive equality is part of our right to equality, claiming that reservation is not a right is absurd.

Reservation is no longer seen as an exception to the equality standard by the Supreme Court; rather, it is seen as a characteristic of equality. The terms "proportionate equality" and "substantive equality" have been used to show that the equality criterion can only be completely achieved when the poor are given a legal benefit. The principle of substantive equality is at risk.

A limited interpretation of basic rights may be technically accurate, but it will not lead to sensible policy. Meanwhile, calls for change and a reconsideration of reservation regulations have become louder; one issue is whether reservations are still essential, and whether benefits have achieved their goal. While many segments of society remain disadvantaged in India, political engagement has resulted in relative discrimination among limited groups. As the reserve pie grows larger, it becomes more of an exclusive system rather than an inclusive one. It is past time for India to critically assess its affirmative action policies. In the redesign, simplification, legislative sunsets, and periodic assessments should all be significant concepts. Article 16(4) provides for perceived discrimination, which is nothing more than protective discrimination in accordance with the Poona Pact bilateral agreement. However, as society has changed, this imbalance has been restored, and the courts' perspective has evolved towards more extreme approach to granting reservations in questions of promotion. Although the commission for SC/ST has addressed the three issues of societal underdevelopment, insufficient presence, and government efficiency, administrative efficiency should be the key element for advancement.‘The reservation system should be a kind of respect of all individuals and a reward for the worthy ones’

4. CONCLUSION

The objective of reservation, it was remarked, is to guarantee that the backward classes acquire upward mobility and march hand in hand with the rest of India's people. However, if just the creamy layer within the SCs and STs moves forward, this laudable goal will be thwarted. The Supreme Court distinguished between the identification and exclusion of SCs and STs for the purposes of determining backwardness under Articles 341 and 342 and the conferment of reservation on SCs and STs to achieve the larger goal of equality. When Articles 14 and 16 are harmoniously construed with Articles 341 and 342, it can be shown that Parliament has the full authority to include or remove people from Presidential lists depending on pertinent considerations, according to the concept of harmonic interpretation. At the same time, while applying the principles of equality set out in Articles 14 and 16, the Constitutional Courts will be well within their rights to exclude the creamy layer from such groupings or sub-groups.

The highest court has left the magnitude to be determined by the State after determining insufficiency of representation in the Nagaraj case. The Court has stated that when the number of SCs and STs decreases, it is evident that the number of SCs and STs would decrease. Furthermore, the Attorney General of India's recommendation that the portion of the population be used as a criterion for insufficiency of representation was rejected outright. This was accomplished by contrasting the text of Article 330, which deals with Lok Sabha seat reservation and mentions reservation based on a percentage of the population, with Article 16 4A, which has no such mandate. What barometer will be used to skim off the creamy layer will be fascinating to observe. The income formula employed for identifying the creamy layer inside OBCs might be a viable way for identifying the creamy layer, however it has been criticized and politicized.

DESTROYING HUMANITY PHYSICALLY AND VIRTUALLY VIA HUMAN TRAFFICKING

By Vikas Pratap Singh[1]

ABSTRACT

The world is made up of elements but the language we all understand is only humanity, which means that humans are born with equal rights and equal dignity. No one shall be deprived of his rights assured by nation as well as the nature. In 1948 when United Nation declared Universal Declaration of Human Rights (UDHR). In general, human rights are the protection of natural rights as well as fundamental rights of every individuals. No one has right to compel any human to be the labor with or without wages, to be a slave without dignity, to be sex worker without self-respect etc. Human Trafficking is practiced generally to fulfil the requirement of labor, slave, wives, as well as children, within a country as well as at international levels. We have strict laws at National and international level. If we consider the Article 23, of Constitution of India, which talks about human labor and trafficking in human, Section 370 & 370A etc. Of Indian Penal Code, 1860(IPC). When we deny Fundamental Rights Of individuals, then indirectly we deny the human rights assured by Indian laws as well as United Nations Human Rights Commission (UNHRC). For instance, people from Nepal, Bhutan, Pakistan, India etc. are abducted or kidnapped and are send to far off places like Thailand, Russia, Ukraine, Sri Lanka etc. Human trafficking is the most preferred form of exploitation of humans at National and international levels. Making laws, enacting them timely, doing survey is beneficial but, something which is missing is the trust on the government by citizens they are easily influenced by person of other states or countries for the promise of money, job and facilities with which they want to live their life. Government of the countries are unable to control their citizens from being exploited by engaging them in a well-equipped employment. The main reason behind this kind of activity is poverty, lack of education, lack of technology and the most important one is lack of belief in government and laws.

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1. INTRODUCTION

The term 'Human Trafficking' means, the transport of humans from their soul place to the other place with force, undue influence or by the process of abduction, kidnapping or deception for the purpose of labor, slavery, Prostitution, domestic labor, or for organ marketing such as liver, eyes, kidneys, soft tissues, etc. irrespective of their caste, race, religion, etc.

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as "*the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."*[2]

*"*Human rights are not a privilege conferred by government these are every human being's entitlement by virtue of humanity said by"- Mother Teresa. If you could not provide equality and protection to someone's right then we are not the one who can molest a human. From British period India was standing in the mid of the troubles to defeat the sign of slavery, which was practiced from so many eras before. The introduction of courts, constitution, a bunch of laws, and education for all, the British reformers was in the direction to get freedom from their own conquest state. Human trafficking was considered wrong but not illegal, because we have not considered humans as a living being. The sufferings of trauma, harassment, molestation is majorly experienced by women of every caste, religion, region, race, etc.

Before 19 century, world was not familiar with the term Human Trafficking, but as soon as people got educated, the level of awareness has enhanced day by day, during the period of Slave dynasty, human trafficking was the right of ruler and practicing enslavement was fundamental duty. Human Rights are the fundamental rights as well as natural rights of which a human being is entitled. We all have learned about social behavior and society. The thinking of every individual in society is different as everyone is unique. But the violation of human

[2] United Nations. (2000). *United Nations Human Rights Office of the High Commissioner*. Retrieved March 3, 2013, from www.ohchr.org: http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx.

rights arises a conflict which may called as Crime. The individual whose rights are violated, is entitled for justice. The application of legal maxim 'ubi jus ibi remedium' which means that 'where there is right there is remedy'. Human rights are the basic living rights which provide dignity, equality, social status, and at the time of requirement justice too. The application of legal maxims as well as penalties on trifle act can make society aware about right and wrong. In India even half of the population living in rural areas is not aware about their rights provided for their protection by The Constitution of India. If someone unaware of his rights and unaware of evils of society that may lead to destruction of an innocent life, then there is need of community police.

Human Trafficking is an old problem recognized at later stage, but practiced from long time at the global level. According to Walk Free Foundation & ILO Global estimation, in 2016, 25 million people were subjected to be forced sexual labor and were exploited and humiliated till death or they got STD's (Sexually Transmitted Diseases). The global report identifies that from the total individuals abducted, 51% of Victims were women, 21% were men, 20% were girls, and 8% were boys. The report also tells that 45% of the total abducted individuals were trafficked for sexual exploitation and 38% for forced labor i.e. domestic helpers, mine labor, slaves working in factories, mills, and fields etc.

With the growth of technology and the use of social media, the buying and selling of human beings has become as easy as a simple "click" on a keyboard. On websites such as, backpage.com, men, women, and children were available for "purchase" with sexual acts as their "product" to sell. These websites made it easier than ever for traffickers to find victims and have made forms of payment nearly untraceable. This poses a tremendous concern because victims are being trafficked without a way to track those who are paying for their services which makes it even more difficult for law enforcement to charge these criminals. By using social media, they "refollow the concept of "friend" and "follow" to find their customer and many victims get romantically attached with the traffickers which force them to work with their traffickers or get sexually exploited in manipulated manner[3]. So, it would not be unjust to say that in this era of technology the humans are trafficked only physically or mentally, they are even trafficked with the help of technology and Artificial Intelligence, i.e. virtually. As trafficking is darker side of society, now it is also becoming the darker side of technological advancements.

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n[3] Human Trafficking and the Internet, https://www.caclapeer.org/lapeercacblog/human-trafficking-theinternet. (last visited Dec. 10, 2019, 3:00PM).

The traffickers who nab or kidnap the children, woman to sale in the market of human trafficking are not considered as a human, they are scavengers who feed up on the humanity of the individuals. The value of human love and emotion is priceless if we compare this with money then we should go for a change. The rights, laws and education look good, and it is the best form of prevention of trafficking. But it can be excellent only when 'we' the citizens who are human, start valuing human, it means and human need to increase human value and humanitarian duties. Human is a social animal but it does not mean that human should act like an animal.

2. HUMAN RIGHTS AND ITS VIOLATIONS

'To deny people their human rights are to challenge their very humanity' this quote by Nelson Mandela[4] shows that, on humanitarian basis we cannot force any human to do odd or immoral jobs. Human Rights are universal rights and hence the sufferers of trafficking are entitled to be provided with all human rights, irrespective of their sex, age, race, ethnic origin, nationality etc. The most common thing they all suffer is lack of humanity, life without dignity and concern including health issues and social justice too.

Every human is born with some rights which cannot be infringed under any circumstances, for example Article 21, of Constitution of India[5], which talks about Right to life and liberty, Article 14[6] which provides Right to equality, on humanitarian basis, Article 23[7] abolishes the forced labor and Human Trafficking and also Article 24[8] which prohibits the children employment or child labor.

Article 23 and 24 are provided so that no one can be exploited.

Every human deserves dignity and rights, no one shall be held in slavery or servitude. No one shall be subjected to torture or punishment or cruelty. The traffickers search the individuals who are in search of job or need of money, they play mind games with the innocent and needy individuals. They start to influence by promising them a better lifestyle and high living standards. But the real face of hell starts as soon as individual leaves his/ her house. The relation

[4] https://www.brainyquote.com/quotes/nelson_mandela_447259.

[5]. art. 21.

[6] INDIA CONST. art. 14.

[7] INDIA CONST. art. 23, cl. (1).

[8] INDIA CONST. art. 24.

between the victims of trafficking and human traffickers is like 'prey and predators', who is always ready to attack with all his weapons. Human trafficking is ranked third in list of the well-organized crimes at global level, which are referred as the most preferred and profitable illicit business in the world, the list is topped by Drugs and Arms trading dealers[9]. This is the worse type of molestation of a human from his/ her rights by the process of fraud, coercion, undue influence, and deception etc. The world is made up of different elements but the language we all understand is only humanity. All humans are born with equal rights and equal dignity. No one shall be deprived of his rights assured by nation as well as the nature.

Human Trafficking is practiced generally to fulfil the requirement of labor, slave, wives, as well as children, within a country as well as at international levels. We have strict laws at National and international level. Article 23[10], of The Constitution of India and Section 370[11] & 370A, of Indian Penal Code, 1860 (IPC) talks about human labor and trafficking in humans, When Fundamental rights are denied then indirectly, we deny the human rights assured by Indian laws as well as United Nations Human Rights Commission (UNHRC).

For instance, people from Nepal, Bhutan, Pakistan, India etc. are abducted or kidnapped and are send to far off places like Thailand, Sri Lanka, Bangladesh, etc. They are easily influenced by person of other states or countries for the promise of money, job and facilities with which they want to live their life. The desire to live a high standard life is dream of every individual, but everyone is looking for a shortcut, that brings a human in the hell of trafficking. The main reason behind this kind of activity is poverty, lack of education, lack of technology and the most important one is lack of believe in themselves and hard work.

Human trafficking is considered as inhuman act which abuses humanity and diminishes human value. Life after the destruction of natural life and infringement of natural liberty becomes hell, but what we have to do with that. Person is not 'us' why should we bother about him? It's about humanity, human has priceless life and never diminishing value of humanity the trafficking is an ugly practice of killing human values and molesting a human with all negative human efforts. Trafficking get promoted when the people with the power remain silent and choose not do anything. Trafficking is practiced under the darkness of night, and in the crowd of cattle and through sea ways etc. for the traffickers a baby girl or a woman is just a money-making machine

[9] THE WORLD'S BIGGEST ILLICIT INDUSTRY, Nathan Vardi, https://www.forbes.com/2010/06/04/biggest-illegal-businesses-business-crime_slide.html?sh=46f76514760a. (last visited Dec. 10, 2019, 4:23PM).

[10] INDIA CONST. art. 23.

[11] The Indian Penal Code,1860, No.45, Acts of Parliament, 1860

because the stage of molestation starts with domestic violence and leads to sexual exploitation.

