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Dr. Pradeep Kumar
Executive Editor & Managing Director
Journal of Legal Studies

'Mediation' as a Pivotal Tool in Alternate Dispute Resolution in Industry Parlance

Samrat Bandopadhyay[1]

Abstract

With the adoption of new innovative, creative and performance-oriented approach in Commercial landscape, the complexity and legal issues are seeing an unprecedented growth. It is seminal and vital to note that in the domain of 'Alternate Dispute Redressal' mechanism, provides the opportunity to explore amicable settlement of disputes inter alia without the hassles of Court visits, finding of common grounds, negotiable and plea-bargaining techniques, mutually negotiated solution, avoiding pendency of cases, timely and efficient utilisation of resources to arrive at solution. Mediation as one of the ancient legally and statutory backed solution provides an alternative to business stakeholders in the value chain of 'Commercial landscape' to resolve disputes in an effective manner, where the parties are in control and avoid the litigated process in arriving at a timely solution, thereby avoiding untimely and preventing unexpected manner of disposal of cases. The instant paper is an attempt to look at technological and management best practices across the nation and in international parlance. The inspiration in opting for "mediation" as an alternative dispute redressal with advancement of technology and propelled by motivated purpose of arriving at a 'Win-Win situation' for all the stakeholders without affecting the good will, revenue downfall and aspiring for long term solution is being explored and analysed in the instant paper. The statutory provisions of Mediation along with Section 12A of Commercial Courts Act, 2015 read with Section 89 being added to Code of Civil Procedure vide Civil Procedure (Amendment) Act, 1999 is being analysed in detail along with judicial precedents. The advantages of maintaining confidentiality and voluntary approach via mediation are another facets of the analysis while reading conjointly with Mediation Bill, 2021 from Institutional perspective in the instant deliberation.

Keywords: *Mediation, Alternate Dispute Redressal, Plea Bargaining, Commercial Courts, Civil Mediation Council, Mediation Conciliation Project Committee, International norms.*

Introduction

'Alternate Dispute Resolution' (ADR) System provides the mechanism and the framework to resolve dispute amicably where the parties have an inherent advantage of timely and speedy resolution. Various alternate dispute resolution technique in the form of Arbitration, Mediation, Conciliation, Negotiation are emerging as a positive and most sought after resolution framework which provides the parties to avoid the delay caused by pendency of cases and to tackle and arrive at solution without going through the time consuming battle of litigation in adversarial system of justice in India. Mediation as a viable option provides the base to not only resolve the personal disputes but also the commercial disputes.

The jurisprudence of Mediation is inbuilt in the cultural ethos of the country. History is replete with examples of Lord Sri Krishna playing the part of mediator between the Pandavas and the

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Kauravas in the famed battle of Mahabharata. Even, a step closer to the family dispute matters in childhood time was addressed by senior or elders' members of the family in an amicable manner. The success of the family mediated disputes at childhood provides us the direction that if in the early years of one's life if the disputes are settled within the family, then it has the advantage of problem being solved at family level rather than being escalated to higher pedestal, at time in Hon'ble Court of Law. It beckons one of think and analyse that if the problem are solved at family level then, Is it the ego or the arrogance or lack of trust that there has been an upward trend in matter of disputes which are surfacing in various Court of law? The answer or solution to the issues may be a simple and innocuous one. The concept of 'Mediation' is age old and has garnered traction world over.

Mediation as viable option of ADR

Mediation provides the opportunity to parties to address the issues directly and without encroaching on the rights of other in a mode of sharing and exchanging of complete information and to arrive at a mutual amicable settlement. In this the parties take control of the settlement of the disputes themselves, where the 'Mediator' acts as a facilitator and is a quintessential catalyst to solve the issues emanating from the dispute. Thereby, it is supplicated that the mode of 'Alternate Dispute Resolution' is a win-win situation where parties try to arrive at a solution in a timely fashion. This brings advantages of ensuring protection of 'confidentiality', impartial manner of dispute resolution from the perspective of Mediator, equality of parties with the willingness of the parties to go for settlement of dispute with minimal utilisation of resources and in a cheaper and cost-effective manner. The positives of the Mediation are first and foremost, the legality in the eyes of law in dispute settlement. Secondly, the process enables one to sit down and express their issues in a structured and less cumbersome and flexible manner in an environment, which is assisted by counsels of the clients. Thirdly, this also enables the parties to negotiate and to analyse all the options and to arrive a solution that would also prevent imbalance of traditional and hitherto mode of arriving at solution, which are lengthy and inconvenient to parties.

In the personal dispute space, the matrimonial disputes are getting solved and have opened the vista of opportunities to listen to the parties and reach a solution. It also has the advantage of preventing and avoiding the litigation process which saps one of the mental and cost associated with carrying on the lengthy and cumbersome settlement in Courts of Law. It is pertinent to mention that when if the parties fail to arrive at a solution via the 'Alternate Dispute Resolution', they can continue further as the suit is returned to the Court where it was documented. The system of looking at alternate mode of arrive at solution is in sync with the adjudicatory judicial process of arriving at a solution and thereby, avoiding and preventing load on the Hon'ble Courts. The Indian judicial system is primarily based on the philosophy of exhausting all the options at the lower judicial setup before arriving at the doors of the higher judiciary.

The solution of Mediation achieves the purpose by enabling the Mediators to solve the matter expeditiously and following the rules and in conformance to the ambit of solutions as enshrined in the provisos of legal enactments. Pertinently, not only the process enables to

avert the expanding loads on the Court but also enables the parties to consider the opinion of the Mediator at their own discretion. The suggestions of the Mediator are not binding on the parties. The mediator has the option to meet the parties separately or both of them together as per the convenience of the parties.

Trained Mediators- A Quintessential Factor

The skill and talent of the Mediator plays a pivotal role in the entire process of Mediation. Though the role of the Mediator is that of a facilitator, the fulcrum of the success of the mediator depends on the way and the conduct of the Mediator. There are two types of Mediation centres, one that of Court annexed mediation centre and the other outside the complex of the Court. There are options for opting for mediation by parties' pre-litigation and post-litigation. The applicability of Mediation to solve commercial disputes requires the mediator to exhibit and demonstrate subject matter expertise, where the nuances of the business have to be understood by the mediator, so that parties are enabled to arrive a solution that is amicable at the same time financially viable.

In the commercial space, the option of opting for mediation could be based on 'Cost-benefit Model' and 'Long term sustainability'. The mediator has to demonstrate the art of negotiation and an ability to carry on the process of 'plea bargaining' as both the parties look to the 'zone of convenience' to arrive at a solution. In cases of personal disputes, the mediator should be able to 'empathise' rather than to 'sympathise' with the parties involved in the suit. The growing importance of Mediation to arrive at solution for matrimonial disputes has been a success story which has not only being able to find solution but also enabled the court to concentrate on other litigation issues. Training and awareness of mediation has to be multi-level and multi-dimensional, it has to be all inclusive process to educate and make them aware of the scope and ambit of mediation as a viable potent tool for meeting the ends of justice and for efficacious delivery of justice.

Mediation providing impetus to Justice Delivery

The vital characteristic of Mediation has been that of voluntary nature as an option for the parties; its non-binding and interest-based procedure which ensures confidentiality for the parties involved. The parties could terminate mediation at any time, if they feel it does not appeal to them. The decision has a non-binding characteristic which makes it a viable option, where the mediator assists the parties to arrive a negotiated solution. This becomes quintessential for parties who are not even at talking terms with each other. Unlike, the arbitrator, the mediator is not a decision maker, but a catalyst to the process of finding a solution. The solution primarily in mediation include due consideration to varied factors such as financial, social, cultural, business and personal interests as well. The principle of 'Confidentiality' ensures that parties when weighing the option need not be bothered by the future consequence beyond the realm of mediation. Mediation ensures a holistic approach to decision making for arriving at a negotiable ground for effectively reaching at a solution that is significant not only for the parties but also for the long term goodwill of the stakeholders in the value chain of business. In economically advanced countries including Australia and Canada, mediation is evolving as a viable option for alternate dispute resolution process. In

this context, even in the existing framework, Civil Mediation Council and Mediation Conciliation Project Committee would have a seminal role to play.

Mediation- From Judicial Prism

Section 89 of Code of Civil Procedure, 1908 is empowering for the Civil Courts to refer to matters for alternate dispute redressal as it took the present shape with the passage of the CPC (Amendment) Act, 1999[2]. Though at the time of commencement of the Code of Civil Procedure, 1908, a provision was provided for Alternate Dispute Redressal and thereafter, it was repealed by Arbitration Act (Act 10 of 1940) under Section 49 and Schedule 10. The old provision had reference only to Arbitration and its procedure under Second Schedule of the Code. It was thought that enactment of Arbitration Act, 1940 has a consolidating effect rendering Section 89 of Code of Civil Procedure as superfluous. However, the said Section 89 was re-invigorated with new options and not restricted to Arbitration only.

It is vital to note that recommendation and efforts of Law Commission as well as Malimath Committee report has a profound effect on the final inclusion of Section 89 of Code of Civil procedure by Section 7 of the CPC Amendment Act, 1999, which enables the Court to refer the suit which is surfacing before it to direct the parties to opt for mode of settlement outside the Court. It is pertinent to note that Order X Rule 1A of the Code of Civil Procedure has a provision to direct the parties to opt for outside Court settlement as per sub-section (1) of Section 89. It is also pertinent to note that in line with Section 23 of Hindu Marriage Act 1955 and Section 9 of the Family Courts Act 1984, the Hon'ble Court of Law is its endeavour tries for re-conciliation between the parties for the settlement of the disputes.

It is pertinent to note that in *Afcons infrastructure and Ors. v. Cherian Verkay Construction Co. (Pvt.) Ltd*.[3], the Hon'ble Supreme Court of India has laid down the broader areas or guidelines which are subject matter of Alternate Dispute Resolution. In the aforesaid case, it was ruled that disputes pertaining to election to public offices, serious cases pertaining to fraud, forgery, impersonation and cases involving criminal matters are not the subject matter of ADR. The case was seminal from another perspective, it alluded to the fact that Mediation is a essentially a private process where the mediator provides the space for the parties to deliberate and to arrive at a solution; thereby essentially the process itself bring forth ideas and solutions for the parties to arrive at a 'voluntarily' arrived resolution of disputes.

Mediation from Commercial Dispute Resolution Angle

Mediation is another vital tool to enliven the legislative intent as enshrined under Section 12A of the Commercial Court (Amendment) Act, 2018. The commercial landscape is a dynamic sector which is employment driven and business oriented sector which is looking for solution which are cost-effective and maximises the resources with its optimal usage. The revenue

[2] CPC (Amendment) Act, 1999 came into effect from 1st July 2002.
[3] *Afcons infrastructure and Ors. v. Cherian Verkay Construction Co. (Pvt.) Ltd.* 2010 (8) SCR 1053.

generated and constant endeavour for cost saving models of addressing commercial disputes is in tandem with the basic essence and philosophy of 'Mediation'. The conceptual base of 'plea bargaining' in management arena where the cost-effective solution for sustainability and viability of business is provided the needed traction with the "mediation" working a potent tool for arriving at a solution for the business problems. The plenitude of business solution is augmented by finding solution that is viable from revenue and cost structure of business at the same time upholding the golden scales of 'Goodwill' which is intangible strength of the business and brand equity of a company.

Technology in Mediation

Technology is a dynamic field which is changing with the passage of time. The advent of disruptive technologies, Big Data, Internet of Things (IoT), Data Analytics, Blockchain technology processes, Conferencing Techniques, Data warehousing and Encryption technology are changing the landscape of how business and legal arena functions. Mediation as a framework and a process has to be technology savvy and should be in sync and tandem with evolving technological techniques and tools. It is imperative that the success of any legal endeavour has to be technology driven and at the same time, should function is a way which is empowering the common citizenry of the country. The technology would also play a vital role in training, human resource development, education and awareness of the stakeholders in this endeavour of taking mediation to the last mile as a viable option of alternate dispute resolution technique.

Data protection as the building block for the confidentiality of the parties could play a quintessential role for the wider superset of Data Privy. Building on the international best practices and benchmarking the processes in a systematic, structured and concerted manner are some of the important milestones which would strengthen the structure on which the alternate dispute resolution framework is being built. The role of technology is a vital component where accessibility, availability and affordability are the three A's which has to be review and refurbished resulting in bolstering the system of dispute resolution in an environment that is empowering and technology driven at the same time. It is vital to note that technology would be employment generating where the Central Government initiatives of Digital India, make in India, Startup India and Stand-Up India, Atal Tinkering Labs, Innovation Hub model through hub and spoke model of development of Creativity Driven Labs would encourage more participation of technology brains of the country.

Awareness on Mediation

Pre-litigation mediation training programme is the need of the hour. Proper awareness at international and national forums would provide the edifice for bulwark and foundational base for the sustainability of mediation as a viable option of alternate dispute resolution. Identifying the stakeholders in the value chain of business is another aspect which cannot be disregarded. Training programmes for the judicial fraternity, retired judges of the Apex Constitutional Court including Supreme Court and the High Courts would have be bolstered with training programmes for advocates. The proper systemic and institutional mechanism to strengthen the awareness endeavour with District/Sub-divisional Court Bar Associations and

Advocates would go a long way in solving the issues pertaining to this endeavour for sensitising citizenry for seeking justice and opting for alternate mode of resolution of disputes.

Conclusion

The success story for any legal endeavour has to be all inclusive process that is citizen-centric and driven with the objective of addressing the issues of the parties in an amicable manner. Mediation as a option for Alternate Dispute Resolution is an endeavour to look at Win-Win scenario where the parties are not at loss, rather they benefit not only from the end result but also from the process of mediation as a whole. It is positive from the prism of reducing the pendency of the cases in a significant proportion with the advantages of solution arrived at by parties themselves. Mediation has seen a huge success in matrimonial dispute and family personal cases including property subject matter. The commercial dispute resolution vis mediation is taking shape in India and helping the parties to resolve disputes in cost effective manner expeditiously.

The current Mediation Bill, 2021 has to be seen in the perspective of Institutional Mediation in the light of the technological developments and changing dynamics of the business. With the passage of time, the training and awareness of Mediators and their capacity building for taking up cases in the domain of mediation would be a quantum step in the direction of judicial process of providing justice in a timely fashion. The common adage of 'Justice delayed is Justice denied' could be tackled in an effective and efficacious manner by embracing 'Mediation' as a tool for providing justice to the seeker and potential litigant, without going through the litigation process in adversarial system of justice in Courts of law. The positives of rendering justice is a time-bound manner would strengthen the judicial edifice and thereby upholding the doctrines of '*equity, fairness and good conscience'*, the basic principles on which the edifice of judicial system is being built in India's vibrant democracy.

Analysis of Madhya Pradesh Lokayukt Evam-Up Adhiniyam, 1981

Divya Kathar[1]

Introduction

Lokayukta institutions are statutory bodies without any constitutional status. They are "ombudsman" and they conduct an inquiry into the allegations of corruption against certain public functionaries and for other related matters. The Administrative Reforms Commission of India proposed that the Scandinavian 'independent Ombudsman' system be incorporated as the existing redressal mechanism is ineffective.

Corruption is the primary problem in India. There are extensive issues regarding leakages in PDS, 'fixing' of public contracts, crony capitalism and kickbacks which regularly undermine confidence in the political process. The erosion of public trust brings with it its own sets of problems, a slew of other issues like economic losses, no capital flow and foreign investment, and disregard for established regulatory mechanisms and legal processes.

State legislations govern Lokayukta, their powers vary according to the autonomy rendered to them by these legislations, as well as the relationship with the state government, which always in a position to trammel the effective functioning of Lokayuktas, as the Lokayukta depends upon the state for assistance in matters of enforcement of orders, directives etc.

The proper functioning of the Lokpal at the Centre is like a distant dream despite lip-service by the government. The states that have adopted Lokayukta are: Orissa (Orissa Lokpal and Lokayukta Act, 1995), Rajasthan (The Rajasthan Lokayukta and UP-Lokayuktas Act, 1973), Maharashtra (The Maharashtra Lokayukta and UP Lokayuktas Act, 1971), Uttar Pradesh (The U.P Lokayukta and UP-Lokayukta Act, 1975), Bihar (The Bihar Lokayukta Act, 1973), Andhra Pradesh (The Andhra Pradesh Lokayukta and UPA-Lokayuktas Act, 1973), Karnataka (The Karnataka Lokayukta Act, 1984), Madhya Pradesh (The Madhya Pradesh Lokayukta and UPA-Lokayuktas Act, 1975), Gujarat (The Gujarat Lokayukta and UPA-Lokayuktas Act, 1975), Delhi (Delhi Lokayukta and Up-Lokayukta Act, 1995), Kerala and Uttarakhand (Uttarakhand Lokayukta Act, 2011), Himachal Pradesh (The H.P Lokayukta and UPA-Lokayuktas Act, 1973), Assam (The Assam Lokatukta and UPA-Lokayuktas Act, 1985), Chattisgarh (Chhatisgarh Lok Aayog Adhyadesh, 2002), Goa (The Goa Lokayukta Act,

[1] ***Assistant Professor, APN Law College Jabalpur (M.P.)***

2013), Haryana (The Haryana Lokayukta Act, 2002), Jharkhand (Jharkhand Lokayukta Act, 2001), Punjab (Punjab Lokauyukta Act, 1996).[2]

Appointment Procedure

The Governor has the power to appoint Lokayukt and one or more persons as Up-Lokayukt for conducting investigations according to the provisions of this Act.

a) The Lokayukt is appointed after consulting with the Chief Justice of Madhya Pradesh High Court and the Leader of the Opposition in the Legislative Assembly (if there is no leader then a member selected by the opposition in a manner as per the directions of the Speaker).
b) Up-Lokayukta shall be appointed after consulting with the Lokayukta, and the Chief Justice of a High Court should be consulted where the Lokayukta to be appointed is a sitting Judge of a High Court there.

Qualification

a) The person appointed as a Lokayukta should be a Judge of the Supreme Court or he can also be a Chief justice or a Judge of any High Court in India.
b) An Up-Lokayukta must be a judge of a high court in India, a former secretary to the government of India, or someone who formerly held a position with the central or state government with a salary at least equal to that of an Additional Secretary to the government of India.

Oath and Administrative Control

Lokayukt or Up-Lokayukt shall make, subscribe an oath before the Governor. The lokayukta will have the power to control administratively the Up-Lokayukta for the purpose of disposal of investigations under this Act, the Lokayukta may issue general or special directions to the Lokayukt considered necessary by him and he may make over any case to Up-Lokayukt for disposal of case. But this will not empower the Lokayukta to question any finding, conclusion or recommendation of Up-Lokayukta.

Term of office and other Conditions of service

The Lokayukta or Up-Lokayukta shall not hold any office of profit or be a member of Parliament or a State legislature. He must not be a member of any political party or an officer of a cooperative society. He is not allowed to operate a business or engage in any profession. and if he enters this office then he shall resign from the office which he holds, if he is connected with his political party sever his connection and if practicing any profession he must suspend practice of such profession.

[2] Shefalika Narain, The Requirement of Lokayukta in India, IJPS (2019) https://www.ijsp.in/admin/mvc/upload/60102_THE%20REQUIREMENT%20OF%20A%20LOKAYUKTA%20IN%20INDIA.pdf.

Term of office

The tenure of a Lokayukta or Up-Lokayukta is of six years and he shall not be eligible for the second term. If the Lokayukt recommends then the term of Up-Lokayukt could be extended for a maximum period of three years.

Removal and Resignation of Lokayukta

Lokayukta and Up-Lokayukta may give their resignation to the Governor. The Lokayukta shall be removed from his office by the order of the Governor. The said order shall be passed following an address by the Legislative Assembly of Madhya Pradesh to the Governor in the same session that is supported by a majority of the entire membership of the Legislative Assembly and by a majority of not less than two-thirds of the members present and voting for removal on the grounds of proven misbehaviour or incapacity.

The removal of a judge is provided in the Judge (Inquiry) Act, 1968, the procedure for the presentation of an address and the investigation and the proof of misbehaviour and incapacity of the lokayukta subject to necessary modifications will apply to the removal of the Lokayukta.

If a vacancy occurs by reasons such as death, resignation, removal or for any other reason then the Governor may direct the Up-Lokayukta to act as Lokayukta. When the Lokayukta is not able to discharge his functions due to illness or any other reason then the Governor may by order direct the Up-Lokayukta to perform his functions. When the Up-Lokayukta is acting like Lokayukta, he will have all of the responsibilities and privileges of the position, as well as the salary, benefits, and perquisites listed in the Second Schedule. When the Lokayukta or Up-Lokayukta ceases to hold office then the said person shall be ineligible for further employment in any cooperative society, Government Company, or Corporation which is under the administrative control of the Government of Madhya Pradesh.

The Lokayukt's salary, perquisites, pension, and other employment terms must be consistent with those that were available to him prior to appointment under the High Court Judges (Conditions of Service) Act of 1954 or the Supreme Court Judges (Conditions of Service) Act of 1958, as applicable.

Jurisdiction

The Jurisdiction of Indian ombudsman is exercised when there occur irregularities, non-action by the authorities, maladministration and illegality of jurisdiction or procedure. There is no uniformity of Lokayukta in terms of covering authorities. In addition to this permission is required to investigate cases relating to officials above a certain rank. The matters which are mostly within its purview are-matters of pension, gratuity, PF, any claims relating to retirement, removal or termination of service.

The matters which are usually excluded from the jurisdiction of Lokayukta are:-

- Matters relating to State security
- Actions taken relating to appointments, payment and other matters of employment.

- The complaints where there is an alternative remedy present, before any Tribunal or Court of Law.
- Actions in which a public inquiry is ordered like under the Public Servants (Inquiries) Act,1950.
- The complaints which are not made as per stipulated period of limitation in the Act i.e. beyond the period of limitation (generally 3-5 years).
- A matter where there may arise a bias

Inquiry

The Lokayukta and Up-Lokayukta in Madhya Pradesh shall not conduct inquiry in respect of-

1. Any formal or public inquiry ordered under Public Servants(Inquiries) Act,1950.
2. Inquiry which has been referred under the Commission of Inquiry Act, 1950; or
3. An allegation against a public employee, if the complaint is brought after a period of five years has passed since the alleged act of conduct is said to have occurred.

Meaning of Allegation

Allegation under section 2(b) of the Act means any affirmation that the public servant

i). "Misused his position to gain or favour himself or to any other person or to cause undue harm to any person;

ii). was actuated in the discharge of his functions as such public servant by improper or corrupt motives;

iii). is guilty of corruption; or

iv). is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member of his family or by some other person on his behalf."[3]

Procedure Relating to Complaints

Every complaint which involves an allegation shall be according to the prescribed procedure along-with a deposit of twenty-five rupees. The complainant shall swear in affidavit before the Lokayukta or any officer authorised by the Lokayukta. In case of a complaint against a public servant where Chief Minister is not the competent authority then neither the deposit nor the affidavit is required. But both the affidavit and deposit may be directed if the Lokayukta or Up-Lokayukta opines it as necessary.