3. CAUSES OF TRAFFICKING

1. Poverty: The biggest evil of human, and everybody wants to get out of it as soon as they can. To overcome this, specially the boys and girls of new age gets attracted towards the offers and jobs by the unknown person, who pushes them in the darkness of the Prostitution or labor.
2. Unemployment: The reason, when a well literate person gets trapped in the web of trafficking is lack of job opportunity in the country or state. They easily get attracted towards phone calls and emails send to them by the use of cyberspace.
3. Absence of social safety: the safety of the individuals is the concern of the state but there are some moral duties of the citizens, which also allow to take care of the society and show some worry about towards members of the society.
4. Political Instability: the laws made by present Chief Ministers and international delegates gets an order of disability due change of Chief Minister or Delegates, and the traffickers get enough time to get out of the jurisdiction of that state or country.
5. The individuals are not aware of such kind of business(awareness): the people living in remote areas like small villages or towns are not aware of human trafficking, as a result they are easily trapped in web of the traffickers.
6. The individuals don't want to disclose their privacy (Privacy concern): problem of privacy at age of adolescence is very common in girls and boys, due to which they don't share the contact and chatting with their parents. This result in pushing themselves in the hell.
7. The literacy rate: due to lack of knowledge about laws and information, cases are not filed and hence the state do not take any action upon that.
8. The state jurisdictional limitation: the other main issue is that a state does not take action or does not allow other state to take action in the jurisdiction of their state.
9. Corporation Among the State (At International level also): The Paper of corporation between different states are signed publicly but they don't bother to help anyone without proper proof.
10. Attraction towards technology: the individuals are so eager and excited to prove themselves superior of one another that, they forget to pay attention towards their personal life, and starts to live a virtual. The human has become so dependent on technology that even for food and friends and marriages are found on social networking websites. According to government data, there is nearly 25% increase in trafficking in 2016, due to the easy accessibility of mobile

phones and internet[12]. The highest number of cases registered are from West Bengal.[13]

4. LEGAL PROVISIONS AND THE CONFLICTS

India has dozens of laws to prevent and protect the victims, but these law fails due to the absence of witnesses, evidence etc. To save the childhood of a child and to protect dignity of women of different countries, have made strict laws so that humanity can be preserved. Immoral Trafficking Prevention Act, 1956 (ITP Act), was introduced as the first tool to defeat trafficking at National and International levels. India also has Juvenile Justice (Care and Protection of Children) Act, 2015, which prohibits the use of children in immoral acts like beggary, prostitution, organs trading, child sex tourism and child pornography etc. Acts like Bonded Labor (Abolition) System Act, 1976, Transplantation of Human Organs Act, 1994, and Child Labor (Prohibition and Regulation) Act, 1986 and so on. What's the use of enacting huge number of laws if we cannot prove the sin by the normal method? The use 'Res Ipsa Loquitur[14]' must be applied instead of 'Onus Probandi[15]'. Sometimes the victims themselves do not want to file complaint against the traffickers. This is the result of absence of victim or witness protection scheme in India. The victims and witnesses turn hostile due to the fear of the perpetrators.

Nowadays the way of trafficking has changed, Traffickers use mobile applications and social media to attract individuals. Internet is playing a very major role in the trafficking. If the trafficking done with the help of internet then it is said to be cyber trafficking. Cybercrime's or cyber trafficking is so clear that the victims experiences a huge trauma physically and also mentally due to being used for the purpose of selling, pornography, harassment, etc. Information Technology Act, 2000, which was amended in 2008, includes human trafficking via internet[16]. Section 67A and Section 67B, Information Technology Act, 2000, (Amended.

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[12] Shashank Shekhar, Sex traffickers using social media to prey on victims. https://www.google.co.in/amp/s/www.indiatoday.in/amp/mail-today/story/human-trafficking-social-media-women-minors-modernslaves-973008-2017-04-23. (last visited Dec. 10, 2019, 6:34PM).

[13] Shashank Shekhar, sex traffickers using social media to prey on victims. https://www.google.co.in/amp/s/www.indiatoday.in/amp/mail-today/story/human-trafficking-social-media-women-minors-modernslaves-973008-2017-04-23. (last visited Dec. 10, 2019, 7:30PM).

[14] Legal Maxim, in Latin which means that 'Things Speak itself'.

[15] Legal Maxim, in Latin which means that 'Burden of Proof'

[16] ET Contributors, cyber laws Parts II: a guide for victims of cybercrime, https://m.economictimes.com/tech/internet/do-you-know-how-to-report-a-cyber-crime-heres-a-guide-for-victims/amp_articleshow/ 61464084.cms. (last visited Dec. 10,2019, 2:45PM).

2008) provides punishment for pornography and Child pornography respectively. In May, 2011, India has ratified or signed United Nations Conventions against Transactional Organized Crimes (UNCTOC)[17] to combat human trafficking with countries like Afghanistan, Pakistan, Sri Lanka, and recently with Nepal to overcome the problem of human trafficking. The problem in dominating these traffickers after being nabbed is in our own laws which somehow have conflict between them. The Indian Parliament passes new laws very easily, but ironically forgets to delete the old ones. The benefit of not deleting the old laws gets these accused to be free on the use of money and higher jacks in the authority. The courts, the laws, even the police or army cannot do anything until 'we' don't take stand for our own people.

India has signed several Memorandum of Understanding (MOU) with its bordering countries like Bangladesh, Myanmar and Bahrain for bilateral co-operation in cases of cross border human trafficking. But all these MOUs mean nothing when it comes to the cases of Cross border trafficking through cyberspace. The perpetrators have used internet to virtually cause cross border trafficking to countries beyond immediate borders of India without being noticed by the Governments. Such victims of cross border human trafficking are almost invisible to the prosecutors thanks to the anonymity maintenance possible by advanced technologies. Fake IP addresses or masked identity helps for the benefits of the perpetrators thereby resulting into easy cyber trafficking at the global level.

5. CASE RECORDS

According to survey by United Nations Office on Drugs and Crimes (UNODC), the number of cases filed in 2003 was 20,000 where as there is increase in number of cases in 2016 to 25,000[18]. A survey also tells about the countries who made laws against Human Trafficking was 25, but there is drastic change in number of countries to 65. Which shows a condition to big worry towards humanity. Every year 44,000 children are decepted for the hazardous works[19]. NGO's state that on an average 50,000 women and children are trafficked for the use sex workers in different parts of the country[20]. In a survey by Hindustan Times, it was found

[17]United Nations, https://www.unodc.org/southasia/en/frontpage/2011/june/significance-of-the-untoc-to-address-human-traffickinginterview-with-mr-g-k-pillai.html website visited on Dec. 12, 2019, 9:30PM.

[18] UN News, Human trafficking case hits a 13 year old record high new UN report shows, https:// news.un.org/en/story/2019/01/1031552.(last visited Jan. 12, 2020, 7:20AM)

[19] Child Trafficking in India, https://en.m.wikipedia.org/wiki/Child_trafficking_in_India.(last visited Jan. 12, 2020, 7:30AM).

[20]Child Trafficking in India, https://en.m.wikipedia.org/wiki/Child_trafficking_in_India.(last visited Jan. 12, 2020, 12:00PM)

that 8132 of human trafficking were filed, which means on an average 63 victims are rescued per day[21]. In 2016, out of 23,000 victims, 182 were foreigners from different countries were kept as sex workers and their natural liberty was infringed[22].

6. SUMMARY

According to International labor Organization (ILO), there are more than 11.7 million people working as forced labor in Asia Pacific region[23] .There are an estimated number, approximately 46 million people enslaved worldwide, with more than 18 million of them living in India, according to the 2016 Global Slavery Index by the Walk Free Foundation[24]. Poverty is the main problem behind trafficking because people who are trafficked are poor, they cannot afford the food of three times for their children as well as family. They are attracted by lucrative deals with unknown person in order to get rid of their poverty and debts.

The problem will remain same until we get up and fight against this evil business of selling humans. The use of social media must be done with all concern and awareness about the application or website going to use. Robert Hannigan, the Director of Communication Headquarters for the British Government stated that groups like Facebook, Twitter and WhatsApp are the "commend-and-control networks of choice for terrorists and criminals.[25]"

The trafficking of person is very easily done in night or in daytime with the help of crowd of cattle trying to cross international borders like India- Bangladesh, Pakistan, Nepal etc.

To overcome the problem of trafficking or cyber trafficking, India is developing a database with the help of a Charity named Thomson's Reuters Foundation, in New Delhi, which will help the police and other public departments working for the welfare of the society, in keeping

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[21] Press Trust Of India, 8132 cases of human trafficking were reported in 2016, on average 63 victims rescued per day, https://www.google.co.in/amp/s/m.hindustantimes.com/india-news/8132-casesof-human-trafficking-reported-in-2016-average-63-victims-rescued-a-day/story-OguqzIq50jiFZrvg51hrmL_amp.html.(last visited Jan. 12, 2020, 3:00PM).

[22] Press Trust Of India, 8132 cases of human trafficking were reported in 2016, on average 63 victims rescued per day, https://www.google.co.in/amp/s/m.hindustantimes.com/india-news/8132-casesof-human-trafficking-reported-in-2016-average-63-victims-rescued-a-day/story-OguqzIq50jiFZrvg51hrmL_amp.html. (last visited Jan. 12, 2020, 6:00 PM).

[23] International Labor Organisation,https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm.(last visited Jan 12, 2020, 6:45PM).

[24]Nita Bhala, India builds game changing database to track human trafficking, https://in.reuters.com/article/india-trafficking-technology/india-builds-game-changing-database-to-track-human-traffickingidINKBN19D1T8 . (last visited Jan. 13, 2020, 8:13AM)

[25] M. Chertoff, T. Simon, The Impact of the Dark Web on Internet Governance and Cyber Security, "Center for International Governance Innovation and Chatham House" Publishing House, Canada, 2015; p. 1.

records of the rescued children, women and men[26]. The progress in the case, number of cases filed against human trafficking etc. India is the biggest hub in the world where human trafficking is so common. Due to lack of data the exact or accurate number of cases cannot be determined, for which the new database will be utilized. The working of this system will be easier than any other department, the information seekers need to open the webpage and after input all details about the cases registered and investigating cases will be shown[27].

7. SUGGESTIONS AND CONCLUSION

The use of Internet has mutated relationship between the victim and offender. It is so because cyberspace has converted the traditional (one to one) confrontation between offender-victim into a virtual one as very often the offender is 'invisible' and the victim is unaware of the identity of the perpetrator. This has resulted in the victimisation becoming more 'insidious'. Thus, the victim cannot directly help the prosecution authorities (with the description of offender, etc.) This "invisible threat" is nevertheless able to create countless victims, like an atomic bomb. This should be taken into account by the legislator as an aggravating circumstance. This is necessary, since the Internet allows the offender a rapid spread of his criminal results in many and various locations and also a simultaneous creation of unspecified number of victims, offering the perpetrator the possibility to act in such way without even moving from his chair.

In the era of globalization, it is not enough to move only at a level of horizontal action to tackle crime, because it is unrealistic. It is not enough to have a uniform legal framework at a regional level when States outside the region do not have corresponding provisions. The challenge we face today is that we should respond to the globalized crime with a universal legislation, otherwise all attempts will stay fragmentary and we will not be able to escape from this huge spider's Web that generates daily more and more victims. However, together with a universal legislation we need a uniform technological infrastructure at global level that would allow a joint system of communications setting for the rapid intervention of the prosecuting authorities on location and identification of the perpetrators and the preservation of evidence, as well as a

[26] Nita Bhala, India builds a game changing database to track human trafficking, https://in.reuters.com/article/india-trafficking-technology/india-builds-game-changing-database-to-track-human traffickingidINKBN19D1T8. (last visited Jan. 13, 2020, 9:45AM)

[27] Nita Bhala, India builds a game changing database to track human trafficking, https://in.reuters.com/article/india-trafficking-technology/india-builds-game-changing-database-to-track-human-trafficking-idINKBN19D1T8. (last visited Jan. 14, 2020, 9:30AM)

strong international cooperation.

The legal vacuum created due to the usage of cyberspace as the modus operandi for trafficking has proved an added advantage for the traffickers. The Government, NGOs and the common citizens need to work hand in hand for prevention and prosecution of the traffickers. The different Government and non-government agencies work together for spreading awareness about such crimes and the disadvantages about the handiest and most helpful device found in the hands of every individual be it young or old- mobile. The schemes that have been introduced by the Government for the benefits of the impoverished should be ensured to reach the needy and not just remain in the files of Government or used at the time of elections for vote banks.

To combat against organized crimes we need to be organized, if we want to dominate the evils rising in society then we need to be united. It is said that human is the beautiful and biggest creation of god, then how a human can be dominated by other. For the failure of system somewhere we are only responsible, if the violation of rights took place then we need to raise our voice, Otherwise let’s be dominated and stay exploited.

DO WE HAVE ENOUGH LAWS TO PREVENT STALKING IN INDIA?

By Naman Jain[28]

ABSTRACT

Stalking is a step one offence which leads to the occurrence of the serious and heinous crimes such as rape and outraging modesty of a woman. The laws related to stalking is weak in India and people are not aware about the fact of zero FIR and the mindset of the offender. How Bollywood and cinema is helping in making the psychology weak and affect the society at large. The statistics from various researches and reports show that woman remains silent and which causes them various problems and disorders. Also, the article discusses about the laws available for the woman under IPC,1860 and how they are modified and government's take on this to improve the situation and laws for the woman. In Indian constitution woman are given a special status keeping the historical background in consideration which makes the laws favoring the women. The author puts some suggestions and his finding to curb the problem in the country.