If a person in police custody, a jail, an asylum, or another facility for the insane person writes a letter to the Lokayukta, the letter must be forwarded to the Lokayukta unopened and without delay by the police officer or person in charge of that facility. The Lokayukta if deems fit he may treat the letter as complaint. A person who makes any false complaint in a wilful and malicious manner under this Act, if he is convicted, he may be punished with rigorous imprisonment which may extend to two years or with fine and fine may extend to five thousand rupees or with both and the person may be ordered to pay compensation to the person against whom the complaint was made. No court shall take cognisance of an offence

[3]Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981,§ 2(b), No. 37 M.P. Act of 1981

punishable under this section, the exception to this is when a complaint is made by or under the authority of the Lokayukta or Up-Lokayukta. Additionally, the complaint shall be considered formally proven if it bears the signature and seal of the Lokayukta and Up-Lokayukta, and the evidence of the Lokayukta and Up-Lokayukta shall not be required for the purpose.

Procedure in respect of enquiry (Section 10)
The Lokayukta or Up-Lokayukta will select the process that must be followed for the investigation, and they will make sure that the natural justice principles are upheld.

Applicability of Evidence Act and Code of Criminal Procedure
The general principles of powers conferred by the Evidence Act,1872 and Criminal procedure Code,1973 shall apply to the enquiry procedure before Lokayukta or up-lokayukta in the matter of:-

"(a) summoning and enforcing the attendance of any person and his examination on oath;

(b) requiring the discovery and production of documents and proof thereof;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof, from any Court or office;

(e) issuing commission for examination of witness or documents; and such other matters as may be prescribed:

Provided that no proceeding before the Lokayukta or Up-Lokayukta shall be invalidated only on account of want of formal proof if the principles of natural justice are satisfied :"[4]

The statement on affidavit shall be a sufficient evidence if it is necessary to summon any Government servant in his official capacity.
"Proceeding before Lokayukta or Up-Lokayukta shall be deemed to be a Judicial proceeding within the meaning of Section 193 [and Section 228] of the Indian Penal Code."[5]

The Lokayukta or Up-Lokayukta is considered to be a Court within the meaning of Contempt of Courts Act, 1971.

Reports of Lokayukta and Up-Lokayukta

1. If the Lokayukt or an Up-Lokayukt finds the charges to be true after conducting an inquiry, he or she must report his or her findings and recommendations to the appropriate authorities in writing, together with any supporting documentation.
2. The competent authority must review the report submitted to it pursuant to subsection (3), if applicable, the Up-Lokayukt, action taken or intended to be taken on the basis of the report, within three months of the date of receipt of the report.

[4] Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981,§ 11, No. 37 M.P. Act of 1981.
[5] Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981,§ 11 (2), No. 37 M.P. Act of 1981.

3. The case will be closed under notice to the complainant, the public servant, and the relevant responsible authority if the Lokayukt or Up-Lokayukt is pleased with the action taken or intended to be done on his recommendations. In any other situation, he may write a special report about the issue to the Governor and tell the relevant complainant if he believes the case merits it.
1. The Governor shall receive an annual report from the Lokayukt or the Up-Lokayukt on the fulfilment of their duties under this Act.
2. If a public servant is the subject of a negative comment in a special report required by subsection (3) or an annual report required by subsection (4), the report must also include the substance of the defence offered by the public servant in question and any comments made by or on behalf of the State Government, the department of the State Government, or the public authority in question, as applicable.
3. Upon receipt of an annual report pursuant to subsection (3) or a special report pursuant to subsection (3). A copy of it plus an explanation memo must be filed to the State Legislative Assembly by the Governor.

If some matter appears to be of general public, academic or professional interest to Lokayukta, then he may exercising his discretion make available timely the substance of the cases closed and otherwise disposed off in an appropriate manner.

Report of complaint against the Chief Minister or Neta Pratipaksha
The Lokayukta shall send his report to the Governor with his recommendations and the Governor shall take action as he deems fit and appropriate on the report. The Legislative Assembly must receive both the Lokayukta's report and the order that was made.

Staff of Lokayukta and Up-Lokayukta
The Lokayukta may appoint offices and other employees for assistance of Lokayukta and Up-Lokayukta for the purpose of performing their functions. The Lokayukta or an Up-Lokayukta for the purpose of conducting enquiries use the services of:-

- Divisional Vigilance Committee (under section 13-A)
- any officer or investigation agency of the State or Central Government with the consent of that Government; or
- any other person or agency.

Divisional Vigilance Committee is constituted for each division by a notification in the Official Gazette. The Committee consists of three members:

- “one shall be retired Judicial Officer not below the rank of a Civil Judge Class I or a retired executive officer having experience of Court's working not below the rank of a class I Officer of the State Government.
- One of the members shall be the Chairperson of the Committee. The Chairperson and the members shall be appointed by the State Government [on the recommendation of] Lokayukta.

The member of this Committee has a term of 3 years when he is appointed and he shall be eligible for re-appointment. The member shall not hold any office after he has attained the age of 70 years. The chairperson may resign before expiration of his term by sending a letter to the Lokayukta. The minimum age to be appointed as a member is 35 years old. Where there is no distinct committee, the State Government may allow a Divisional Vigilance Committee to exercise jurisdiction over another division as well. An enquiry may be done by a Divisional Vigilance Committee into a complaint referred to it by a Lokayukta or Up-Lokayukta and submit the report to the Lokayukta or Up-lokayukta.

The committee shall ensure the observance of the principles of natural justice. The Committee shall have the powers under the CrPC, 1973 in the following matters:-

"(a) Summoning and enforcing the attendance of any person and his examination on oath.

(b) Requiring the discovery and production of documents and proof thereof.

(c) Receiving evidence on affidavits.

(d) Requisitioning any public record or copy thereof from any Court or office.

(e) Issuing commission for examination of witnesses or documents and such other matters as may be prescribed."[6]

The functions of the Committee shall be discharged under the administrative control of the Lokayukta, he may issue general or special directions for the smooth and efficient functioning of the committees.

Secrecy of Information

Any information obtained by Lokayukta or Up-Lokayukt or from the members of the staff for investigation purpose and any evidence recorded or collected shall be treated as confidential. The Lokayukta, Up-Lokayukta or any public servant shall not be compelled to give or produce evidence relating to information recorded or collected. This shall not apply to the disclosure of any information or particulars for the purposes of :-

- The inquiry or any report or for any action or proceedings to be taken on such report.
- Any proceedings for an offence under the Official Secrets Act,1923, or any offence of giving or fabricating false evidence or for proceedings under Section 15
- Any other purpose as may be prescribed.

The protection involved in this Act to Lokayukta or Up-Lokayukta or against any officer, employee, agency or person under section 13 no suit, prosecution or other legal proceeding shall lie when it is done or intended to be done in good faith.

Suggestions by Lokayukta

The Lokayukta when notices a practice or procedure and apprehends corruption or mal-administration, he may draw attention of the Government and may suggest improvement in the practice or procedure as he deems appropriate.

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[6] Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981,§ 13(6), No. 37 M.P. Act of 1981.

Rules

Power to make rules

The Governor by notification may make rules to carry out the provisions of this act into effect. The Manner and mode of selection of Chairperson and Members of the Divisional Vigilance Committee, their allowances, conditions of service, staff of the committee and allied matters shall be made in consultation between the State Government and Lokayukta. The rules so made shall be laid on the table of Legislative Assembly. Section 18 clarifies that the Lokayukta or an Up-Lokayukta is not authorized to enquire into an allegation against:-

- "Any member of the judicial service who is under the administrative control of the High Court under Article 235 of the Constitution of India;
- the Chairman or a member of the Madhya Pradesh State Public Service Commission."[7]

Rules and other Acts

Madhya Pradesh and Karnataka have separate agencies for conducting investigation which is headed by the DGP, (states which do not have these are compelled to hire private investigations for carrying out investigations).

The Madhya Pradesh Special Police Establishment Act, 1947 makes provisions for constituting a special police force for conducting investigation of offences which affect the public administration. The act contains provisions describing the jurisdiction of the forces, the superintendence and administration of the Special police Establishment.

The Madhya Pradesh Lokayukta Evam UP-Lokayukta (Investigation) Rules,1982 provides rules relating to investigation like:-

- The procedure prescribed under section 340 of CrPC, 1973 shall be followed for matters pertaining to Clause(b) of subsection (i) of section 195 of CrPC and the complaint made under section 340 shall be signed by the officer so appointed for this purpose by the Lokayukta.
- In cases not covered by the regulations, the Lokayukta or Up-Lokayukta shall have the authority to control proceedings, investigations, and inquiries.
- When an investigation is conducted against a public servant then after a copy of the complaint or the grounds of investigation has been served on the concerned public servant, then the Lokayukta or Up-Lokayukta shall render an opportunity to him or his representative so authorised to inspect or copy the affidavit of the complainant and other documents filed in support of such statement, complaint or affidavit.
- The Lokayukta may issue the directives required to carry out the requirements of the Acts, the rules, and the relevant order.[8]

The State government in consultation with the Lokayukta has made the Madhya Pradesh Lokayukta and Up-Lokayukta (District Vigilance Committees) Rules,1995. The inquiry is

[7] Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981,§ 18, No. 37 M.P. Act of 1981.
[8] Madhya Pradesh Lokayukta Evam UP-Lokayukta (Investigation) Rules,1982.

done only in those matters which are forwarded by the Lokayukta and Up-Lokayukta for enquiry. The committee submits its inquiry reports on the complaint within a period as directed by the Lokayukta/Up-Lokayukta.[9]

Cases

1. *In Kanhaiyalal Vishwakarma vs. State of M.P*.[10]
   In this case the petitioner filed a PIL alleging several financial irregularities committed by the tahsildar. It was held that the petitioner has a remedy under the M.P. Lokayukta Act of 1981, which is a complete code and it should be resorted at the first instance. Act has been enacted with an objective to investigate cases of corruption in public life. Public Interest Litigation in such cases is not entertainable.

2. *Abdul Naim vs State of M.P*.,2014(4) M.P.L.J 580
   There were allegations that the Block Development Officer has abused his official position and misappropriated the amount sanctioned for various schemes and works. Allegations made by the petitioner is required to be enquired into in an appropriate forum, where a detailed inquiry would be conducted as per the provisions, affording a reasonable opportunity of hearing to the Respondent. The petition was dismissed as the remedy to lodge complaint regarding the allegation under the Madhya Pradesh Lokayukt Evam-Up Adhiniyam, 1981 was available to the petitioner.

3. *Harish Sharma vs. State of M.P*.,2011(1) M.P.L.J.556=2011(2)MPHT 350
   The appellant was appointed to a post in connection with the affairs of the State of M.P., relating to anti dacoity operations, he was remunerated by the government. FIR was lodged against him that he had acquired assets disproportionate to the income from complainant's known sources. It was held that appellant being Tahsildar Co-ordinator of Gram Raksha Samiti is public servant within the meaning of Madhya Pradesh Lokayukt Evam-Up Adhiniyam, 1981.

4. *U.K. Samal vs. Lokayukta Organisation represented through the Legal Advisor, Bhopal*[11]
   Lokayukta has the power under section 7 to get any matter investigated by the Special Police Establishment (SPE), the police agency at their disposal. He has the power to enquire into the allegations contained in a complaint or other information and he also has the power to refer the matter to the SPE at any stage of the inquiry.

5. *Dharmendra vs. State of M.P*.,2011(3) M.P.L.J. 598=2011(4) MPHT 122
   A chargesheet was issued to appellant for alleged misconduct committed by him 10 years ago. There was no material to show that the Competent Authority of State Government applied its mind independently and examined report from the Lokayukta Organization. It is contrary to the spirit of section 12(2) of the Act of 1981. The order dismissing the writ

[9] District Vigilance Committees) Rules,1995.
[10] 2011(1) M.P.L.J.472=2011 MPHT 20.
[11] 2011(3) M.P.L.J 445.

petition which challenged action of State Government in issuance of chargesheet is liable to be set aside.

6. *Smt. Meena Mehra v. The Lokayukta Organization*
There is a difference between a case where there is no legal evidence produced or the evidence if produced fails to prove a charge manifestly, and a case where there is availability of legal evidence, which, on appreciation may or may not support the accusations. The present case requires investigation and there is no compelling and justifiable reason to interfere under section 482 of the CrPC (inherent powers) nor under the writ jurisdiction.

Record of Complaints

Period	Complaints received in a year	Total No. of Complaints	Complaints filed after preliminary Examination	Complaints dent to department for necessary action	Complaints registered for enquiry	Complaints Pending at the end of the year
2010-2011	4407	4414	3547	08	834	25
2011-2012	4923	4948	3987	11	894	56
2012-2013	6135	6191	5206	12	857	116
2013-2014	4888	5004	3917	10	1044	33
2014-2015	5687	5720	4675	-	915	130
2015-2016	5023	5153	3692	03	1034	424
2016-2017	5945	6369	4064	418	1644	243
2017-2018	6926	7169	5154	-	1665	350

The number of the complaints received by the Lokayukta is increasing.

Controversies

- In the past decade, the Special police Establishment of Lokayukta has found a number of patwaris and peons especially in the revenue department amassing huge wealth (in crores). The civil society has criticised that the Lokayukta resorts to ‘selective targeting’. Despite complaints of corruption, ministers and bureaucrats do not seem to be on the radar of state Lokayukta’s radar.

- The Chief Minister himself has admitted that he was under the Lokayukta scanner and that, some 2600 cases of corruption were pending against him and his cabinet.[12] Many of the cases have been closed and the Chief minister and his wife has been exonerated of the charges.

Conclusion

The office of Lokayukta has more or less become a parking spot for the retired bureaucrats with little or no power; nonetheless in states like Karnataka, the institution has been effective

[12] Available on https://www.thehindu.com/news/national/other-states/Shivraj-admits-being-under-Lokayukta-scanner/article165 60589.ece (accessed on 10 June)

because there is no dependence on the state government for assistance in enforcing authority. Karnataka is one of the most powerful Lokayukta in the country. Many states consider the complaints against the administration of the state to be a part of the jurisdiction exercised by the Lokayukta, while many Lokayukta of other states fail to recognize this jurisdiction. Some states include public functionaries within the ambit of the Lokayukta, while the other states go to an extent of enlarging the scope of the Lokayukta, while some states have excluded them in a systematic manner, other states extend the scope of Lokayukta's power to include actions of Registrar's and Vice chancellors of universities.

The present institutional setup of Ombudsman is inadequate to address the problems of Corruption and failure of governance. The institutions have very little independence and until the executive influence is addressed, there is no use of further legislation.

A person who is filing a complaint under this Act has access to remedies through an appeal, revision, review, or any other matter in addition to the provisions of this Act and any other enactment or rule of law that has similar provisions and no provision shall put a limitation or effect the right of a person in obtaining remedy.

There is also a provision of transferring the pending complaints from the office of Vigilance Commissioner to Lokayukta or the Up-Lokayukta. A complaint which is disposed of by the Vigilance Commissioner shall not be entertained by the Lokayukta or Up-Lokayukta under this Act. But they may enquire into any complaint which is disposed of by the Vigilance commissioner within a period of two years before the commencement of this Act if he considers necessary to meet ends of justice. Lokayukta though has separate wing for investigation but that may not help when the chief ministers are involved in the cases and they easily escape. Generally, the reports of Lokayukta are not even read and is just dumped, but in most cases ombudsman acts as an aid to legislature, executive and citizens.

Suggestion

The institution should be given powers to take action like dismissing any person, including the Chief Minister of a state if found guilty. Lokayukta must be given independent investigation agency, independent enquiry agency and own prosecution.

Artificial Intelligence and Legal Disruptions: An Analysis

Abhimanyu Gandhi[1],
Gaurav Gupta[2]
&
Vikramaditya Buddhist[3]

Introduction

Man invented the machine to ease his burden by performing strenuous tasks repeatedly at a faster pace. Popular novels, such as I.Robots[4]. When the novel *I.Robots* was first published in 1950, the general perception was that intelligence in machines was just the wild imaginations of dreamy novelists. However, only seven decades later, intelligent machines are a part of our daily lives.

Machine learning was a technological advancement have enabled certain types of machines to learn and perform some tasks on their own. The concept of artificial intelligence is no longer foreign. Artificial Intelligence (AI) is the branch of science concerned with creating machines equipped with human-like intelligence to act in a human-like fashion and exhibit human capabilities. AI development is aided by a variety of disciplines, including computer science, psychology, philosophy, sociology, mathematics, biology, and neuron science. In its literal sense, artificial intelligence refers to machine intelligence that is used to reduce human workload. Artificial intelligence can mimic human-like qualities such as planning, reasoning, problem-solving, speech recognition, thinking, and many other activities; the difference is that it can do so much faster and more efficiently.

Artificial intelligence (AI) has been recognized as a widely applicable 'general-purpose technology[5] with the potential to disrupt many social behaviors practices, and institutions. AI is a set of techniques that enable improvements in the accuracy, speed, or scale of machine performance across complex or large (data) environments, with the goal of replacing or improving human performance in a variety of specific tasks such as decision-making, pattern recognition, and prediction. As a result, as society transitions into a 'digital life-world'.[6] AI

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[3] Student, B.A.LL.B. VII Semester, Vasudev College of Law, Haldwani, Nainital.

[4] 1950, a fixup (compilation) novel of science fiction short stories or essays by American writer Isaac Asimov, depicted machines as intelligent beings capable of acting on their own, making decisions, creating things, etc.

[5] Manuel Trajtenberg, 'AI as the next GPT: A Political-Economy Perspective' (National Bureau of Economic Research 2018) Working Paper 24245 accessed 22 October 2018; Ajay Agrawal, Joshua

[6] See generally Jamie Susskind, Future Politics: Living Together in a World Transformed by Tech (Oxford University Press 2018).

technology raises fundamental questions of power and control across society[7], and is expected to challenge almost every sphere of human activity.

New technologies have a history of posing legal challenges.[8] What does all of this mean for the legal system, looking beyond the specific issues raised in each domain or sector? Due to this and its widespread use, artificial intelligence (AI) has the potential to bring about significant, and in some cases seismic, changes in the legal and regulatory landscape.

AI Affordances

The concept of 'affordance' was introduced by *James Gibson* to refer to all action possibilities with an object based on user's physical capabilities.[9]The concept of affordances was subsequently adapted and modified by *Don Norman* in order to make it more useful in designing technology:

> *The term affordance refers to the relationship between a physical object and a person (or for that matter, any interacting agent, whether animal or human or even machines and robots). An affordance is a relationship between the properties of an object and the capabilities of the agent that determine just how the object could possibly be used.*[10]

Norman not only emphasized the relational aspect of affordances but also went further. distinguishing signifiers from affordances: 'Affordances determine what actions are possible. Signifiers communicate where the action should take place. We need both.'[11]

Design serves a specific function in affordances, enabling people to achieve their goals or objectives. Disruption arises from the unperceived or unrealized potential affordances of a system or artifact, resulting in unexpected or jolting discoveries of hidden or opaque affordances or lack of strong signifiers. Gibsonian conception of affordances states that a disruptive moment occurs when a previously unknown affordance is realized and used. This perspective suggests that the invention of a need is not the only disruptive moment, but also when new applications for a technology are developed and acknowledged, leading to disruptive consequences.

Legal consequences for unacknowledged advantages can arise, and overcoming the recognition barrier can provide a defense against disruption. Treaty-based responses may strengthen the legal system, but ossifying pre-identified challenges makes it vulnerable to disruption from

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[7]Hin-Yan Liu, 'The Power Structure of Artificial Intelligence' (2018) 10 Law, Innovation and Technology 197

[8]See for instance Lyria Bennett Moses, 'Recurring Dilemmas: The Law's Race to Keep Up With Technological Change' (2007) 21 University of New South Wales Faculty of Law Research Series accessed 3 July 2018; Colin B Picker, 'A View from 40,000 Feet: International Law and the Invisible Hand of Technology' (2001) 23 Cardozo Law Review 151; David D Friedman, 'Does Technology Require New Law?' (2001) 71 Public Policy 16.

[9] James J Gibson, 'The Ecological Approach to the Visual Perception of Pictures' (1978) 11 Leonardo 227

[10] Donald A Norman, The Design of Everyday Things (1988)

[11] *Ibid.*

unacknowledged affordances. Preventive frameworks have their place, but must maintain flexibility and adaptability for effective implementation.

The legal disruption model identifies three disruptive moment types, each corresponding to a specific affordance. Overcoming unanticipated barriers is crucial for legal disruption caused by technology. Displacement or destruction is the main channel, while Legal Development is the other. Extra caution is needed to identify and address disruptive situations that may go unnoticed.

Legal Displacement

The disruptive moment in legal displacement response involves the use of AI in creating and enforcing normative law, a first application of legal automation. The second aspect involves transforming the legal system's embeddedness in regulatory modalities, allowing regulators to gradually "nudge" or fully "technologically manage" their behavior.

Legal Destruction

The last pathway in the legal disruption model, legal destruction, is closely related to the practical underpinnings and boundaries of legal systems. In this category, a disruptive event is responded to by regulatory initiatives that ultimately fail over time. This can happen when there are insurmountable political or practical barriers to the regulation of the new technology, making it impossible or impractical to advance the law. Alternately, the underlying conditions that uphold the legal order may become less stable, which would result in legal destruction. Insofar as it alters the status quo of the current legal system, legal destruction is thus most frequently the result of an extrinsically disruptive moment, though it can also result from an intrinsic one with unexpected outcomes. It can be further divided into "erosion" and "decline"—soft and hard versions, respectively.

Legal Issues Created By AI:

Issue of Liability

Think about machine learning algorithms that provide solutions to issues that are unusual to human operators. Even by itself, this scenario raises a number of issues that are relevant to various legal disciplines. Who should be granted a patent monopoly for inventions independently developed by an algorithm that itself was derived from machine learning techniques. Autonomous systems are flexible, intelligent, and capable of "decision-making". There is no clear distinction between the levels of control, which range from partially controlled to fully autonomous systems. A proportional decrease in the level of human involvement or interaction can be seen across the spectrum. The level of autonomy used must be appropriate for the task.

The current doctrine in tort, contract, and agency law will be put to the test as intelligent machines like robots become even smarter, more independent of human supervision, and depend more and more on artificial intelligence for their performance. If there is harm to a human or damage to property, attributing liability to a manufacturer or seller or any human in the chain of distribution will be difficult. Courts are frequently required to dissect cutting-edge technology and apply unsuitable case law to determine liability in situations where artificial intelligence is alleged to have caused harm. The very human concepts of fault, negligence,

knowledge, intent, and reasonableness, for instance, are frequently at the heart of common-law tort and malpractice claims. In the *United States v. The Athlone Indus, Inc*[12] the court declared that "robots cannot be sued" and instead discussed how the maker of a faulty robotic pitching machine is liable for civil penalties for the machine's flaws. As a result, courts will continue to struggle with the issue of determining liability as the use of artificially intelligent technologies, such as autonomous machines, gains widespread acceptance.