1. INTRODUCTION

As India is one of the most dangerous countries in world for a woman to live in. And stalking is the new branch of sexual harassment law which is developing rapidly. Stalking is defined as the a or approaching the other person. And in legal context the definition of stalking differs from jurisdiction to jurisdiction as per Indian laws the stalking is a punishable offence where a man monitors or follows a female by several ways to contact or notice her activity. Where in western culture specifically in America its definition differs from state to state but the ingredients remain same that are there should be some fear or terror to the victim of stalking or to the near relatives such as husband, children or other family members.

2. HISTORICAL BACKGROUND

Earlier the Indian courts was not much interested in taking cognizance of sexual harassment easily i.e., sec. 354 of IPC,1860 then in case of *Mrs. Rupan Deol Bajaj & Anr* vs *Kanwar Pal*

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Singh Gill & Anr[29] The Hon'ble Supreme Court gave the guidelines for sexual harassment and directed magistrate to take cognizance under section 354 read with section 509. After the span of two years the Hon'ble Supreme court gave another landmark judgment in Vishakha Case[30] which later brought revolutionary legislation of Sexual Harassment at workplace Act,2013. And this legislation gave new speed to the jurisprudence of sexual harassment in India.

In India stalking was not an offence till 2013 and in 2013 by Criminal Amendment Act,2013 it was made an offence under Indian Penal Code as section 354D where it included both the physical (offline) and cyberstalking. Along with these developments in sexual harassment arena the Hon'ble Supreme Court in case of *DIG of Police* v. *S Samuthiram*[31] included the eve-teasing and explained meaning of the word 'modesty' in relation to women along with the gave guidelines for urgent measures to be taken to curtail the offence.

3. UNDERSTANDING THE LAW OF STAKING

Firstly, Section 354D of IPC defines Stalking as: -

Section 354: (1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law;

(iii) or in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of

[29] 1996 AIR 309, 1995 SCC (6) 194
[30] AIR 1997 SC 3011
[31] (2013) 1 SCC 598

either description for a term which may extend to five years, and shall also be liable to fine."

Here, law maker prescribed punishment into two parts that is if the offence is committed for first time then it will be punishable for three years or with fine or with both, where altogether it gave punishment stricter for repeater that is of five years and now the offence become non-bailable.

Secondly, Section 292 of IPC defines

"292. Sale, etc., of obscene books, etc.-- (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

[(2)] Whoever

(a) sells, lets to hire, distributes, publicity exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished on

first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term

which may extend to five years, and also with fine which may extend to five thousand rupees.

[Exception.--This section does not extend to

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in-

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose"[32].

The above stated offence means that the Stalking takes within its purview the act of sending obscene content to the victim through emails or messages on websites or on other software like WhatsApp etc.

Thirdly, Section 507 of IPC relates to criminal intimidation by anonymous communication.

"Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section."[33]

[32]https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=326
[33]https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=571

Fourthly, Section 509 of IPC states insulting the modesty of a woman.

"Word, gesture or act intended to insult the modesty of a woman.
Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine."[34]

4. UNDERSTANDING THE PRESENT VIEW OF SOCIETY IN INDIA WITH REGARDS TO STALKING

The Bollywood acts as the society changer and many teens believe in that movies and most of the movies has portrayed stalking as a romantic act for example in 'Ranjhana' movie the hero waited for hours on road to see the heroine. Similarly, in various songs such as 'Ladki kyon' of movie Hum Tum portrayed stalking as a romantic act. And at last in Bollywood the man is able to melt the heart of woman or manages to get her. But in reality, if a girl clearly shows disinterest in the boy and boy still follows or tries to contact in fantasy of Bollywood that they will get their dream girl. And in this fantasy unknowingly they commit the offence of stalking. Also, In present scenario the woman also fears to report to the police as it apprehends them that police may not register their complaint or FIR and will cause her trouble while registering or investigating and the second point which comes is the society related pressures which starts falling on her as it may become a hurdle in her marriage or can ruin the respect of the family. And in some cases, the woman fears to share this with her family or friends which in accumulation ultimately leads to cultural conflict and General social ignorance in part of the victims and their relatives regarding the possibility of severe extreme consequences pertaining to physical harm, suicide and murder threats contributes towards the perceptual ignorance.

[34] https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&sectionId=46297&sectionno=509&orderno=573

5. STUDIES RELATED TO THE MINDSET OF THE OFFENDER AND COMMISSION OF OFFENCE

It becomes very relevant to know the reason or the mindset of the offender committing offences as the mental element is an inevitable part of a crime. Various studies over the globe show that the offender usually suffers from psychotic disorders or severe personality disorders. Which disrupts their decision-making power or the ability to think correctly? As their mental state or intention to commit stalking is not necessarily always present but law it does not take mental element into consideration which becomes the loophole in the provision by which an offender is released which results into miscarriage of justice and it has also been observed from various judicial orders and pronouncements that other offences like voyeurism, sexual harassment, obscenity, insulting or infringing the modesty of women are associated with stalking on a large scale. As per 226th Law Commission report the acid attack[35] is in chain of other offences which can cause grave injury to the society and may be rape in rare cases.

6. EFFECT OF STALKING AND OTHER OFFENCES ON VICTIM

In mental health the victim suffers the anxiety disorders, depression, fear of losing life, insomnia, panic attacks, sadness, suicidal thoughts, anger, fear, nausea, headache which may result into development of chronic disease. Also, it has been reported in various cases that the victim is suffering from incurable diseases.

Where, in physical the victim may suffer the shivering, resisting using the daily route, changing the contact details or various consequences. Which may extend to inability of trusting on persons which leads to the spoiling of relationships and avoidance of activities, isolating herself

[35] 226th Law Commission report available at https://lawcommissionofindia.nic.in/reports/report226.pdf (Last Modified on May 5,2019)

Various media and police reports of stalking and other sexual harassment offences and victim compensation scheme

As per NCRB Report of 2018[36]

Offence	2016	2017	2018
Stalking	7190	8145	9438
Voyeurism	932	1090	1393
Sexual Harassment	27344	20948	20962
Assault on Women with Intent to Outrage her Modesty	84746	86001	89097

From the above table it can be observed crime rate against woman as per IPC has increased significantly in last two years and these much is the reported cases, there are thousands of cases which go unreported. From various media report it can be observed that one case of stalking reported in every 55 minutes. And this situation needs the urgent attention of law makers as the law have various loopholes and the offenders can not be convicted. In an interview one ACP officer said that 26% of the offender were convicted for the stalking in 2015.

Along with this it is also reported that in many of the cases the offender is pretty much sure that the victim is not going to report it to the authorities or offender knows that the family of the victim is weaker or due to any other reason they'll not report it to the police.

But at the same time by courage if someone reports it to the police or to the magistrate then the victim is kept under check and her mental health is checked along with this the NALSA has included stalking into sexual offences and victim is granted compensation as per the injury[37].

[36] https://ncrb.gov.in/en/crime-india-2018

[37] Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018 available at https://wcd.nic.in/sites/default/files/Final%20VC%20Sheme_0.pdf (Last Modified on May 5,2019)

7. CHANGES REQUIRED IN LAW TO MAKE IT MORE ESSENTIAL

The basic and first amendment which is needed in the law for stalking is itself in the definition of stalking as in the other countries the offence of stalking is neutral where in India it is gender biased. And the section must be amended as it is proposed in bill[38]i.e.

"Stalking" - (1) Whoever:

(i) follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or

(ii) whoever monitors the use by a person of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that the course of conduct will not amount to stalking if the person who pursued it shows-

(i) it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances the pursuit of the course of conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description of a term which may extend to five years and shall also be liable to fine.

The lawmaker did not brought the abetment of this offence under a specific offense as if someone knows and fails to report it to the authorities then that person is said to be the abettor of the crime this was quoted by Hon'ble Supreme Court in a judgment and it is also necessary to be added as an specific offence as this provision will help in increasing reports of stalking

[38]THE CRIMINAL LAW (AMENDMENT) BILL, 2019 available at http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/crimnal-E-12719.pdf (Last modified on July 12, 2019)

matters and situation can be handled in a better manner.

Also, the other thing which comes here is only the direct offender is liable under this offence the law makers have not made the specific offence for binding the middle man (agent) who transmits the information to the stalker of the victim. Which again creates the dark cloud of worry over the victim and hurts the mental health of the victim? Because from a practical view if victim changes her mobile number and other contact details even the address the stalker gets information about that because of the middle man hence, also fixing them with abetment there must be other specific offence for this.

Also, by giving periodical training and workshops to police officers who are working on ground and dealing with public majorly Constables about stalking and other sexual harassment laws can help in tackling the current situation with current provisions with more efficiency.

8. CONCLUSION

From the above discussion it can be inferred that stalking with respect to the society is not only an offence which could happen against the woman from Navtej Singh Jauhar judgment[39] It can be said that there are more than two genders in the society, hence the gender-neutral laws is the need of hour. As stalking is not an older law in India so, it has its benefits and its judicial interpretation is increasing its scope but it lacks the applicability as no. of incidents reported are very less and investigating authority also lacks the willingness to investigate. So, by following the judgment of Supreme Court in case of DIG of Police v. S. Samuthiram[40], by encouraging victims to come forward and by giving workshops and training on monthly or quarterly basis to constables can improve the quality of the implementation of law.

It is a well-known fact that every human being wants to live and enjoy his life till he die but sometimes a human being is desirous to end his life due to some incurable disease by unnatural way. When a person ends his life by his own act it is called “suicide” but when it comes to end life of a person by others though on the request of the deceased, is called “euthanasia” or “mercy killing.

The word Euthanasia was originated from two Greek words: ‘Eu’ means ‘Good’, and ‘thantos’ means ‘death’, so Euthanasia means good death. In the modern sense of word, it is also known as “mercy killing” and practice of ending a life to relieve suffering from unbearable pain. It is

[39] AIR 2018 SC 4321
[40](2013) 1 SCC 598

a very complex matter and there are different types of Euthanasia. They are:

1. ***Voluntary Euthanasia***: when the person who is killed has requested to be killed.
2. ***Non-Voluntary Euthanasia***: when the person who is killed made no request and gave no consent.
3. ***Involuntary Euthanasia***: when the person who is killed made an expressed wish to the contrary. It is involuntary when the person killed gives his consent not to die.
4. ***Active Euthanasia***: Active Euthanasia is also known as 'Positive Euthanasia' or 'Aggressive Euthanasia' and refers to causing intentional death of a human being by direct intervention.
5. ***Passive Euthanasia***: Passive Euthanasia also known as 'Negative Euthanasia' or 'Non-Aggressive Euthanasia' and refers to intentionally causing death by not providing essential, necessary and ordinary care or medical services.

There are many countries in which euthanasia is not legally valid and United Kingdom is one of them in which both euthanasia and assisted suicide is considered as criminal offence according to Suicide Act 1961. But there are also some countries which allow voluntary euthanasia like Netherlands, Luxembourg, Belgium, France, Australia, Colombia and Canada. Assisted suicide is legal in Switzerland, Germany and five states of US but it should be done only under prescribed rules and regulations.

In India, Passive euthanasia is legal since 2018 but patient must consent for this by a living will and must be suffering from incurable disease with unbearable pain.

EUTHANASIA AS A VIRTUOUS AND RIGHTFUL ACT

By Bharti Sharma[1] & Shivi Thareja[2]

1. INTRODUCTION

"I'm 29 years old and I've chosen to be voluntarily euthanised. I've chosen this because I have a lot of mental health issues. I suffer unbearably and hopelessly. Every breath I take is torture…"

These were the lines said by Aurelia Brouwers, a 29-year-old Dutch woman, when asked that why she wants to embrace death. Evidently, it sounds devastating and reflects the misery and agony that this woman underwent. She was euthanised on 26 January 2018. She drank the poison supplied by a doctor and was lay down to die.

Euthanasia is illegal in most countries, but in the Netherland, it is allowed, if a doctor is convinced that a patient's suffering is "unbearable with no prospect of improvement" and if there is "no reasonable alternative in the patient's situation".

Aurelia Brouwers' wish to die came with a long history of mental illness. When she was 12, she suffered from depression and was later diagnosed with Border Line Personality Disorder. She was chronically depressed and sicidal, had anxiety, psychoses and heard voices.

During the last fortnight of her life, Aurelia was often distressed and had self-harm. One of the journalists, who documented the last days of her life, recalls that it was quite obvious that she was under constant mental pressure and didn't talk much on any other thing apart from euthanasia. On that, she was crystal-clear.

She expressed, *"I'm stuck in my own body, my own head, and I just want to be free. I have never been happy - I don't know the concept of happiness."* [3]

- **The Right to Die with Dignity**

Classically, euthanasia has been defined as the hastening of death of a patient to prevent further sufferings. Within this broad definition, there are several terms used to describe different forms of euthanasia, namely voluntary and non-voluntary euthanasia: and active and passive

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[3] Linda Pressley, "The troubled 29-year-old helped to die by Dutch doctors", *The BBC*, Aug. 9, 2018.

euthanasia.[4] Dutch Commission on Euthanasia (1985) has defined it as: "A deliberate termination of life of an individual, request by another; in medical terminology, the active and deliberate termination of life of patients, on request by a doctor."