Considering the Body

Artificial intelligence plays a significant role in various technologies, including industrial robots, electronic agents, and virtual avatars. These intelligent entities, including our alter egos, may exist as virtual avatars in the digital economy. However, these technologies also pose legal challenges when used as stand-in actors, digital assistants, or cyber hacking tools.

Artificial intelligence offers a solution to common-law traditions, as it does not require a physical body to exist. This raises special legal issues, as it does not require a physical body to exist, and even in the physical world, cases may still be difficult to prove. This raises questions about the legal system's ability to account for avatars' activities in the physical world. Artificial intelligence's fundamental design raises questions about software distributors' liability under tort law, as they are responsible for damages caused by software bugs, unlike physical presence. Industrial accidents, are another example, involving automated machinery are caused by software and algorithms controlling their behavior. Legal challenges arise from these elements, making legislation governing intelligent machines focus on AI algorithms and analytical methods.

How Do We Apply Mens Rea?

AI has made it possible for humans and machines to coexist in the modern world. There have been many instances of accidents involving these robots and AI. Numerous incidents involving fatalities occurred recently when people were either involved in or close to specific types of robotics or AI-related transactions. Here are a few cases that substantiate it.

Joshua Brown

As the first victim of an autonomous vehicle, he holds the notorious distinction. On May 7, 2016, his Tesla Model S struck a tractor-trailer. Because the bright sky prevented the AI from seeing the white part of the tractor-trailer that was blocking the road, the car continued straight while losing its roof.

Robert Williams

He is considered the first person to be killed by a robot. On January 25, 1979, while working in a Ford dealership A robot was supposed to be retrieving some casts, but it kept giving incorrect information about the number of casts, leaving Williams with no choice but to climb up, and when he did, he was hit by the robot's arm.

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[12] *United States v. Athlone Indus, Inc*. 746 F.29 977 (3d Cir. 1984)

African Soldiers Killed by Robo Canon

When an anti-aircraft weapon started firing on its own in 2007, it resulted in the deaths of 9 South African soldiers and the serious injuries of 14 more. The weapon was an Oerlikon GDF-005. It was made to lock on to "high-speed, low-flying aircraft, helicopters, unmanned aerial vehicles (UAV), and cruise missiles" using passive and active radar, laser target designators, and range finders. It can even reload on its own when in "automatic mode," which might have caused more chaos.[13]

These are just a few examples of the "murders" committed by AI, though they cannot legally be referred to as murders because they typically lack the essential component of *mens rea*. It's only half a crime when a robot kills someone. Nevertheless, it is still illegal (*actus reus*). Two challenging questions that lawyers must address are how to establish men's rea and how to ascertain the motivations behind the robot's criminal behavior. Since a robot is programmed to perform specific tasks and say only a limited set of things, even cross-examining one is impossible. Robots today are not the same as those in Hollywood movies.

AI and IPR

Artificial intelligence will impact copyright, trademark, and patent law, as intelligent machines and software evolve. Intellectual property, defined as nonphysical non-physical property, is based on ideas and values.[14]

Artificial intelligence has the potential to produce content that could be considered intellectual property, but it may also violate others' rights. Intellectual property rights are a form of ownership, allowing owners of patents, trademarks, and copyrighted works to profit from their labor or investment. These rights are outlined in Article 27 of the Universal Declaration of Human Rights. Legal regulation for individual intellectual property rights (IPRs) is largely the same across countries. A trademark must be distinctive, identifying goods or services from one source. Inventions must be novel, inventive, and industrially applicable for patentability, while creativity or originality is required for copyright protection.[15]

To protect intellectual property in the new world of technology led by artificial intelligence, law-makers must develop legal mechanisms to address infringement problems. These autonomous systems challenge conventional understandings of concepts like patents and copyrights, raising concerns about intellectual property rights and regulation of creations. Legal mechanisms must be provided to address the challenges posed by autonomous systems, which raise important issues regarding intellectual property rights and the regulation of such creations.

Patent offices worldwide do not register machine-produced work, but if AI machines can "invent" a solution to technical problems, they could commit patent infringement. This

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[13]Available on https://www.wired.com/2007/10/robot-cannon-ki/ Accessed on 20/01/2023.
[14] Justin Hughes, "*The Philosophy of Intellectual Property*" (1988) 77 Georgetown Law Journal 287.
[15] Kur A. and Dreier T., *European Intellectual Property Law: Text, Cases and Materials*, Second Edition (Edward Elgar, 2013).

confusion may arise when new inventions are produced by AI-enabled machines, as the machine/robot may be the owner of future inventions. The distribution of ownership rights among different entities and the enforcement of such rights are also confusing questions in patent laws. As society progresses, the law often follows behind, causing new difficulties for legal systems. The Internet of Things, for example, could secretly record audio of murders, self-driving cars, and high-definition video cameras. To address these challenges, fundamental concepts in intellectual property law, such as "person of ordinary skill in the art," will need to be revisited. A new standard for written description and enablement will be required, tied to proving ownership of an invention to humans or AI and instructing them of artistic skill in the creation and use of an invention.

Legal Personhood

The increasing influence of AI raises legal issues, including whether AI entities should have equal rights to humans. Integrating AI and robotics into the legal system is a workable solution, but AI's advancement may require its own rules and statutes. Will AI be treated as legal objects or subjects?

An entity must be a legal actor with legal capacity to have legal personhood status. AI entities, like robots, are not granted the same rights as real people or non-human entities. An "artificial legal person" is a legal fiction granted by the legal system to grant legal standing to non-human entities. These entities can carry out various legal acts and have rights and obligations under the law, including accountability for specific actions.

The legal system primarily consists of natural persons and artificial legal persons. Technological advancements in AI and robotic systems have challenged legal precedents and accelerated AI adoption. The Internet of robotic things and growing internet have accelerated this trend. It's crucial to consider the future of society without legal personality for autonomous AI entities, as they operate independently of human control.

The ambiguity of artificial intelligence's testifying capabilities may arise if the fiction of legal person status is granted. The Fifth Amendment's prohibition against self-incrimination was upheld in the *Schmerber v. United States*[16] case, but the Supreme Court allowed for real or physical evidence, such as a brain scan. This raises questions about whether autonomous artificial intelligence will be required to prove charges against itself through software downloads.

Judicial Approach & Its Critique

Machines lacking intelligence are often held accountable for their actions, as seen in the case of Comptroller of the *Treasury v. Family Amusement Facilities*[17]. Pre-programmed robots, lacking "skill," can only perform menial tasks, such as dancing and singing at a food establishment. This makes intelligent machines interesting and difficult to regulate from a legal

[16] 384 U.S. 757(1966)
[17] 519 A.2d 1337, 1338 (Md. 1987).

standpoint. As human-like artificial intelligence becomes more prevalent, the law becomes more questioned.

The law can handle disputes involving robots when given instructions by a programmer, as seen in *Jones v. W M Automation Inc*.[18] The case focused on the gantry loading system on a robot. As intelligent machines become more autonomous and rely on artificial intelligence, assigning liability to manufacturers, sellers, or human in the chain of distribution will challenge existing tort, contract, and agency law. Legal research and legislative action are underway to determine responsibility for autonomous AI, as drones and autonomous vehicles are becoming more prevalent.

Behurst v. Crown Cork[19] involved an intentional tort claim for a fatal injury caused by a robot's danger zone. The court ruled that the employer's refusal to reprogramme the machine was an appropriate jury question, but granted summary judgment to Seal USA. The Behurst robot was built to "unthinkingly" transfer metal from one die to the next, but if roboticists create machines that are inventive, intelligent, and capable of learning new skills, it might be challenging to place responsibility for any system failures on any individual human.

Force v. Facebook, Inc.[20] involved families, executors, and survivors of Israeli terrorist attacks. Facebook, Inc., was found to be a publisher covered by Section 230 of the Communications Decency Act, as the term "publisher" was not narrowly defined. Facebook's use of algorithms to match content with users' interests rendered it no longer a publisher. In *Bertuccelli v. Universal City Studios*[21], the court denied a motion to exclude an expert for testifying in a copyright infringement case due to an AI-assisted facial recognition analysis. The reactive approach to AI has been insufficient, and courts must now play a proactive role to address legal gaps created by AI interactions.

Regulation of AI

There are a few questions that need to be addressed when thinking about the topic of regulations, such as when to regulate, whether to do so in advance or as the need for regulation arises, and what models might be suggested. We will be better able to draw a conclusion if we can find the answers to these questions.

Government regulators should create legislation to protect the public from potential risks as AI surpasses human intelligence while stifling AI research. Professor Matthew Scherer's work on artificial intelligence suggests that a regulatory regime must define the term, as AI and robotics are not the same.[22] This is the first step in developing a policy for AI, as it is crucial to ensure

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[18] 818 N.Y.S.2d 396 (App. Div. 2006), appeal denied, 862 N.E.2d 790 (N.Y. 2007)
[19] *Behurst v Crown Cork & Seal USA*, Inc, 2007 U.S. Dist. ELXIS 24922 (D.Ore.Mar.30, 2007). 203 P.3d 207, 346 Or. 29, 2009
[20] *Force v. Facebook*, Inc., 934 F.3d 53 (2d Cir. 2019).
[21] *Bertuccelli v. Universal City Studios LLC*, No. 19-1304, 2020 U.S. Dist. LEXIS 195295 (E.D. La. Oct. 21, 2020)
[22] Matthew U. Scherer, "Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies", 29 HARV. J. L. Tech. 354, 2016.

the safety and development of AI-controlled technologies. Artificial intelligence is a rapidly evolving technology that has led to unpredictable legal disputes involving intelligent machines and virtual entities. The current legal framework will be tested by ever-smarter iterations of the technology, necessitating new legislative action to provide judges with additional guidance when dealing with systems that learn autonomously and respond in an unpredictable manner to their environment.

The Case for Later Regulations

Government regulation in the development process can hinder greater breakthroughs and discoveries, reducing economic growth in both short and long terms. Implementing too soon in the process can lead to regulatory panic, hindering developers and entrepreneurs from innovating and making significant technological advancements. This can result in other nations outpacing the regulating state in the AI arms race, which accounts for up to 80% of the wealth gap between wealthy and developing nations. In the short term, regulating AI too soon may allow other nations to outpace the regulating state in the AI arms race.[23]

Recent technological advancements, such as email, listservs, web browsers, websites, blogs, and social networks, have shown the success of government regulation. These advancements were not subject to early regulation, but they have since proven successful due to the default position for the digital economy, 'innovation allowed,' or permission less innovation. The federal government promoted a permissionless innovation agenda during the Clinton era, allowing the commercialization of the internet in the mid-1990s and passing the Telecommunications Act of 1996 without any analog-era communications and media technologies regulations. The Framework for Global Electronic Commerce outlined the federal government's policy toward the internet, stating it should develop as a market-driven arena rather than a regulated industry.[24]

Given the internet's success, it is tempting to adopt a similar approach with AI, allowing early research and development with only a very minimal regulatory structure and creating one only much later, when the sector has developed more. This strategy has following drawback:

1) It is founded on an incorrect estimation of the effect regulations have on technological advancement.
2) It misrepresents early attempts to censor the internet.
3) Because AI differs fundamentally from other emerging technologies in terms of how it works, regulatory efforts should be made frequently and early.

[23] Diego A. Comin and MartíMestieri Ferrer, "If Technology Has Arrived Everywhere, Why Has Income Diverged?" (NBER Working Paper No. 19010, May 2013), http://www.nber.org/ papers/w19010.pdf; see Robert E. Hall and Charles I. Jones, "Why Do Some Countries Produce So Much More Output Than Others," Quarterly Journal of Economics 114 (1999)

[24] White House, "A Framework for Global Electronic Commerce," Executive Office of the President, July 1997, https://clintonwhitehouse4.archives.gov/WH/New/Commerce/read.html ("Framework for Global Electronic Commerce").