The Apex Court in India has given a very wide interpretation of Article 21 of the Indian Constitution, which reads as, "*Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law".* [5]

Dr D Y Chandrachud, J in his judgement in ***Common cause v. Union of India*** [6], has expressed his view on the relation which exists between life and death as follows:

Life and death are inseparable. Every moment of our lives, our bodies are involved in a process of continuous change. Millions of our cells perish as nature regenerates new ones. Our minds are rarely, if ever, constant. Our thoughts are fleeting. In a physiological sense, our being is in a state of flux, change being the norm. Life is not disconnected from death. To be, is to die. From a philosophical perspective, there is no antithesis between life and death. Both constitute essential elements in the inexorable cycle of existence.

In the case of ***Kharak Singh v. State of Uttar Pradesh and Ors***. [7] it was held that that the word 'life' in Article 21 means right to live with human dignity and it does not merely connote continued drudgery. Right to life has more than just 'mere animal existence'.

In one of the cases in the Constitutional Court of South Africa, O' Regan J. stated in the that "without dignity, human life is substantially diminished."; ***(S v. Makwanyane)*** [8]

The Supreme Court, in the case of ***National Legal Services Authority v. Union of India***[9] opined that the true scale of development of a nation is not economic prosperity, but human dignity.

After World War II, several nations realised the importance of human dignity and the need to preserve it and henceforth, the U.N. Charter, 1945, mentioned 'Dignity of the Individuals' as its core value. The Universal Declaration of Human Rights (1948) also echoed the same sentiments. Article 3 of the Geneva Conventions also explicitly prohibits outrages upon personal dignity. Keeping up with the changing dynamics of the society, the Supreme Court expressly declared that every individual has the right to die with dignity, through its judgement on ***Common Cause v Union of India.***

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[4] Baker AC, Hannon NR, *et. al., Death and Dying: Understanding and Care- Ethical Issues* 203-226 (Delmar Publishers Inc., New York, 1994).
[5] The Constitution of India, art. 21.
[6] (2018) 5 SCC 1
[7] AIR 1963 SC 1295
[8] 1995 (3) SA 391.
[9] (2014) 5 SCC 438.

The Bombay High Court in the case of ***Maruti Shripati Dubal v. State of Maharashtra*** [10]**,** held that, in any case, a person cannot be forced to enjoy the right to life to his detriment, disadvantage or disliking. It's said that even the darkest clouds have a silver lining. "Hope" is that light which helps an individual to trail through the tough times in life. But a life without faith is mere existence. Life of a person who is in deep pain, whether mental or physical, is not worth living at all. He/she inhales agony with every breathe they take. They die every day. The society, through its different realms like religion, legislations, governments etc has no right to tell a person that how they are supposed to end their sufferings like ailments, which are caused by natural forces.

Every man is the best judge of his pain and should have the power to make decision as to when stop their sufferings by choosing death peacefully or waiting for it every now and then.

- **Euthanasia is Not Murder**

Homicide is often an indicator of violence. It is one of the most grievous acts a person can commit. However, there lies a thin line of difference between which death is justified and which is illegal.

The term "euthanasia" is brought from the Greek word "euthanatize" meaning "well death" and it speaks for itself. Patients, who are suffering from terminal disease, become hopeless and disappointed to such an extent that they want to end their lives rather than to continue the same under such pathetic circumstances. Every person has a right to live a dignified life and the plight of the person causes him to live a tortuous life, then he should be allowed to end such tortuous existence.

In the case of ***Reg. v. Govinda*** [11], the accused had knocked down his wife, kept a knee on her chest and gave two to three violent blows with the closed fist on her face. This act produced extraversion of blood on her brain and afterwards, the wife died due to this. This is a violent act, and the death of the woman was caused brutally. It was unexpected end and a crime. It is a failure of a unit in the society.

Whereas, in the case of ***Aruna Shanbaug v Union of India*** [12], Ms. Shanbaug was in a Persistent Vegetative State (PVS) since she had been sexually assaulted in 1973. A writ petition under Article 32 before the Supreme Court of India was filed by one of her close relations, asking for

[10] 1987 Cri LJ 473: (1986) 88 Bom LR 589.

[11] (1877) ILR 1 Bom 342

[12] (2011) 4 SCC 454

the legalisation of euthanasia so that Aruna's continued suffering could be terminated by withdrawing medical support. Supreme court in 2011 recognised passive euthanasia in this case by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision.

This relieved the aggrieved and end the sufferings of the patient and her close ones. This act, in any aspect, be considered as "murder". Euthanasia is justified as none of us has the right to tell anyone how much suffering they can and should bear.

- **Ethics and Euthanasia**

The concept of euthanasia is subject to various ethical debates. One such view is propounded by the utilitarian school. John Stuart Mill's ethical theory mainly talks about pleasure and evasion of sufferings. According to him, "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce reverse of happiness" [13]. Hence, voluntary active euthanasia can be a reason of happiness for many people.

It's said that to save a man's life against his will is the same as killing him. The persons suffering from pain will get rid of it and having control over their lives would give contentment. In addition to this, the family of the patients, who feel the pain of their close ones, and might be under a financial burden, will ultimately be free of pain. Lastly, euthanasia gives a sense of autonomy and control to people, to decide how and when their lives should end, when death with incurable disease is certain. Therefore, utilitarian school of thought would allow active voluntary euthanasia because it follows greatest happiness principle.

Another American philosopher, Alan Gewirth propounded the Principle of Generic Consistency (PGC) which according to him is the supreme rational reference point for judging the permissibility of all actions [14]. He calls it as the supreme principle of morality.

Gewirth would justify voluntary euthanasia and uphold it as 'dying with dignity', once it is clear that the conditions of voluntariness which is one of the generic rights of agents is met by the agent requesting euthanasia [15].

Finally, unlike Kant who didn't support assisted death and would see the physician carrying out voluntary euthanasia as going against his obligation towards the patient, Gewirth would see the physician as fulfilling the positive duty which the PGC imposes on him as an agent to assist other agents in securing their generic needs.

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[13] John Stuart Mill, *Utilitarianism*, Parker and Son, London, 1863.
[14] Alan Gewirt, *Reason and Morality*, University of Chicago Press, Chicago, 1978.
[15] Alan Gewirth, *Reasons and Morality*, Pg. 226, University of Chicago Press, Chicago, 1978.

Above all, Gewirth would argue for voluntary euthanasia from the point of view of autonomy of the individual which for him is the simple understanding of human dignity.

- **Euthanasia Respects an Individual's Autonomy**

Respect for autonomous persons demands recognition of their right to decide how they will live their lives. This includes the dying process, the ability to choose one's own destiny. We have the right to avoid intolerable suffering and exert control over the way we die. Some authors believe there is a right to commit suicide and, therefore, to be free of unreasonable restrictions on the means by which one can exercise this right [16]. Battin, has argued that there is an unequally distributed, but fundamental, right to suicide which we have because it can be constitutive of human dignity, at least in a negative sense, when life becomes unbearable[17]. The patient's right to self-determination has been a most central argument in favour of physician-assisted suicide [18]. Often it is assumed, without argument, that this implies a patient's right to request another agent to intervene so as to bring about his or her death. lo Even with adequate palliative care there are cases in which it is not possible to avoid the suffering.[19]

Autonomy is an individual's capacity for self-determination or self-governance. Emmanuel Kant believed that autonomy is the capacity to deliberate and to give oneself the moral law, rather than merely heeding the injunctions of others. Personal autonomy is the capacity to decide for oneself and pursue a course of action in one's life, often regardless of any particular moral content.

He further developed the idea of moral autonomy as having authority over one's actions. Rather than letting the principles by which we make decisions be determined by our political leaders, pastors, or society, Kant called upon the will to determine its guiding principles for itself, thus connecting the idea of self-government to morality; instead of being obedient to an externally imposed law or religious precept, one should be obedient to one's own self-imposed law.

A person, while asking for euthanasia, expresses his/her personal choice, realizing his/her autonomy. The request for euthanasia is part of the human freedom to terminate one's own life. Thus, the euthanasia request of a competent individual is a basic freedom to define the framework and conditions of his/her life, more precisely it is a decision about how that life

[16] M. Gunderson, "A Right to Suicide Does Not Entail a Right to Assisted Death" 23 *Journal of Medical Ethics* 51 (1997)

[17] MP Battin, *The Least Worst Death: Essays in Bioethics on the End of Life*, 280-282, (Oxford University Press, New York, 1994).

[18] D Callahan, "When Self-Determination Runs Amok" 22 *Journal of Medical Ethics* 20 (1994).

[19] T Quill, C.K. Cassel, D.E. Meier, "Care of the Hopelessly Ill: Potential Clinical Criteria for Physician-Assisted Suicide" 327 *New England Journal of Medicine* 1380-1384 (1992).

should be lived and ended.

2. EUTHANASIA AS CATASTROPHE AND TRAGEDY

- **There is no Right to Die**

The exponents of euthanasia proposed many arguments in the favour of Right to die but there is a principal responsibility of society and government to save the life of every individual, so it ought not to be legalizing the killing of one person by another [20]. It is also believed that if a physician's role is to take your life as well as to preserve it that causes a lot of vagueness into the relationship." Hence this would destroy the special role of the physician and a patient.

Against the Right to Die, Velleman argues that, by giving more options, a Physical Assisted Suicide policy can impel a patient to choose death. Without the option of PAS, a patient can continue to live by default [21]. A choice to live or die is not as good of a situation than living, without having the option to die. Additional options are not always beneficial sometimes they became the reason of many other problems. A patient may feel the choice to die is a better option than the choice to live whereas if she hadn't had the option of PAS, he/she would keep living by default. A PAS policy for this reason, to prevent an unnecessary burden to those who would benefit from living by default. Euthanasia in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit must always be prohibited [22].

In our society we don't have all rights and you can't your ask doctor for PAS or Euthanasia with respect to Right to Die. We does not have all the rights what we want in society. A doctor is considered as a healer and it does not have right to allow to terminate a patient. Dr Melvin Kirschner, a member of the Joint Committee on Bioethics of the Los Angeles County medical and bar associations.

If once euthanasia legalizes then then doctors will do it as their duty towards the Right to Die and it directly affects the medical and moral standards of a society. Also granting licence to physicians to practice euthanasia will abrade their confidence to tackle with serious condition of patients at that time when they need it most. [23]

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[20] James Podgers, *"Matters of Life and Death: Debate Grows Over Euthanasia*", 1Aba Journal 62, 1992.
[21] David J Vellmen, *Journal of Medicine and Philosophy* (Oxford University Press, London, 1992)
[22] The Parliamentary Assembly of the Council of Europe (PACE) in Resolution 1859(2012), Paragraph 5, http:/assembly.coe.int/main.asp?
[23] Richard M. Gula, *"Dying Well: A Challenge to Christian Compassion*." Christian Century 116, no. 14: 501-505, esp. 504, (May 5, 1999).

- **False Mercy and Compassion**

Exponents said that Euthanasia is a mercy on people who are suffering from unbearable pain whereas on the other side opponents clearly opposed this perspective and called it a false mercy and compassion. Pope John Paul II says: Human dignity is an undeserved gift, not an earned status. The dignity of life springs from its source. We come to be by the loving action of God the Creator. The dignity of life is beyond price [24].

Euthanasia is an action by intention causes death, with the purpose of banishing all suffering [25]. It is a direct violation of the Law of God, as it is the systematically and morally unacceptable killing of a human person. Euthanasia is one of those disasters which caused by an ethic that declare to dictate who should live and who should die. Even if it is motivated by sentiments of a misconstrued compassion or of a misunderstood preservation of dignity, euthanasia actually eliminates the person instead of relieving the individual of suffering [26].

Sometimes it is not motivated by a selfish refusal to be burdened with the life of someone who is suffering from unbearable pain, in this situation also euthanasia must be called a false mercy, and a "perversion" of mercy. True "compassion" leads to sharing another's pain; it does not kill the person whose suffering we cannot to cure them. Also, this is the act of euthanasia appears all the more perverse if it is done by those, like relatives, who are supposed to treat a family member with patience and love, or by doctors, who by virtue of their specific profession are supposed to care for the sick person even in the most painful terminal stages.

Doctors have responsibility to cure the patients and to care of them even in the most terrible stages and never to kill them and also never suggest them for euthanasia. Euthanasia is not mercy killing but a perversion of mercy. [27]

Nancy Dubler, director of the Division of Law and Ethics at Monte-fiore Medical Center in New York City stated that the main problem is not that the sick person desires for death but instead of love and comfort. The real problem is not that the patient is suffering from terrible disease but a plea of warmness and love and care from their loved ones.