The Case for Early Regulations

Early regulation is crucial for policymakers to ensure the world closely resembles their vision for AI technology. This involves careful planning, brainstorming sessions, and setting up governance structures before the industry's growth. Effective regulation allows society to collectively consider new developments and make decisions about their impact on our lives. Section 230 of The Telecommunications Act of 1996 aims to regulate internet development without raising tort liability concerns. Before the current era of technology and regulation, lawmakers struggled with how technological advancements were changing the world. The Industrial Revolution significantly altered American manufacturing, with small manufacturers producing small, limited output in local regions.[25]

A large portion of the American labor force had gathered in massive factories a century later, dwarfing the combined output of those smaller, regional artisans. Legislators eventually had to consider how their world had changed after the Industrial Revolution and how they wanted it to change, in a way that should sound familiar to policy-makers battling the anticipated effects of emerging technologies today. In factories where workers put in more than ten hours a day, they frequently came across child labor.[26]

There were no legal requirements for a minimum wage, workers' compensation, unemployment insurance, or restrictions on how much an employer could charge employees for unstated expenses like health care or environmental harm. As a result, Federal policy-makers outlawed child labor, set minimum wages, and protected worker rights. The Industrial Revolution led to the American industrial middle class, which was a product of legal reforms. AI has the potential to disrupt the Industrial Revolution, allowing productivity and wealth creation while removing those from employment. To fully benefit from AI, we must consider its future and regulate issues.

Conclusion

The study of artificial intelligence and legal disruption is not a separate legal field but a perspective to examine current legal presumptions, principles, and procedures. By critically reflecting on the roles and purposes of the law, we can avoid Easterbrook's Law of the Horse fallacy and explore the opportunities and traps of the regulatory enterprise. Given that law develops incrementally in a linear fashion and artificial intelligence is frequently asserted to be an exponential technology[27], there must be a point where the exponential take-off crosses the straight line if these assumptions are true. Where AI is below the line and to the left of this intersection, the hype surrounding the technology generally falls short of expectations and is underwhelming in terms of functionality. To the right of this intersection, however, the formerly

[25] Harold D. Woodman, "Economy from 1815 to 1860," in Glenn Porter, ed., Encyclopedia of American Economic History, vol. 1 (Charles Scribner's Sons, 1980), 80–81.
[26] Stephen M. Salsbury, "American Business Institutions Before the Railroad," in Glenn Porter, ed., Encyclopedia of American Economic History, vol. 2 (Charles Scribner's Sons, 1980)
[27]Brynjolfsson and McAfee (n 106)

uninteresting technology adopts an unexpected and startling tone as it quickly surpasses both expectations for its capabilities and our ability to contextualize, accommodate, or situate it.

It is generally believed that we are now getting close to this intersection. If these assertions are true, the legal system is one of the institutions whose existence will be dramatically altered by the rapid development and societal integration of AI. If this is the case, it is critical to begin looking ahead in an effort to reduce the discrepancy between exponential technologies and linear expectations. This is exactly what the framework for the legal disruption that we have proposed does. Even if these assertions prove to be false, considering these changes will shed new light on the legal endeavor that seeks to shed light on the entirety of the law.

Protection of Rights of Women in India and Free Legal Aid & Service

Shipra Mishra[1]

Abstract
There are two persons in society that is men and women. It cannot be denied that women are the backbone of the family. Women as a mother, a daughter, a wife play her role very well. The perception of women is also related to divine force. It is treated as a 'Shakti' in Indian society. In Vedic period, the position of women was very glorious because they are treated equally to men. In Vedic times, they participated in every walk of life with men. But with the times, the status of women is changed. They become victim of patriarchy and other crimes. Women as a daughter lives under the supervision of her father, as a wife under the supervision of her husband and as a mother under the supervision of her son. With the passes of time, women is considered a vulnerable group of society and suffer several crimes like rape, domestic violence, female feticide, dowry, sexual harassment, child marriage, acid throwing etc. They are victims in male dominated society. In spite of these, there are human rights for the protection of rights to both men and women. There is also a free legal aid for the vulnerable group of society. This paper includes the concept of free legal aid. Further, it highlights the national as well as international laws relating to the protection of rights of women. Lastly, this paper elaborates the drawbacks in exercising the rights of women.

Key words: Women, Rights, Free Legal Aid, Human Rights, and Legal Status.

Introduction
Men and women both have equal rights as per human rights. Human rights as depict from word that some rights are given to human in spite of their sex, age, religion etc. These rights are available to them because they are human either men or women. But in reality, scenario is different from this position. Men's position is above the women. Basically, human rights of women are curtailed in society. There are no equality in men and women. When we see the role of men and women in society then finds that women's role is more important than men. Women play their role in house hold as well as in work place. They help the family members. They play a very important role in development of nation like men. In spite of these facts, women are deprived from their rights. There are some specific areas in which women's rights are violated:

- **Dowry Deaths:** Dowry deaths are most commonly violation of rights of women. Dowry is the curse for the women in male dominating society.[2] It is some pecuniary things which are given to the groom family by the bride family. When the demand is not given to the groom party then they torture the bride physically and mentally. Presently, dowry deaths are increased according to NCRB report. For the prevention of this crime, there is also dowry prohibition act, 1961. But, there is lack of implementation.

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[2] Flavia Agnes, Law and Gender Inequality (2001)

- **Domestic Violence:** It is the most invisible violation of rights of women in society. This offence is done under the four walls of the house. Domestic violence occurs when a woman suffers physically and mentally criminal act by her husband, in laws, father, brother or other family members. It includes verbal as well as physical abuse and other forms of mistreatment. For the prevention of this offence, there is also 'The Protection of Women from Domestic Violence Act, 2005'.
- **Female Foeticide and Female Infanticide:** When an infant is killed in the womb of her mother, it is known as a female foeticide. On the other hand, when a girl child is killed after birth, it is called female infanticide. This is the violation of human rights of a girl i.e. right to live. Our society is male dominating society. Every family wants a boy child rather than girl child.
- **Sexual Harassment of working women at workplace:** It is one of the evils of the modern society. In India, there is more biasness towards men women. Women have given less salary then men in workplace. They discriminated in workplace. Because of discrimination, women suffer very much emotionally and financially.
- **Child Marriage:** Child Marriage is continuously still prevalent in India. When a girl child below 18 years and a boy child below 21 years marries then it is called child marriage. Although, child marriage is prohibited under the Child Marriage Restraint Act, 1971 but when once a marriage occurs it is not void.[3] There is also a patriarchal thinking in the marriage age that girl should be younger than boy.
- **Trafficking:** Many cases of trafficking of girl or women are reported every year. It is the violation of human rights of women. For the prohibition of trafficking, there is also the Immoral Traffic (Prevention) Act, 1956.

Concept of legal aid

Presently, India is a developing country. Although the nation is undoubtedly in a phase of progress, those who live in the upper half of society are the ones who are reaping the benefits. The world of the destitute is a realm of DARKNESS. Yet the basic basis of the society that should be acknowledged is those who are still ignored. Hence, using their ignorance and reaping the rewards for the upper class is not at all helpful for the future of the nation.

The issue of reparation comes after someone realises that he has been mistreated. These authorities whether public or private also offer the help that those who have been harmed need. These institutions offer LEGAL ASSISTANCE. This Assistance transforms into LEGAL AID. With the goal of assisting the VICTIMS, these authorities and several other groups host such LEGAL AID CLINICS around the country.

The Legal Services Authority Act was passed by the parliament in 1987 and went into effect on November 9th, 1995 in order to create a standardised system for delivering free and

[3] E.G. Thukral & Ali, *Child Marriage in India: Achievements, Gaps and Challenges*, Mar. 25, 2023, at 4 PM, http://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/HAQCentreForChildRights1.pdf

competent legal services to the nation's weaker sections.[4] The National Legal Services Authority (NALSA) was established in accordance with the Legal Services Authorities Act of 1987 to oversee and assess the operation of legal aid programmes and to establish guidelines and policies for providing legal services to those in need.

A woman is also entitled for free legal aid under the Legal Services Authorities Act, 1987. Sec 12 (c) mentioned those persons who are entitled for free legal aid. Under this section, there are three categories that are entitled:

1. A person related to Scheduled Caste or Scheduled Tribes.
2. A beggar or victim of human trafficking as defined by Article 23 of the Constitution.
3. A woman or child

Constitutional Provisions regarding legal aid

India is a welfare country. According to Indian Constitution, there should be uplift of every person including vulnerable group. There is also some legal provision related to free legal aid.

- **Article 21:** Protection of life and personal liberty
- **Article 39A:** Equal Justice and Free Legal Aid

Article 21 is a fundamental right under Part 3 of the Constitution of India while Article 39 A is a directive principle of the state policy under part 4 of the Constitution of India. Rights mentioned under Part 3 are fundamental for the persons whereas directives mentioned under fourth part are basic principles for the governance of the nation. There is no conflict between them.

Other provision for the uplift of women under the Constitution of India

There are many other provisions relating to the women empowerment under the Constitution. They are as follows:

- **Art. 14-** All people, including women, are equal before the law, and they have a right to equal protection under the law within India's territorial jurisdiction, according to Article 14 of the Indian Constitution. It means that everyone should be treated equally under identical conditions, regardless of gender.[5] The State ought to treat everyone equally and ought not to engage in any form of discrimination.
- **Art. 15-** Article 15 forbids the state from treating any person, including women, unfairly on the basis of their religion, race, caste, gender, place of birth, or socio economic status. It declares that all citizens have the right to enjoy equal rights with relation to access to public spaces, infrastructure, hotels, restaurants, stores, and other services. Nonetheless, the state has the authority to create any special accommodations for women, children, scheduled castes, scheduled tribes, and other underprivileged groups.[6]

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[4] G. Mallikarjun, *Legal Aid in India and the Judicial Contribution*, Mar. 30, 2023, at 2 PM, 13.pdf (commonlii. org)
[5] A. Parashar, Women and Family Law Reform in India: Uniform Civil Code and Gender Equality (1992)
[6] G. B. Reddy, Women and the Law (2010)

- **Art. 16-** All people, including women, would have equal opportunity in areas of public employment, regardless of their gender, races, castes, ethnicities, faiths, and socioeconomic origins. There are several exceptions, such as when the government may declare by legislation that a specific job necessitates a resident of the state. The State has the authority to designate some positions for members of underprivileged groups, as well as for members of scheduled castes and scheduled tribes.[7]
- **Art. 17-** Article 17 abolishes untouchability and forbids its practice in any form. It refers to a social practice which looks down upon certain depressed classes solely on account of their birth and makes any discrimination against them.
- **Art. 19-** The rights given under Article 19 are related to freedom of speech and expression. Under Article 19, there are 6 types of rights with reasonable restrictions. These rights are available to both men and women.
- **Art. 20-** It has taken care to safeguard the rights of persons including women accused of crimes. This article is related to ex post facto laws and self incrimination.
- **Art. 21A-** Article 21A of the Indian Constitution states that all children between the ages of six and fourteen must get free and mandatory education in a manner that the state may specify by legislation.
- **Art. 23-** Art 23 prohibits traffic in human beings and beggar and other forced labour. Traffic in human beings i.e. women, children etc. and forced labour militate against human dignity.
- **Art. 24-** It prohibits employment of children below age of 14 in any hazardous employment. This is in keeping with the human rights concepts and United Nations norms.
- **Art. 25-** Women have the same rights to religious freedom, including the ability to express, practise, and spread their beliefs.