The opponents defined true compassion and mercy as palliative care. Palliative care refers to physical, spiritual and emotional care of a patient who is suffering from unexpected and

[24] Evangelium Vitae, *The Gospel of Life* (Random House, New York, 1995)
[25] CDF. "Declaration on Euthanasia," 1980, Rome, available at: https://www.vatican.va/roman_cirial/ last visited: 10/06/2021.
[26] John Paul II to the Participants in the International Congress on Life-Sustaining Treatments and the Vegetative State: Scientific Advances and Ethical Dilemmas, March 20, 2004.
[27] Pope John Paul II, Evangelium Vitae (The Gospel of Life), 66, Random House, New York, 25 March 1995

unbearable pain. When cure is not possible, palliative care is the only way. [28]

It is stated that besides medical care and medical treatment, palliative care and comfortableness is necessary, so that they may live their remaining days as fully as possible and at their best.

- **True Autonomy is not in the favour of Euthanasia**

According to the exponents of euthanasia, every individual has freedom of choice to do what they want, and it should be respected by all others, but the opponents stated that this freedom is not absolute, and it directly affects the solidarity and dignity of other human beings [29].

According to one of the documents of the Sacred Congregation for the Doctrine of the Faith, Declaration on Procured Euthanasia, human life is the only and essential basis of all goods and a necessary source of every human activity in society without which these sources are useless. Also, life is a gift of God's love, and it is the duty of everyone to save this life as well as to make it beautiful. As life is a gift from God, everyone has the obligation to live a life in accordance with God's view. [30]

No one can allow the killing of a patient, and no one is allowed to ask for this act of killing for oneself or for others. Also, no authority has right to recommend such an action because it is a violation of the divine law, an offense against the dignity of the human life, a crime against life and an attack on humanity never favours euthanasia and also it is not a true Autonomy.

Kant and Mill stated that the principle of autonomy forbids the voluntary ending of the conditions necessary for autonomy, which would occur by ending one's life [31]. Also, euthanasia is merely and rarely autonomous because terminally ill patients have no sound mind to decide whether to take euthanasia or not [32]. The act of euthanasia is contrary to the "right to life". The Universal Declaration of Human Rights defines the importance that, "Everyone has the right to life."[33]

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[28] What is Palliative Care?, United States, available at: http://euthanasia.procon.org/view.answers.php?questionID=000181(last (last visited on 10.06.2021)

[29] Kevin Wm. Wildes, S.J *et. al., "Choosing Life: A Dialogue on Evangelium Vitae"* (Georgetown University Press, Washington DC, 1997).

[30] Congregation for the Doctrine of the Faith, Declaration on Euthanasia, Part I, Rome, available at: https://www.vatican.va/roman_cirial/ last visited: 10/06/2021.

[31] Goldman L, Schafer AI, (eds.) "*Bioethics in the Practice of Medicine"* 4-9 (Saunders, USA, 2008).

[32] Patterson R, George K, "Euthanasia and assisted suicide: A liberal approach versus the traditional moral view" *J Law Med* 494-510 (2005).

[33] Goldman L, Schafer AI, (eds.) "*Bioethics in the Practice of Medicine"* 4-9 (Saunders, USA, 2008).

- **Failure of Medical Ethics**

Conventionally, the main idea behind medicine was to cure, to care and to alleviate the patient's suffering [34]. If euthanasia legalizes then internal morality of medicine would be questioned and its fundamental goals were deprived. If these ethics changed then they are not compatible with the protection of human dignity, like putting an end to the patient's life [35]. The International Code of Medical Ethics of the World Medical Association states that "A physician will always remember in mind the obligation to respect and preserve human life" and the Medical Ethics Manual of the World Medical Association states that "Euthanasia, which is the act of cautiously ending the life of a patient, even at the patient's own request or at the request of close relatives, is unethical and wrong. The physician should respect the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness but to allow for euthanasia is not morally or medically right for society.

It is a true fact that permitting physicians to practice euthanasia would ultimately cause more harm than good. Euthanasia is fundamentally and morally incompatible with the physician's role as healer and life saver and would cause serious societal risks.

The practice of physicians in euthanasia increases the significance of its ethical prohibition and it will be goof if rather than engaging in euthanasia, it's the duty of physicians to respond towards the needs of patients at the end of life. Physicians:

1. Should not discard a patient once it is determined that the disease is not curable.
2. Must respect patient's autonomy and wish to live more rather than suggest for euthanasia.
3. Must provide good communication, love and emotional support.
4. Must provide proper comfort care and adequate pain control.
5. Legalizing of euthanasia directly shows the failure of medical ethics and medical science.

[34] Beauchamp T, Childress J, "*Principles of Biomedical Ethics"* (Oxford University Press, New York, 7th Edn. 2013)

[35] Congregation for the Doctrine of the Faith, Declaration on Euthanasia, Part I, Rome, available at: https://www.vatican.va/roman_cirial/ last visited: 10/06/2021.

3. CONCLUSION

In this manuscript, we have presented both pros and cons of euthanasia. Proponents of euthanasia stated that it is the only way to free a human being from unbearable and incurable disease. In the perspective of a person in support of mercy killing — one should have the right to self-determination, and thus be allowed to choose their fate. Pro-euthanasia activists often point at countries that have legalized Euthanasia like Belgium and Netherlands to argue that it's mostly unproblematic. While on the other hand opponents stated that it could soon become a slippery slope, with the legalization of involuntary Euthanasia following it. Moreover, there is no way to regulate mercy killing properly. Allowing this undermines the commitment of doctors and nurses to saving lives. Euthanasia may become a cost-effective way to treat the terminally ill, and this will discourage the search for new cures and treatments for them.

Legally request to end a person's life prematurely voluntarily has been under a lot of debate. This debate focuses across complex and dynamic aspects like legal, health, human rights, ethical, spiritual, religious, psychological social and cultural aspects of the society. But after presenting both the arguments in favour and against of euthanasia, when talking about Euthanasia, we will discuss it in a neutral aspect, covering both the supporters and opponents' perspectives on this complex activity. There does not seem to be any cut and dry reasoning behind whether the practice of Euthanasia is good or bad. In one end, it can be used to release someone from suffering, but on the other end, it can be used to hide punishable criminal acts.

FARM LAWS

By Abhishek Kumar[1]

1. INTRODUCTION

Recently parliament passed three bills related to the agriculture section in India. These laws are as follows

(iii) Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020:

(iv) The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020:

(v) The Essential Commodities (Amendment) Bill, 2020

In June 2020, the Central Government presented three ordinances focusing on extensive agricultural changes in the nation. Government has expressed that the objectives of the Act are to Freeing up controls on trade, changing administrative framework, giving hindrance free trade and establishing a farmer-friendly environment. These ordinances will override all State laws in this regard. But this was all done in absence of a strong opposition and without consulting with the states, farmers and the commission agents, who are the main affected parties, resulting in a strong opposition and demand for rollback of the ordinances.

2. THE FARMERS' PRODUCE TRADE AND COMMERCE (PROMOTION AND FACILITATION) BILL, 2020

This bill seeks to enable the sale and trade of agricultural produce outside of the APMCs. Essentially, the monopoly of the APMCs ended with the implementation of this bill since the market is now open for private players as well. The entry of private players creates a possibility of more competition which in turn will lead to offering better pricing of produce to the farmers. Rather than going to the APMCs to sell their produce at a fixed price, the farmers can form an agreement with private players directly. The bills also reform trading by creating an e-highway for e-trading of produce and transactions. The whole process of eliminating the APMCs role can be beneficial to farmers since they won't have to deal with the fees charged by the APMCs to the farmers while buying their produce and can also sell their produce inter - state. The fees charged by the APMCs and the profits procured by the middlemen in the process of the supply

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chain drives the price higher by the time it reaches the consumer which creates a wide gap between the price at which the farmer sold the produce and the price at which the consumer buys it. Eliminating the process of middlemen and direct deals between farmers and private players will lead to better prices offered to the farmer by the private players compared to the APMCs, coupled with the exemption of fees while dealing outside the APMCs. The concerned bill also provides for a dispute resolution. It prescribes that every farming agreement has to provide for a conciliation process and a board to settle any disputes arising in realising the agreement. Which will further strengthen the confidence for dealings between private players and farmers, hence involving more players leading to better competition and pricing.[2]

3. THE FARMERS' (EMPOWERMENT AND PROTECTION) AGREEMENT ON PRICE ASSURANCE AND FARM SERVICES BILL, 2020

The bill seeks to regulate the prospects of contract-farming, which will be an option as a result of farmers being enabled to trade outside of the APMC's. It provides for a national framework that seeks to empower and protect a farmer while dealing with private players like large retailers, agro-business firms and exporters of farm produce. The provisions for protecting and empowering farmers are necessary for them to deal without fear and avoid exploitation from the large and powerful private players.

A farming agreement shall be formed between the farmer and the purchaser relating to the sale of the agricultural produce at a "mutually agreed remunerative price framework" and should be done in a fair and a transparent manner. The agreement will include the price that is decided for the produce and may also place it subject to conditions for compliance with mutually acceptable quality and standards. The process of determination of the price at which produce is being traded must be specified as well.

This bill provides for Dispute Resolution between the concerned parties to settle any dispute arising out of the farming agreement, similar to the bill discussed prior to the present one.

[2]https://economictimes.indiatimes.com/news/economy/agriculture/agriculture-reforms-free-market-finally/articleshow/78198415.cms?from=mdr

4. THE ESSENTIAL COMMODITIES (AMENDMENT) BILL, 2020.

The amendment made to Essential Commodities Act includes Section 3(1A). This particular section empowers the Central Government to regulate the stock limit or the supply of specific food items and produce only in extraordinary circumstances, which prior to the amendment could be done at any instant on directions of the government. The amendment removes the restrictions on stock limits for the farmers. Earlier, farmers could be penalised for exceeding the stock limit or could be forced to sell the excess stock below the market prices which would incur losses for farmers. In a rational market, such a restriction would be heavily oppressive to farmers. The restriction has been amended in the present bill to only be exercised in the case of extraordinary situations such as war, famines and extraordinary rise in prices. These limits would further not be applicable to processors or value chain participants of agricultural produce if their stock limit does not exceed the overall ceiling of installed processing capacity or demand for export, hence not adversely affecting these businesses and ensuring somewhat of an incentive for the private players.

5. ANALYSIS

The provisions of the three bills seek to reform the agricultural sector, a sector which is quite important to the country's economy and yet consists of farmers mostly full of sorrows and under pressure of poor income. Such are the conditions of most farmers despite being ensured a Minimum Support Price offered by the APMCs. The reforms aim to enable an alternate way for farmers to sell their produce at competitive pricing to more potential buyers than just the monopoly of the APMCs, especially for the marginal farmers, who constitute 80% of Indian Agriculture.[3]

The ability of farmers to deal outside the APMCs enables opportunities for private players taking active interest in this sector and can become a potential investor. For example: Agri-tech startups that aim to digitize trading of agricultural produce by connecting farmers with buyers. This will only attract more VC capital into the agritech sector in the next 12 to 18 months, signaling greater potential to reimagine India's agriculture industry for maximum impact. The need to improve the existing underdeveloped means of trading between byers and

[3]https://www.thehindubusinessline.com/opinion/agriculture-bills-a-milestone-in-farm-reforms/article32930294.ece

farmers will attract the private sector to invest in separate modernized trading platforms[4]

The removal of restrictions on stock limits for farmers will lead them to increase production during favourable market environments since there is no limit on the stock he or she can produce anymore. This creates an opportunity for private warehouses and cold storage facilitating companies, which in turn will look to incorporate themselves in the market and accumulate their fair share of revenue by providing the facilities to farmers who are looking for storage for their produce as a result of increase in production. This will attract investment by private players who wish to set up storage and warehouse facilities.

The bills surely enable the prospect of boosting private investments in the agricultural sector to some extent. However, the reforms can also result in boosting the farmer's income.

The Empowerment and Protection Bill provides a legal framework for farmers to form contracts with private companies at a pre-decided price for a pre-decided quality with a specified standard of quality. This gives an incentive to the farmers for growing certain crops, since the price has already been mutually agreed upon and the farmer can invest accordingly. Farmers often grow a few specific crops like rice and wheat which provide them with low yield and income solely because with these crops, they are guaranteed an MSP and hence have to take on minimal risk in growing them. However in case of contract farming where the price is already agreed upon, the farmer does not have to worry about the uncertainty around selling the crop later. Growing such crops which are economically more profitable is not encouraged and will lead to better income for farmers. Also, farmers will not have to necessarily resort to the APMCs to sell their produce, which means that they will not have to pay the significant fees charged by them. The APMCs procure produce from farmers at low rates and the price is subsequently jacked up with each intermediary until it reaches the consumer. The wide gap between the price paid to the farmer and the price paid by the consumer can be lowered and the commission taken by middlemen can be redirected as a higher income for the farmers instead since there will be no need for such intermediaries in contract farming.

The above points indicate that along with a boost of private investment in the agricultural sector, the farmers also stand to gain from the bills as the reforms will result in a very significant increase in their income if taken advantage of the new laws.[5] Here is where the important question lies, "if taken advantage of the new laws." Most farmers in India are marginal farmers

[4] https://yourstory.com/2020/10/farm-bills-2020-benefit-farmers-agritech-startup-agri-warehouse

[5]https://economictimes.indiatimes.com/news/economy/agriculture/newly-passed-farm-bills-will-ensure-sustainable-profitable-future-for-farming-community-faifa/articleshow/78249583.cms?from=mdr#google_vignette

owning less than 2 hectares of land. These farmers resort to the APMCs due to the assured payment and also because they do not have the capacity nor the power to deal with private players. There have been instances of private corporations using their influence and might to suppress farmers' demands.[6] Due to this, farmers may continue selling their produce to the APMCs or they'll have to succumb to low profits due to lack of negotiation power while dealing with private sectors. Hence, small farmers may not be able to take the best of the advantages provided under the new agriculture laws.[7]

It is also possible that the reforms will not necessarily result in a boost in private investment.[8] There have been instances where states have tried to reform agricultural laws on similar lines and their outcomes haven't been the same as what was desired. There are three such examples- Kerala never had an APMC Act. Despite there being a lack of an AMPC monopoly, there hasn't been much private investment in the sector in Kerala. The Kerala government instead is establishing rural markets across the state to help farmers. Bihar nullified its APMC Act in 2006, with no evidence of any major private investments in marketing. In Maharashtra, similar laws have been implemented as the bills. In 2016, the state government excluded fruits and vegetables from the APMCs' ambit. An ordinance was issued in 2018 to amend their APMC act to allow free trade of food and animal products outside of the mandis. These laws too didn't lead to an emergence of significant private investments outside the mandis.[9]

6. CONCLUSION

The new agriculture bills passed will certainly reform the sector in India in the near future with the new provisions enabling farmers as well as private sectors to benefit from the agricultural industry. However, there should be proper implementation of the laws to assure that these reforms truly benefit the stakeholders and not just a few selected ones. Marginal farmers may not be able to make the best opportunity out of the new laws if they are not ensured with proper dispute resolution in the case where a dispute arises in dealing with powerful private players. The undesirable results achieved in few of the states that tried to implement similar provisions shall be examined so as to avoid a failure of the new reforms. Perhaps a nationwide

[6] https://www.latestlaws.com/articles/farmer-bills-2020-is-it-anti-or-pro-farmer/
[7] https://indianexpress.com/article/opinion/columns/harvest-of-distrust-farmers-protest-punjab-haryana-tamil-nadu-6612062/
[8] https://www.indiaspend.com/no-evidence-that-freeing-up-agri-markets-will-spur-private-investment/
[9] https://scroll.in/article/973773/before-the-centre-a-few-states-had-freed-agriculture-markets-to-attract-investments-and-failed

implementation will prove to work unlike the state reforms. The government must also actively take steps to encourage private investment and try not to deter it instead, as was noticed with the recent ban on onion exports.

The Agricultural Bills will definitely help in attracting private investment and also boost rural income, however, only to a certain extent. To make the reforms truly beneficial for all the stakeholders, the government must ensure that proper implementation of the bills and ensure that private investment is attracted and also the farmers' interests are safeguarded from exploitation by the same private players.

INTELLECTUAL PROPERTY AND OWNERSHIP

By Aryan Mohnani[1]

ABSTRACT

The world is continuously being technologically advanced, whether it is in medicine or business. Humans have been utilizing and making the most value of their ideas and thoughts. As we live in this dynamically fast-paced world, we need to ensure that the products of human intellect aren't being pinched and stolen away. This is when Intellectual Property comes to mind. These can be protected by the law so that the valuable thoughts and ideas of the individual are nourished and awarded, either by financial or general recognition. Huge companies like Microsoft to Sony, all make sure that their designs and inventions are protected and they do that by registering them as Intellectual Properties. That's why it is crucial to learn more about Intellectual Property and its rights.

1. WHAT IS INTELLECTUAL PROPERTY?

According to the World Intellectual Property Organization (WIPO), Intellectual Property refers to the creation of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.[2] These are the intangible creations or properties of the human intellect. Some of the most well-known are Copyrights, Trademarks, Patents, Trade Secrets, and Industrial Designs. All Intellectual Properties are territorial in nature, for example, If an Intellectual Property is registered in India, it can be only valid in India. For registering in any other country, one must follow the relevant law in that country.

2. WHAT ARE INTELLECTUAL PROPERTY RIGHTS?

Intellectual Property can be registered by any individual or an organization. Whoever creates a product through his brainpower or creative mind, that person or organization will be inherited with some rights. These are exclusive rights to gain financial benefits from that intellectual

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[2] https://www.wipo.int/about-ip/en/

property. As the rights are exclusive, the ideas accruing to it, should also be exclusive, that is why there are exceptions hereto.

3. WIPO

The World Intellectual Property Organization (WIPO) is an international agency also known as a global forum that regulates Intellectual Property around the globe. It is a specialized agency of the United Nations, with 193 member states as a part of it. Its motive is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all. [3] It develops IP tools, services, databanks, platforms, etc. and helps IP offices, users and other stakeholders from different countries. It is to help governmental IP institutions by providing technical infrastructure so that the process for registration and dispute resolution gets efficient and helps users around the world.

4. WHAT IS THE TRIPS AGREEMENT?

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement is a multilateral internationally recognized agreement that set out minimum standards for the regulation and dispute resolution of Intellectual Property, not only that, it is the most comprehensive multilateral agreement on Intellectual Property so far. It is made by the World Trade Organization and is between all the member nations of the WTO. The agreement covers copyrights and related rights, undisclosed information, industrial design and safeguard of various plants and patents. The features of this agreement are based on -:

(i) Standard

(ii) Enforcement

(iii) Dispute resolution and settlement amongst nations

5. TYPES OF INTELLECTUAL PROPERTY

There are several types of Intellectual Property which are explained below:

5.1. Trademarks

A trademark includes a distinctive name, word, or sign that helps to differentiate goods and

[3] https://www.wipo.int/about-wipo/en/.

services from one enterprise to the other. The purpose of the trademark is to brandish and develop the goodwill of the enterprise and make it grow in vigorous competition. The monetary value and trust of the enterprise get enshrined in the trademark, which helps organizations retain consumers and helps build an eternal name for themselves. The TRIPS Agreement gives certain recommendations and a specific framework, a nation should follow for the efficient and effervescent process of the trademark. These are mentioned in Section 2 of Part II of the TRIPS Agreement. In India, trademarks are governed under Trade Marks Act, 1999.

Infringement of Trademarks

When a person gets a trademark registered, that person gets exclusive rights to the trademark, which means if someone uses a trademark that is identical to the trademark that has already been registered by a person or an enterprise without the permission of the proprietor of the trademark, the act would be known as Trademark Infringement. It is the unauthorized use of the trademark which makes this act illegal. Trademark Infringement in India is defined under Section 29 of the Trade Marks Act, 1999.

If an identical trademark gets registered, it creates confusion in the eyes of the consumer, which might deteriorate the reputation and goodwill of the authentic trademark. To prove that a trademark has been infringed and to make a claim against a person for the same, it is to be shown or expressed that the infringing trademark is identical to the trademark registered by the proprietor. Section 103 of the Trade Marks Act, 1999 states the punishment for falsely registering a trademark, and the following conditions are given that state the definition of falsifying-:

(i) If falsification of trademark has been committed;

(ii) If any trademark has been falsely applied to goods and services;

(iii) Makes, possesses or disposes of any instrument with the object and purpose of falsifying a trademark;

(iv) Falsely indicates name of the country or place where the goods have been made or the name or address of the person who is responsible for its manufacturing;

(v) Alters or tampers with the indication of origin that is applied or required to be applied to a product. [4]

The punishment for infringement of a trademark according to Section 103 shall not be less

[4] S.103 The Trademarks Act, 1999- Definition

than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. [5] On the other hand, there are exceptions for infringement which are mentioned in Section 30. Also, if the proprietor gives consent for the somewhat identical mark, or gives license to anyone, mentioned in Section 49, that would not amount to infringement.

How to Register a Trademark in India?

The first step to register a trademark is to decide what to register, either a logo or a name or a sign. One must be careful while thinking of a trademark, if they try to register a trademark, which is already registered or is identical, the application may get rejected. That is why this is necessary. Next, the trademark is to be filed with the Trademark Registry by filling the registration form TM-A which can either be filed physically or online using the Official IP India website. The documents submitted during the registration can vary to different types of applicants. It can either be filed by a proprietor, an agent or an attorney up to the discretion of the applicant. After the registration process is completed, an examiner from the registry determines that if it should be presented to the public so that if they have any opposing views or any objections against the registered trademark, they can be heard. If the examiner has any objections and after objection by the examiner, the issues aren't resolved by the applicant, there can be a hearing for the same. After the hearing, the trademark gets published in the Trade Marks Journal for 4 months, during the four months anyone can object to the trademark if their trademark is infringed. The trademark gets registered if there are no objections by anyone else and, then the applicants get all of the executive rights of a trademark owner. A trademarks validity is for 10 years, the registry through the preferred mode of communication reminds the proprietor of the same. The proprietor can extend the same by approaching the registry.

5.2. Patents

The government has provided certain exclusive rights to inventors to make sure that their inventions aren't used by others to make or sell. This gives the inventor the financial benefit and recognition, it should deserve. This exclusive right is known to be a patent. A patent can be filed also for a mere improvement of an invention. Its main objective is to inspire and encourage inventors to come up with new developments and inventions.

[5] S.103 The Trademarks Act, 1999- Punishment

An invention can only be registered as a patent if the invention consists of the following conditions:

(i) The invention must be new if it shouldn't already be in existence;

(ii) The invention should be non-obvious, if the invention is anything common or anything obvious to invent, it won't be recognized as a patent;

(iii) The invention should not be used in a mala-fide manner, the intent of the invention should be bonafide and it shouldn't be illegal.

The recommendations of patents for member nations are mentioned in Section 5 of Part II of the TRIPS Agreement. Patents in India are governed under the Indian Patents Act, 1970.

Infringement of Patents

Patent Infringement is when someone with unauthorized access, sells, uses, makes or steals the idea of the invention of someone's registered patent. Without the inventor's permission, nobody is allowed to use the patent. Patent infringement is defined and its provisions in Section 104-114 of the Patents Act, 1970 and the penalties are mentioned in Section 118-124 of the Patents Act, 1970. The punishment for an unauthorized claim of patent rights is mentioned in Section 120, and the person violating that would be punishable with a fine that may extend to one lakh rupees.[6]

How to Register in India?

To register a patent in India, the first step would be to look up and figure out if the patent is already registered with the Patent Office. This is done so that the patent application doesn't get rejected. After this, an application form Form-1 should be filled and prepared and submitted to the Patent office. Along with that, an application form Form-2 contains provisional or complete specifications of the invention. After 18 months from the priority date, the publication of the application can be made. Also, a person can request for publication can be made that is defined under section 11A(2) in form 9. The next step for an applicant would be to request an examination, to check the patent if it matches the conditions, this can be filed by submitting Form 18, this can only be done within 48 months from the application filing. Then, the examiner creates a first examination report (FER). The examiner after examining the patent can make objections, the applicant should comply with the objections or the application will be rejected. Once the objections are cleared, the

[6] S.120 The Patents Act, 1970

patent office grants the patent to the patent. The application can also be filed online through the governmental patent website.

5.3. Copyrights

A copyright is an exclusive right automatically provided to whomsoever creates any literary work, music, art, movies, software and more. It protects the original works of authorship. The person provided with copyright has the right to use the work, allow others to use the work, and the right not to let anyone else use or copy the work. The purpose of copyright is to prevent the rights of creators and encourage the development and growth of their skills and inspire creators to come up with creative ideas. The copyright holders can only take financial benefit from the copyright and earn reputation through it. The TRIPS Agreement has given its recommendations on Copyrights for member nations in Section 1 of Part II of the agreement. In India, copyrights are regulated under the Copyright Act, 1957.

Infringement of Copyrights

Copyright Infringement means when someone uses someone else's copyrighted work without the consent or authorization of the holder. The unauthorized access is what constitutes an infringement of the copyright. The right to reproduce, distribute and sell or display the work in the public shouldn't be infringed.

The elements of copyright infringement are-:

- It must be an authentic creation of the creator.
- There should be actual plagiarism or use of the copyright
- There must be some similarity and the similarity must be proved when provided to prove.

Section 51 of the Copyright Act, 1957 defines the infringement of copyright. Section 51 of the Act states when the copyright is to be infringed, it must have certain conditions and are mentioned below:

- A person without taking the authorization of the copyright holder does any use, that the copyright holder is solely entitled to use.
- A person permits the place to be used for communication, selling, distribution or exhibition of an infringing work unless he was not aware or has no reason to believe that such permission will result in the violation of copyright.
- A person imports infringing copies of a work

- A person without obtaining authority from the copyright holder reproduces his work in any form. [7]

Copyright infringement constitutes both civil and criminal proceedings against the person infringing the copyright.

Section 63 of the Copyright Act, 1957, states the punishment of copyright infringement, the infringer shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. [8]

How to Register Copyright in India?