Position of Women under Indian legislation

In India, women are given the legal protection they need to safeguard their economic, social, and cultural life. These few actions demonstrate the efforts taken by the Indian government to protect women's lives. These are Dowry Prohibition Act, 1961; Maternity Benefit Act, 1861; The Protection of Women from Domestic Violence Act, 2005; Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act, 2005; The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; The Immoral Traffic (Prevention) Act, 1956; The National Commission for Women Act, 1990; Hindu Widows Remarriage Act, 1856; Guardians and Wards Act, 1890; Equal Remuneration Act, 1976; Maternity Benefits Act, 1961; Prohibition of Child Marriage Act, 2006 etc.

Women under International Law

The United Nations, from its inception i.e. 1945 till today worked to secure women’s equality. There are various conventions to uplift and develop the status of women in the field of education, politics and social life. It is necessary to highlight the achievements of the United Nations in the area of women’s right since 1948. These are:

[7] J. N. Pandey, Constitutional Law of India (2001)

- Universal Declaration on Human Rights, 1948
- Convention on the Political Rights of Women, 1953
- Convention on the Nationality of Married Women, 1957
- Declaration on Elimination of Discrimination against Women, 1967
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Declaration on the Elimination of Violence against Women, 1993
- Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999
- Commission on Status of Women

Obstacles for exercising Women's rights

It is noticeable that there are several provisions for the advancement of women in International and National level. There are various hindrances that women cannot take advantage of these special provisions. These are as follows:

- **Illiteracy-** Illiteracy is one of the obstacles for exercising rights of women. Women are not so educated in India. According to 2011 census, the literacy rate in India is 74.04% in which 82.14% are men and 65.46% are women. As per this data, illiteracy rate of women is more than men. Because of illiteracy, most of the women are not aware about their rights. They have lack of knowledge about Government scheme etc.
- **Unemployment-** Those who live in poverty and are a part of underprivileged and disadvantaged groups frequently believe that unemployment and a lack of money are the biggest obstacles to expressing their rights. On the other hand, educated and literate people face depression and frustration when they could not find work. They are unable to maintain their living standards when they have no source of income. Housing, health, diet & nutrition, education, and other issues are still unresolved. When a woman with a good education or literacy level cannot find job, she becomes worried and occasionally fails to recognize her rights.
- **Child Marriage-** Child marriage is also play a very important role as an obstacle in exercising women's rights. After marriage women depends on men. They become only a puppet of her husband. When a woman acts against her husband then they become victim of domestic violence. After marriage, they withdraw from the education and learn household chores, bringing up child etc.
- **Poverty-** Because of financial instability, women cannot exercise their rights.
- **Male dominating society-** In India, there is a male dominating society. Women spend their whole life under the control of men. In her childhood, they are controlled by their father, in adulthood by husband and lastly in old age they are controlled by her son. This is the life of a woman in Indian society.
- **Health issues-** Health issue is also a main hindrance in exercising rights of women. Indian family gives priority to male. Female are ignored in a family. Indian family gives importance to male child rather than female child. In a family, women are taught to sacrifice for men.

Conclusion

The primary goal of this study is acknowledging the rights of women. The existence of patriarchal society is the root cause for the violation of rights of women. Apart from this, it can be said that condition of women is changed after independence. There are several legislation, National and international provisions for safeguarding the rights of women. In 21st century, world realized the worst situation of women and agrees that without the growth of women, a country cannot develop. Big initiatives are taken in national and international level for changing social, economic and political situation of women. It is bitter truth that in spite of these provisions, they cannot be completely implemented in society because customs are given more importance in a country like India. Even, the position of women is gradually It is experienced that a slow change occurs over these years and today women are more independent and aware about their rights.

Mapping out the Role of the European Union in Shaping Discourse on Climate Change in Global Policy

Jainendra Kumar Sharma[1]

Abstract

In today's world politics and inside the European Union, climate change has assumed a prominent role. Climate change is a significant political problem at the European level that is frequently discussed at the European Council of Heads of State and Government. The problem has developed into a worldwide matter of high politics. It was the G-8 Summit's top worry in 2007, and the UN General Assembly and the United Nations Security Committee also prioritized it highly in their preparations. In general, the subject is almost never left out of any high-level political gathering. The European Union (EU) is a major participant in climate change politics as a powerful regional actor with an effect on national and international affairs. How and why did a non-traditional actor become a prominent player at various levels of climate change policymaking despite these multiple pressures? According to the Intergovernmental Panel on Climate Change (IPCC)'s fourth assessment report released in 2007, climate change issues have emerged as one of the most significant threats to human well-being and international security. This early analysis focuses on the EU carbon trading programme, a novel institutional mechanism that serves as an example of the policy pressures coming from several levels. This essay examines the phenomenon of EU leadership on climate change. From the early 1990s, the European Union (EU) has developed into a global leader in environmental governance, particularly in areas like the preservation of the ozone layer, biotechnology, biodiversity, and UN reform. Climate change has been the EU's biggest area of leadership.

Key Words- *Climate Change, Global Policy, European Union, Environmental, Governance.*

Introduction

The risks associated with climate change are undeniable, “and its impacts are already being experienced. In 2007, the United Nations found that climate change was the primary factor behind nearly all of its emergency appeals for humanitarian assistance. This recognition prompted the UN Security Council to address the issue of climate change and its implications for international security. Similarly, in June 2007, the European Council acknowledged the influence of climate change on global security, leading to a joint report by the High Representative and the European Commission in spring 2008. Our understanding of the science behind climate change has significantly advanced. The Intergovernmental Panel on Climate Change (IPCC) has concluded that limiting global temperature rise to 2 degrees Celsius above pre-industrial levels would be challenging, even with a 50% reduction in emissions compared to 1990 levels by 2050. If temperatures continue to rise beyond this threshold, it would pose severe security risks.

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The potential triggering of tipping points could lead to further and unpredictable climate changes, making unmitigated climate change above 2 degrees Celsius unprecedented and highly consequential for global security. It is crucial to view climate change as a threat multiplier, exacerbating existing trends, tensions, and instability. Its most significant impact lies in its potential to overwhelm already vulnerable states and regions, increasing the likelihood of conflicts. With its prominent role in development, global climate policy, and extensive resources, the European Union (EU) is uniquely positioned to address the security implications of climate change. Moreover, the EU's comprehensive approach to conflict prevention, crisis management, and post-conflict reconstruction, as well as its strong commitment to multilateralism, align well with the challenges posed by climate change. The European Security Strategy has recognized the link between resource competition and global warming, while the communication document "Europe in the World" has emphasized the profound influence of globalization on international relations. These acknowledgments further underline the EU's awareness of the complex interplay between climate change, security, and global dynamics." The European Security Strategy acknowledged the connection between resource competition and global warming, and the Communication "Europe in the World" emphasized the impact of globalization" on international relations.[2]

The natural environment "of Europe, as well as nearly every aspect of society and the economy, will be significantly impacted by climate change. "Global, social, or distributive justice in general, and international environmental equity (lEE) or fairness in particular are examined in the context of Europe's policies and actions on global warming and climate change (GCC). The equitable and equitable distribution of the costs associated with environmental changes is referred to as lEE.

The first question that needs to be answered is, in relation to the climate change regime, what role should and should international (social and distributive) justice and lEE play? Second, in what ways might concepts of lEE" and global justice have influenced European policies regarding the GCC? Thirdly, are European nations and the European Union (EU) doing enough to alleviate GCC burdens as an organization and community? 3 These issues can be approached from both a normative-ethical and a practical perspective. According to a common sense viewpoint, it is sensible to state that Europe ought to do its part to follow up on the arrangements of the Unified Countries Structure Show on Environmental Change (UNFCCC) calling for adjustment of air ozone harming substance (GHG) fixations at a level that evades "risky anthropogenic impedance" with the World's climate.4 According to a regularizing point of view, one could contend that Europe ought to meet various normally acknowledged moral principles of global weight sharing. Naturally, issues of practicality and ethics frequently cross paths in the real world.[3]"

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[2] U.N. Framework Convention on Climate Change, May 9, 1992, art. 2, 1771 U.N.T.S. 107, 31 I.L.M. 849, 851 (1992) (entered into force Mar. 21, 1994), available athttp://UNFCCC.int/files/essentialbackground/background-publications htmlpdf/applica tion/pdf/conveng.pdf [hereinafter UNFCCC].

[3]Falkner, R. ''the Political Economy of 'Normative Power' Europe: EU Environmental Leadership in International Biotechnology Regulation''. Journal of European Public Policy 14, no. 4 (2007): 507–26.

As a “result, “discussions about how to prevent GCC while meeting ethical demands that those who cause the problem act first and those who suffer the most (and are least able to act) be given special consideration and assistance have dominated international negotiations for the UNFCCC and subsequent measures to implement it, The EU organisation, including the Commission, as well as the member states are discussed in this paper when it comes to "European" policies and commitments with regard to the GCC. 7 Using Frank Biermann's description of an international organisation as a collectively of bureaucracies and member states, this article typically refers to the EU as a conglomerate.[4]””

The differences between EU member states are significant, particularly when it comes to several pressing concerns like energy policy. Nonetheless, Europe is beginning to have more of a single foreign policy, notably when it comes to joint GCC policies and environmental concerns more broadly. Also, the Commission has worked to establish the EU as a leader in the GCC, which helps.[5]

In Today's World, Eu Leadership in International Climate Policy

The EU has played a pivotal role in shaping international climate policy through its commitment to “strict international targets. From the early stages of Convention negotiations, the EU has advocated for binding emission reduction targets for industrialized nations. This commitment was demonstrated during the negotiations for the Kyoto Protocol in 1997 when the EU accepted the highest reduction target (-8 percent) among the major industrialized nations. Furthermore, the EU has been instrumental in safeguarding the Protocol's "environmental integrity." It has advocated for limitations on the use of carbon sinks such as forests and emphasized the importance of prioritizing domestic actions. By championing these principles, the EU has sought to ensure that climate policies are effective and deliver tangible results. The EU's leadership was also evident in initiating negotiations on a global post-2012 climate agreement. The agreement, reached in Bali in December 2007 by the parties to the UNFCCC, was based on the EU's independent commitment made in March 2007.

This commitment aimed to reduce EU greenhouse gas emissions by 20% from 1990 levels by 2020. While the EU's contributions to the UNFCCC and the Kyoto Protocol were relatively modest compared to its efforts, its leadership in the 21st century has been noteworthy. The EU's ongoing commitment to address the challenge of climate change is commendable, although there is still progress to be made. In 2007, the Council of Environment Ministers acknowledged that global reductions of greenhouse gas emissions "up to 50% by 2050 compared to 1990" are necessary. Despite the Kyoto Protocol's role in slowing the expansion of emissions, industrialized nations would need to achieve even greater reductions of 60-80 percent by 2050."

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[4]European Environment Agency (EEA). Greenhouse Gas Emission Trends and Projections in Europe 2007. Tracking Progress towards Kyoto Targets. EEA Report No. 5/2007. Copenhagen: EEA, 2007.

[5] John Barkdull & Paul G. Harris, Environmental Change and Foreign Policy: A Survey of Theory, 2 GLOBAL ENVTL. POL. 63 (2002).

Overall, the EU's proactive "stance and efforts to push for strict international commitments have established its leadership in international climate policy. However, there is recognition that more work needs to be done to meet the ambitious targets required to effectively tackle climate change. Through collaborative efforts and significant contributions from developing nations in limiting greenhouse gas (GHG) emissions, it becomes plausible to curtail the global average temperature increase to two degrees Celsius below pre-industrial levels. The European Union (EU) has emphasized Article 2 of the United Nations Framework Convention on Climate Change (UNFCCC), which aims to prevent hazardous human-induced interference with the climate system. This target facilitates the adaptation of ecosystems, sustains food production, and promotes sustainable economic development. Nonetheless, addressing the impacts of climate change and adapting to them will present substantial political challenges, especially for developing nations.