The first step to register a copyright, after creating the work, the person or an enterprise can file an application form Form XIV, either physically or through mail or through an e-filing facility which is available on the official copyright website. With that, a separate application form Form XV must be submitted with the copyright registry containing the particulars of the work. After the applications are submitted, the registry will issue a diary number to the applicant. There is a 30 days minimum waiting period after the issuance of the diary number, the examiner examines the application, during this period, the examiner can find objections in the application and the applicant has to comply with the objections. If someone objects to the application, a hearing can be conducted with the evidence by the registry. If there are no objections by the examiner or anyone else, or if there were any objections, and complied with, the copyright gets registered by the Registrar of Copyrights and will issue a certificate of registration.

5.4. Industrial Designs

An Industrial Design refers to the nature of the product, that is of how the product looks like and its design. It's not for the protection of technical or functional qualities or how the product works. These are used in a variety of industries and handicraft products. An industrial design consists of two-dimensional shapes, such as lines, colors, patterns and products. It also contains a series of three-dimensional shapes, such as the shape of a product. Nowadays, people are more interested in design than invention. That is why it is of utmost importance to make your product look attractive and better than the rest. People

[7] S.51 The Copyright Act, 1957
[8] S.63 The Copyright Act, 1957

want the aesthetic more than the features and that is why designers need to protect their designs so other manufactures, do not take benefit of that. The TRIPS Agreement has given its recommendations on Industrial Designs for member nations in Section 4 of Part II of the agreement. Industrial Design in our country is governed under the Designs Act, 2000.

Infringement of Designs

As with all the other intellectual properties, Industrial Design is subject to be imitated by competitors, or by any other person. If the design is to be copied, the owner has the right to claim compensation for damages to the design, and be able to apply for an order for the design to be used in the future.

If there is any issue related to the violation, the Court will be looking for the design from the point of view of the average customer. In other words, the Court will consider whether there is any confusion, or to any of the important facts in the mind of the client concerning the items. Section 22 of the Designs Act, 2000 deals with the infringement of registered industrial designs. According to this, any discovery of any fraudulent imitation of a design that has been registered without the permission of the owner is unlawful. It also bans the importation of the materials, which is very similar to the data subject in design. To publish such an article, the terms with the sale with the knowledge of unauthorized use of the design also causes infringement of the design. The punishment for the same is compensation which shall not exceed Rs. 50,000 for breach of the subject samples.

How to Register Designs in India?

To register the industrial design, an application form Form-1 should be submitted to the Design Wing of the Patent Office. After the application is submitted and numbered and dated, it goes for examination. If the examiner finds any objections in the application, the examiner lets the applicant know and those defects have to be corrected within a period of 6 months. If the defects do not get resolved, the examiner provides a personal hearing to the applicant. Also, the applicant can appeal to the High Court within 3 months from the date of the examiners hearing decision. After the examination process is completed, the design gets published in the patent journal and if there are no objections by anyone, the design gets registered.

5.5. Trade Secrets

Any information of a personal nature, which gives to the economic interest of its

shareholders as to obtain benefits using the information over competitors is to be known as a trade secret. Information that constitutes a trade secret, in a general form, to protect the technical and commercial confidentiality of information that is not commonly known to the trade, and to prevent any unauthorized access by any other, is usually a trade secret. It is in a broad sense of the term, or terms of experience, in the process of production, sales methods, distribution, and consumer profiles and various kinds of strategies for advertising, design, life, and suppliers and customers, or a collection of data or information that relates to a business that is not known to the general public, as the owner, trying to keep the secret, and confidential.

Infringement of Trade Secrets

The company has the right to the protection of confidential information, or information that constitutes a trade secret to preserve for another diversion, and the use of its trade secrets. However, more often than not, a crime committed by a person who previously had been employed illegally, by supplying confidential information, which can sometimes lead to corporate espionage, to use for a new company or a new job. The protection of trade secrets will continue as long as the requirements are to defend the values of the company or its owners. The owner of a trade secret must take reasonable steps to protect its breach, or any breach of security is lost if it is not possible in general to keep the information confidential.

6. CONCLUSION

The intellectual property rights, give their owners, with occasional concessions to the exclusive use of the right to receive the income of the cultural expression and innovation. The societies must have good reasons to secure the privileges of the individual worker, and the proponents of such rights.

The management of IP, the Intellectual property is a multi-disciplinary task and requires a number of, and variety of functions and strategies in order to be in line with the national laws, regulations, international agreements, and to experience. From a national point of view, what it is not fully capable of.

The various forms of Intellectual property rights will require different methods of treatment planning and strategies, as well as the interaction between the individual's skills in the different fields such as science, technology, engineering, and medicine, law, economics, finance, and marketing. Intellectual property rights have social, economic, technological, and political implications.

The proprietors to protect their innovations from the competition including patents, trademarks, service marks, industrial design registration, copyright and trade secrets. But because of the loopholes, people are still able to infringe these intellectual properties. The government is taking measures to put a stop in infringement of them. The existing laws relating to the prevention of infringement of intellectual property rights.

MALE SEXUAL ABUSE

By Mansi Dabas[1]

ABSTRACT

Whenever we talk about sexual assault/harassment, it is generally another women being assaulted. The only concern lies with women and no other gender specifically. Norms, society, principles, statistics states that more of women in need, if we compare the information related harassments it will always be women. The only possible assumption about not being much concerned about men is the world has still not accepted that something this can happen to a male. A lot of comparisons are made but no recent studies are found as an accurate proof, especially in country like India. This study confirms that a male sexual abuse is a prevalent problem. It is also evident that victimized men were depressed and yet do not seek health services. Efforts should make to reach men with a history of sexual assault.

1. INTRODUCTION

April is sexual abuse awareness month[2]. our society is well aware of female sexual abuse but males gets neglected but surprisingly 1 out of 6 boys get sexually abused globally before they turned for their 18th birthday and this number is rising to 1out of 4 unexpectedly.

In the definition of rape two things are clearly specified:

a) A rape offender must be a man

b) A rape victim must be women.

Rape in any country is a major concern. Different countries have different rape laws. But if we look closely to the definition of rape the statue of women and children holds more importance than male. A survey was conducted in 2007 by ministry of women and child [MWC] where male victims of sexual assault were more than female victims i.e 53% of male over females, moreover in capital Delhi was 60%, no such survey was conducted after that.

A case was observed in Mumbai where a 14 year old boy was raped by a man, he died by consuming rat poison after the assault, said the reports. Many ordinances have passed but no efforts were made by the legislature to make this crime gender neutral, although a government survey has shown that males were more likely to be victims than females.

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[2] https://www.unh.edu

Sexual abuse to a women will considered as rape but if same happen to male will stated as 'he is sodomized under section 377'. We live in a patriarchal or male dominant society where rape to men is sodomy because the belief society holds is that 'he must enjoyed it'. The jingle we have learned, "**men never get hurt"** or here they never get sexually abused. The primary reason for not reporting is shame, confusion, fear and guilt.

It's high time to look for equality not in pay or in queue but in law.

2. REASONS BEHIND NOT RAISING THEIR VOICE HOMOSEXUALITY

The moment a male victim report his assault he stamped with the tag homosexual. Society found it difficult to accept male as a victim of rape. For them rape only means penile penetration, which is not possible in case of man.

2.1. Masculinity

A 9 year old boy was raped, his father resisted to see him for psychological care, he quoted that 'he neither lost a hymen nor will get pregnant. He should behave like a man, not a sissy'. In Indian culture masculinity is considered as manliness but not emotions one person holds. Hence, they are less likely to get affected by any kind of abuse.

2.2. Societal Pressure

We have some listed data, survey or statistics which shows what percentage of male or females suffered from any kind of abuse. These are the reports which were reported but what about the cases which are buried in the name of society? Rape is seen as gendered crime where male Always the predator and women always the survivor. Society holds the biggest credit for gender inequality in one's country.

The protection of children from sexual offences [POCSO][3] act was introduced in 2012 and it is applicable all over in India. It protects minor children from all types of sexual assaults. Punishments under this act vary accordingly. Moreover any person found guilty for raping a child below 12 will be penalized with death sentence, initiatives were taken by the government regarding rape laws.

The POCSO act is the only provision where both are treated equally. The question arises why is protection from sexual assault end at eighteen years only for boys? Why is there no law for adult males? Why punishment for male rape offender is 10 years in jail as compared with 20

[3] POCSO act 2012 https://indianexpress.com

years for assault on girls under 16? Gender inequality is still a mission which is hard to accomplish.

3. CASE TO BE CONSIDERED

Ramesh, a cab driver was accused for rape charges by one of his passengers. She accused him for forced sexual abuse but after investigating forensic in there reports said that there is no evidence of women being abused by him. Though it was all done for just 500rs.The power of a woman's voice is a sign of upliftment of society but pressing men's voice is not what we call equality. In this case a woman almost destroyed his life by making such false claims. [4]

4. RAPE LAWS IN OTHER COUNTRIES

Experiencing the same conditions some countries came out with rape laws which are equally applicable on both the genders. Where Scotland replaces "women" with "any person" in their definition and mentioning penile penetration can't be the sole ground for rape and on the other hand Canadian and USA laws redefined rape by adding 'penetration through objects is also recognized as rape'. Where every other country is putting their best in equalizing gender crimes India is still way far from it. It is the need of the hour to redefine the definition and it can be written as "A person is said to commit a **rape**, without his/her consent, when he/she is minor, when he/she is unable to communicate".

5. CONTRADICTIONS

Our constitution says that 'India is a secular country and every citizen is equal before law and gets equal protection of the law 'which means no one is above the law and if anyone violates any constitutional right of the citizen or any citizen violates the right of another citizen he/she will be punished under the law. Well said! Our constitution makers put their heart and soul into making the longest and most worthy constitution of the world. They tried to make all the citizens of India a garland but other lawmakers neglected.

Article 14 defines equality before law, that is every citizen holds the same position in the eyes of law but **section 375** of Indian penal code protects women only**. Article 15** states no

[4] Ramesh cab https://www.indiatimes.com

discrimination on grounds of religion, race, caste, sex, or place of birth or any of them. [5] When constitution itself gives a place to every citizen then why such gender crime law discrimination. Everyone born with a flaw, here **article 15[3]** of the constitution lays special provision for women and children. History of India says a lot about women being degraded, insulted, assaulted etc but to secure them we have laws which talk about equality. Then why is it lacking in India, we are heading towards a bright future then why one or the other needs to fight for what they already have.

6. CONCLUSION

Every life matters despite any gender, laws and punishments are for all and equal. The history of women is depressing but we need not to make our men or boys learn what it feels like to go through this pain. sexual assault like harassment attacks the soul not to a particular gender. There is no debate about sexual assault and rape of men and boys exit but nothing has been done to overcome this problem. There are still men out there who are dealing and fighting with it and not speaking because of the toxic mentality of society. The goal is to empower men not to neglect the other gender to uplift the others.

[5] Constitution article 14, 15 and 15[3]

RIGHT TO LIFE: THE BROADER PERSPECTIVE OF SUPREME COURT FOR PRESERVING BASIC RIGHTS

Khushi Saluja[1]

ABSTRACT

Protecting personal life and freedom is a basic right granted to the residents under part III of the constitution of India 1950, the judicial explanation of Article 21 from the Indian constitution with relevancy, the bench of India scrutinize the involvement of the supreme court in safeguarding the principal privileges of the people when the judicial and executive malfunctions in completing out their obligations. The right to live is the most dignified right of human lives, each individual is entitled for carrying on with their life on their own terms with no justice to others an effective democracy. Article 9 of the UDHR impacts the protection of existence and private freedoms of all persons whilst India authorized the announcement the council of contributors followed the identical provision as a fundamental right because India turned into endorser to the proclamation. A powerful democracy should one which guarantees its citizens to guard and be at ease their own lives and liberty the proper to have an entitled existence is said to be the fundamental factor of life it consists of all those elements that make human existence meaningful, gratifying and really worth dwelling in. The constituent meeting followed the same provision as a fundamental right thereto it was perceived that UDHR won't be a legally restrictive device yet it indicates how Indians comprehended the concept of human rights while the authorities embraced Article 21 that stated that the high-quality arrangement of the Indian bench and possesses un interesting spot as a primary right it endures right to stay a lifestyles and man or woman freedom to residents and outsiders and is opposable to the country. In this article, a few landmark cases and also the percepts of the Supreme Court would be discussed. Along with that, this paper limits to the fundamental Right to Privacy.

1. INTRODUCTION

Article 21 claims to all the individuals. These are the rights and privileges for freedom to attain happiness. The bench issued a landmark ruling in 1994. The court has lifted 309 of the Indian Criminal Code that any individual attempting to self-destruct may face imprisonment with consent and up to one year in prison. Section 21A was added by the 86th Amendment Act of

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2002. It essentially expressed the right to education as part of the privilege to the opportunity, and also to the following. An individual accused of any crime is not compelled to come to be an observer of one the impulse in this newsletter is to mean that the law is coercion damage beating or illegal detention for undertaking something a character dislikes this report is called a method of means of protection in the direction of self-incrimination In this article the alternative steps which may be crucial in this article are understood as a double danger this is of the proper to life and private freedom assured through article 21. The motive of the constitutional article was to save people from infringement of private liberty and deprivation of existence until the approaches stipulated by using regulation are accompanied the statements of the supreme of India are to protect the privileges of citizens when the supreme committee and leaders are not acting their roles and their position through justifying and checking the outline the have a look at of basic human rights.

1.1. Article 21- Protection of Life and Personal Liberty

Article 21 of the Constitution of India, states that nobody will be impoverished of their lives of freedoms unless they follow the procedures manipulated by law.

It was said by justice Bhagwati, Article 21[2] that implementing the most crucial constitutional values in a democratic society.

In *Francis Coraile vs. Union Territory of Delhi*[3], Bhagwati J. Said. We believe that the right to live a existence consists of the precise to measure with human dignity. this is, it incorporates all of the essential requirements of existence like correct purchaser goods and refuge, reading, writing, and studying centers. We must specify ourselves in opportunity approaches that, move freely, and in shape with opportunity people. [4]

In *Bandhu Mukh Morcha v Union of India*[5], it has been held with the aid of the apex court that right to life consists of the right to stay with human dignity right to life includes right to stay with human dignity free from exploitation.

As per the case of *Delhi Transport Corporation v. D.T.C. Mazdoor congers,*[6]

Here, it was declared that Right to Privacy is a part of right to livelihood. In *Permanand Katarags v Union of India* it held that injured person brought for any kind of medical help

[2] Article 21
[3] 1981 AIR 746, 1981 SCR (2) 516
[4] https://indiankanoon.org/doc/168671544/
[5] 10 SCC 549
[6] 1991 AIR 101 1990 SCR

should instantly be given medical help.[7]

1.2. Conventional Approach that Supreme Court follows:

The right to personal liberty is further protected under the essential right. It's miles extraordinary that to constrained to non-public phrases, does it suggest that non-public liberty implies most effective immunity from arrest, detention or bodily coercion on my own. [8]

(i) In *A.K. Gopalan vs. State of Madras case*,[9] the majority of judges gave the narrowest interpretation to the phrase non-public liberty and said that expression private liberty in art. 21 approach freedom from arrest, imprisonment or different bodily force, however this interpretation of artwork. 21 modified into, Kharak Singh vs. State of UP , where the personal liberty is being adopted in condensed articles to include all categories of life transferring to constitute public liberty, now not human, besides for its dealings in many articles of artwork. 19 Article. In Article 21, the liberty of the citizen pertains to this unfastened shape or sure attributes, but the court refused to assert the assurance of action pending within the law supplied for in Article 21. The necessity of suitable preventive measures law has been complete of opportunities as it is being duly enacted according with the procedures of Article 22 of the Preventive Detention Act.[10]

(ii) Analysis of Article 21- Post Maneka Gandhi's Case[11] With family or partner, it was offered the broadest interpretation of individual liberty and freedom of expression, the preferred court ruled that the freedom of a person might be protected wherein case the important government ought to hold the applicants passport under article 103c of the passport act of 1967 and withhold the passport most effective whilst vital for the general folk. The regulation additionally stipulates in this situation in where the significant authorities facts the motives for the taking away of the passport and provides a cause for re-submission the applicant which always considers article 21. Together with article 19 similarly to article 11, the case wherein the applicant has now not acquired a replica of the reason for the annexure of the passport laws setting up the procedure for depriving people of liberty have to

[7] https://www.latestlaws.com/latest-casela
[8] https://blog.ipleaders.in/article-21-constitution/
[9] 1951 SC 27
[10] https://www.lawyersclubindia.com/articles/article-21-constitution-of-india-all-landmark-judgments-13787.asp
[11] https://www.advocatekhoj.com/library/jud

be met a the demands of articles 21 and 19-three of the numerous factors of the *Akuroi v Indian union*[12] were discussed. Plaintiff's predominant argument became that detainees ought to be permitted for exercising their rights of felony representation, the right to offer a right of cross-examination become disproved by using him even though the contraction of the first two rights of proof became no longer unduly unconstitutional. The prisoners have been stated to have the right to present their very own proof to refute the allegations of the prisoners notified in writing of detention and places of the custody shall be detained at locations of habitual residence in tremendous situations.

It's far important to detain in every other regions, prisoners have the absolute right to book their personal meals and make visits from friends and loved ones. It's far important to keep them cut loose, the convicted remedy of a punitive nature isn't always to be handled according with the norms of civilization which isn't always a part of article 21 of human dignity for the safety of personal information. The transition to the right contained in article 21, this has been argued through the years to give an explanation for that the scope of article 21 is broadened and that the time period existence encompasses all aspects of life worship and sexual conduct which need to be protected from disclosure privacy in ancient instances turned into related to advantageous morality however this idea is ambiguous in historical Indian writing[13].

A statement by nine judges states of the supreme court says that it connects the right parts, essentials to life and personal freedom under Article 21 as the realm of freedom guaranteed by Part III of the Constitution.[14]

[15]If this privacy is leaked, the one's personal life, status and reputation may be affected in society. Privacy also includes citizens' biometric information, their bank account details, medical data prescriptions, and sometimes social media sites. If privacy is leaked, individuals can also fall right into a nation of depression or their personal lives may be destroyed.

In India after the Aadhaar conspiracy (permitting[16] public authorities to collect and aggregate the biometric and subdivision information of its residents) was confirmed and the public authorities were under the scrutiny of the tribunal, the issue became prominent when security was not the only support of the constitution.

In the words of Ayyanagar J, Personal liberty is employed within the Article condensed to

[12] 1982 AIR 710, 1982 SCR (2) 272
[13] www.eff.org
[14] https://lawtimesjournal.in/privacy-as-a-fundamental-right/
[15] https://www.findyouradvocate.in/2020/12/right-to-privacy-in-india-constitution.html
[16] https://www.lawaudience.com/the-right-to-privacy-is-a-fundamental-right/

include among itself all the categories of life that move to compose the non-public liberties of man aside from those deals in many clauses of Art. 21.

It has been anticipated that no government intervention in personal life, trying to monitor potentially unusual activities.

The government has ordered a number of the organizations such as NIA, RAW and IT to monitor activities that may generate suspicion, except for these consensuses.

As social creatures, one would interact with all kinds of people and exchange information about their lives and other aspects in their day to day interactions, but ideally, they should have the power to control the amount of information that they choose to be intimate with others. Any interference with this can be considered.[17]

2. CAN PERSONAL INFORMATION BE PROTECTED UNDER FUNDAMENTAL RIGHTS?

In *Thappalam Service Cooperative Bank Limited v. St. of Kerala* (2013)[18], with the exception of private information disclosure provisions, this has not got anything to do with an individual's activities or public interest, or might also unnecessarily violate an individual's privacy.

Despite the fact that the charter of India does no longer explicitly assure the rights of people, it is a public cause judged by the courts, but the Article 2 of RTI Act of 2011 targets to provide the rights of man or woman matters awaiting approval in judgments.

2.1. Cases that considered the Right to Privacy

As per the case of *K.S Puttaswamy v Union of India,*[19] a petition to the Supreme Court to challenge Aadhaar's constitutionality on the premise of violation of Aadhaar's right to privacy at the hearing to the class of privacy as a basic right was hostile by means of the central government was filed by a retired judge. The government's criticism to the present right had supported a pair of earlier decisions. MP sharma v Satish Chandra in 1954 as per that the privacy wasn't eliminating MP sharma, the court dominated that the framers of the constitution place the power of research and with a basic right of privacy. This issue was first raised in the case of *Kharak Singh v state of Tamil Nadu, who c*hose Subba Rao in his few judgments, it was accurately detected that the right to privacy comes from expressing one's personal freedom.

[17] https://findanyanswer.com/is-the-right-to-privacy-a-fundamental-right
[18] (2013) 16 SCC 82
[19] (2017) 10 SCC 1

In Kharak Singh the choice contradicted the laws that stipulated night to the residence and referred to as them embezzled invasion of the house and infringement of commanded freedom. However, it maintains alternative arrangements of the regulation on the premise that the authority doesn't assure the right to privacy, Article 21 of the constitution of the India.

In *R. Raigopal v Tamil Nadu*[20] , the preferred courtroom discerned that not anything over a right to study that's contained within the right to life and private freedom bonded through article 21 of the Indian charter.

Furthermore, In the case of the *Naz Foundation v. Govt. of NCT of Delhi* (2009)[21], Delhi HC made a very significant decision on consensual homosexuality. Few articles were recalled in this case for example, articles 14, 19 and 21. The right to privacy is to protect people and help them keep their private space. It is said that individuals need a kind of shelter where they can escape social control, where individuals can remove their masks and temporarily stop projecting to be contained to the world.

Also, The Privacy bill was introduced in 2019. It provides protections for identification theft, together with crook identity robbery, etc, additionally. It forbids stalking each person, or tracking through closed circuit television or other electronic or different manner, until unique processes are followed below certain instances. In keeping with this regulation, every person who has a department workplace in India but uses device statistics in India or manner which is in relation to the individual or divulge to any person any facts associated with the man or woman without the person's consent.[22]

3. INFERENCES FOR FUTURE CASES

The primary ruling requires the authorities to establish information and safety requires the authorities to set up a data safety device to shield privacy of the people. It recommends the established order of a sound privacy system that keep a balance between non-public pursuits and the valid pastimes of the nation.

Chandrachud pointed out that the improvement of information, protection systems is a complex venture for countries to do after careful consideration of privacy requirements and different values wherein records safety and the valid issues of the USA work collectively. The judgment

[20] 1995 AIR 264, 1994 SCC (6) 632

[21] 60 Delhi Law Times 277

[22] http://legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html

may even have an impact on many cutting-edge problems pending inside the supreme courtroom specially the two proceedings concerning Aadhaar and the alternate of information between Whatsapp and Facebook becomes a testing ground for India's software and privacy profile. Lately, it changed into understanding that the apex court has sincerely mounted the right to privacy but this is simplest step one because the real check of the power might be to say them to destiny challenges additionally records that safety gives protection to the residents.[23]

For example, an individual has murdered human beings and also suffers from tuberculosis he should reveal his crimes and however he must no longer reveal his contamination in public. Accordingly, information is saved in universities, banks, hospitals and multinational organizations and on social networking sites that citizens and government have the equal obligations in protecting information and maintaining the privacy of others. It demonstrates the stance of the court in defending the fundamental rights of the people of the country.[24]

In other words, it analyzes the reasons for judicial originality and demonstrates the role of the bench of India in protecting the fundamental rights of citizens. In case the legislative and executive bodies do not fulfill their duties, to some extent, judicial activity in the judiciary stems from potential vulnerabilities and failures for other state agencies to perform their functions. This right about life is one of the most precious human rights. Other rights of individuals develop around this basic human right, [25]so learning becomes very important.

According to the current situation, the government should enact a new law to punish offensive, illegal or unwanted chats, or the IT department should develop software that can listen on anti-ethnic or prohibited conversations when it happens. Privacy can also be interpreted and understood as the Warren and Brandy statement that talks about the right to be let alone.[26]

4. MY STANCE ON THIS

This right should be available to every person without any bigotry. The object of this paper states that someone has the right to live with human dignity and to acquire all the primary necessities of lifestyles. In my view, its miles the maximum innovative right of the constitution proves that the feature of the preferred apex court of India, in shielding the basic rights of the

[23] https://lawcorner.in/why-right-to-privacy-is-important/
[24] Role and Functions of Supreme Court in India (imp.center)
[25] https://lawtimesjournal.in/privacy-as-a-fundamental-right/
[26] https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html

human beings is despicable at the same time as the legislature and administrative corporations fail to perform their abilities and the right to privacy is a congenital detail beneath. Article 21 of our constitution in this dynamic society is essential right is a critical deterrent to save the country. Each person's life must be valued equally and it should be kept in mind that no life is more important than the other.

5. CONCLUSION

The most honorable India's public authority is the Supreme Court, honored by the gentry and illiterate. If the court allows playing a greater role and making it the ultimate judicial arbitrator, the common man has placed in it's outstanding. The court has no military command. The ability depends to an oversized extent on the dominance within the eyes of the general public, also it means that it influences and shapes believes. Furthermore, Maneka Gandhi's and A.K. Gopalan's case, which is the means of art, the right to live life has modified multi-dimensional approaches and reached a replacement realm. However, interpretation will result in a number of disastrous mistakes, and generally reflects that interpretation has crossed the boundaries and has begun to remodel into judicial rashness, which manifests itself in judicial excess. In addition, the Indian courts deliberately did not recognize the quintessence of life. In other words, life in Hinduism includes Dharma, Karma, and Moksha, it is meaningless without all these. Article 21, the right to life, is the only living human flesh right solely for the people. Claiming the current situation, the government should enact various new laws to punish offensive, illegal or unwanted chats, or the IT department should develop software that can be used in anti-racial or prohibited conversation