Additionally, the reduction of GHG emissions requires unprecedented technology transfers and financial resources to empower developing nations to fulfil their essential role in mitigating climate change. These transfers are crucial for enabling these nations to adopt cleaner and more sustainable practices while minimizing greenhouse gas emissions. Such support is necessary to ensure that developing nations can make their contributions to global emission reduction efforts. Overall, achieving the two-degree Celsius target necessitates concerted global cooperation and collaboration, with developing nations playing a crucial role. Alongside mitigation efforts, adapting to the effects of climate change will remain a significant political challenge, particularly for developing nations. Addressing these challenges will require substantial international cooperation, financial resources, and technology transfers to promote sustainable development and minimize greenhouse gas emissions worldwide.[6]"

The EU'S foreign climate policy is one step toward becoming the EU'S Global External Climate Policy Organization

The achievement of EU unity in external climate policy poses a significant challenge due to the multi-actor nature of the EU. The European Union consists of multiple entities, including the European Commission and individual member states, making it difficult to establish a cohesive approach.

However, "for the EU to effectively exercise leadership in climate matters, international unity is crucial. The EU's authority in worldwide environment strategy relies on a "blended capability" involving both the EU/EC and its member states. This means that both the European Community, represented by the European Commission, and individual member states participate in international climate negotiations. Despite acting together and being recognized as a single entity, close coordination between the EU and its member states is necessary to ensure a unified voice. "To address the expanding negotiating agenda in international climate policy, the EU has developed a system of expert groups supporting the

[6] Frank Biermann & Steffen Bauer, Managers Of Global Governance: Assessing And Explaining The Influence Of International Bureaucracies.

Council working group." These groups are granted more authority to shape negotiating positions. This coordination and representation structure has led to significant achievements in the EU's domestic environment strategy, enhancing the EU's recognition as a global player in climate matters.

"In order to fully support EU leadership, it is crucial to leverage the EU's diplomatic potential. However, the differentiated system of EU expert groups under the Council working group can disproportionately burden smaller member states with limited resources. "This presents a challenge that needs to be addressed to ensure equitable participation and contribution from all EU members. Lastly, EU coherence on a global scale remains fragile, particularly in areas where sensitive topics are involved, such as energy policy. Common internal policies in these areas are still lacking, which can hinder the EU's ability to project a unified stance externally. Overall, achieving EU unity in external climate policy is a complex task due to the EU's multi-actor nature. However, through close coordination, leveraging diplomatic potential, and addressing the challenges faced by smaller member states, the EU can enhance its leadership role in global climate negotiations and work towards a more sustainable future.[7]"

European Union Leadership's Strategic Motivations

Throughout the course of international climate policy, the European Union (EU) has consistently displayed leadership in addressing climate change, benefiting from stable domestic politics and institutional foundations.

This has paved the way for Europe's "Climate Change Opportunity, which forms one of three strategic evaluations conducted by the European Commission. In line with this, the Commission put forth a proposal in 2012 to fully integrate aviation into the Emissions Trading System (ETS). However, it is important to note that environmental concerns took a backseat during the early 21st century due to the Lisbon Agenda of 2000. This agenda prioritized enhancing "the competitiveness of the European economy, overshadowing environmental protection. The failure of the Treaty Establishing a Constitution for Europe in 2005 prompted European institutions to seek means of reinforcing their legitimacy and revitalizing the process of European integration. Over the past two decades, Eurobarometer polls consistently revealed strong public support for environmental protection.

Moreover, public opinion polls indicated a particularly high level of backing for climate action at the European level. The release of the IPCC Fourth Assessment Report further heightened the sense of urgency and significance surrounding the issue of climate change. The discussion on the security of Europe's future energy supplies has contributed significantly to the development of stringent climate policies. With soaring oil and gas prices since 2005, the EU's dependence on energy imports became apparent. Without targeted countermeasures, this dependence was projected to increase from 50% in 2005 to 70% by 2030.[8]""

[7] Bretherton, C. and J. Vogler. The European Union as a Global Actor, second edn. London: Routledge, 2006.
[8] Vogler, J. ''the European Contribution to Global Environmental Governance''. International Affairs 81, no. 4 (2005): 835–49.

Concerns "about the safety of Europe's energy supplies were further fuelled by political developments in regions such as the Middle East and Russia, which possess substantial energy reserves. Consequently, the energy security agenda played a crucial role in strengthening the climate agenda, particularly through policies promoting energy efficiency, alternative energy sources, and relevant energy market reforms. The EU's position in the international system, as well as its strategic orientation in international relations, has also contributed to its leadership on climate change. The EU has consistently demonstrated strong support for multilateralism, making it an influential player in multilateral frameworks like the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. These frameworks have already proven effective in facilitating EU leadership in addressing climate change."

Looking ahead, it is "reasonable to expect that climate governance will continue to serve as the primary and most suitable avenue for the EU's pursuit" of a global role in multilateralism. Given the supportive factors outlined above, the EU is likely to remain committed to developing and implementing both internal and external climate policies.[9] Europe's leadership on climate change within the international arena has been bolstered by stable domestic politics, institutional foundations, and public support for environmental protection. Additionally, the EU's focus on energy security, its multilateral stance, and its strategic orientation has all contributed to its role as a climate policy leader. These factors are expected to continue driving the creation of climate policies at both the internal and external levels.[10]"

Challenges Ahead

The EU encounters several challenges as it strives for global leadership on climate change, despite the aforementioned favourable circumstances. These challenges include:

1. **Ongoing domestic policy development and implementation:** The EU must continue to enhance and execute its domestic policies to effectively address climate change. This requires sustained efforts to strengthen regulations, promote renewable energy sources, and encourage sustainable practices across member states.
2. **Coordination of EU environmental diplomacy:** The EU needs to maintain its coordination efforts in environmental diplomacy to ensure a unified and influential voice on the international stage. Consistent collaboration among member states is crucial for advancing climate-related negotiations and agreements.
3. **Implications of EU enlargement from 15 to 27 member states:** The EU's expansion brings complexities in aligning climate change strategies and priorities among a larger group of countries. Ensuring cohesive action and commitment from all member states becomes more challenging as the EU's diversity increases.
4. **Expanding EU policies beyond GHG emissions reduction:** While reducing greenhouse gas emissions remains a primary focus, the EU also needs to develop effective policies that specifically target climate change mitigation in developing nations.

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[9] European Commission. The Enlarging European Union at the United Nations: Making Multilateralism Matter. Brussels: Commission of the European Communities, 2004.

[10] European Commission. Action Plan for Energy Efficiency: Realising the Potential, COM (2006) 545 final. Brussels: Commission of the European Communities, 19 October 2006.

5. This requires addressing issues such as capacity building, technology transfer, and financial support to enable sustainable development globally.
6. **Preserving EU unity in the face of centrifugal forces:** The EU must confront recurring centrifugal forces that threaten its unity. Diverse national interests, political dynamics, and economic disparities among member states can hinder collective decision-making on climate change initiatives. Sustaining solidarity and cooperation is essential for the EU's ability to lead globally on climate action.

Overcoming these obstacles will require persistent efforts, collaboration, and adaptation within the EU. By addressing these challenges head-on, the EU can strengthen its position as a leader in the global fight against climate change.[11]

Advancing Environmental Diplomacy Within the EU

The EU has great potential to "enhance its international performance by effectively utilizing its diplomatic capabilities. In order to overcome its limited access to other resources, the EU should prioritize the improvement of its soft power capabilities. One major advantage the EU possesses is the diverse international contacts of its member states, which provides a unique diplomatic potential. Diplomacy plays a crucial role in soft power and foreign policy in general, and the EU must fully utilize this potential. Currently, the foreign ministries of the European Commission, as outlined in the Green Paper on Energy Efficiency, are responsible for diplomatic initiatives. Additionally, the European Environment Agency (EEA) and the European Commission's Action Plan for Energy Efficiency contribute to Europe's environmental and energy-related diplomacy." With 45 member states leading the EU in climate policy globally, there is a significant opportunity for the EU to exert influence on the international stage. During the sixth Conference of the Parties (COP) held in The Hague in November 2000, the European Commission proposed a strong EU position on several issues related to climate change.[12]"

The "EU demonstrated a remarkable commitment to equity and fairness in the developed world's response to climate change, surpassing the efforts of the United States and other developed countries. The EU advocated for severe limitations on the use of "flexible mechanisms" by developed parties, emphasizing the need for substantial emissions cuts. Although there have been some efforts to establish a "green diplomacy network," the coordination of EU diplomatic efforts has been somewhat fragmented. The establishment of the External Action Service, the EU's diplomatic service resulting from the 2007 Lisbon Treaty, could potentially improve the situation. However, since national foreign services are expected to remain central to EU diplomacy, significant improvements will primarily depend on enhanced coordination of member states" diplomatic endeavours. The EU can further improve its international performance by effectively leveraging its diplomatic potential. Enhancing soft power capabilities through diplomacy is crucial, given the EU's limited access

[11] European Environment Agency (EEA). Europe's Environment: The Third Assessment. Copenhagen: EEA, 2003.
[12] Ott, H. E., W. Sterk and R. Watanabe. ''The Bali Roadmap: New Horizons for Global Climate Change?''. Climate Policy 8, no. 1 (2008): 91–5.

to other resources. The EU's diverse international contacts, coupled with its commitment to climate policy, provide a unique advantage. By coordinating member states' diplomatic efforts and utilizing the External Action Service, the EU can strengthen its position on the global stage.[13]"

Keeping And Expanding the Unity Of The EU

The prospects for EU unity in "climate policy is uncertain, adding to the challenges posed by the enlargement process. While favourable external circumstances have facilitated EU unity thus far, there are factors that could undermine this unity in the future. The withdrawal of the Bush administration from the Kyoto process actually brought Europe closer together, but the changing landscape of global climate policy could pose new challenges.

Developing nations have not seriously questioned the EU's climate leadership so far. However, their increasing involvement in global climate policy and the potential reengagement of the United States in this area could change the dynamics. The "principle of common but differentiated responsibility, established in the Berlin Mandate of 1995, has been a cornerstone of negotiations. Developed countries committed to taking action to reduce their greenhouse gas (GHG) emissions before expecting developing countries to do the same."

This principle "allowed for the participation of developing countries in the climate regime and their eventual emission limitations. "These international dynamics are likely to impede efforts to maintain EU unity in at least two interconnected ways. First, as the EU's international partners become more assertive, they may seek to divide the EU to advance their own interests. This division could undermine the unity of the EU's climate policy. Second, contentious issues such as nuclear energy and external energy policy, exemplified by the dispute between Germany and Poland over the North Stream gas pipeline in the Baltic Sea, will need to be addressed."

Dealing with such issues could further challenge the task of securing EU unity, despite advancements in domestic climate policies. While the EU has benefited from favourable circumstances and relative unity in climate policy, there are potential obstacles on the horizon. The involvement of developing nations and changing international dynamics could strain EU unity, particularly as contentious issues and the potential for external partners to exploit divisions arise. Ensuring EU unity in climate policy may become increasingly challenging, even with progress in domestic climate actions.[14]"

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[13]European Commission. Third National Communication from the European Community under the UN Framework Convention on Climate Change, Commission Staff Working Paper, SEC (2001) 2053. Brussels: Commission of the European Communities, 20 December 2001.

[14] European Commission. 20 20 by 2020: Europe's Climate Change Opportunity, (COM (2008) 30 final). Brussels: Commission of the European Communities, 23 January 2008.

Conclusion

The European Union (EU) has been at the forefront of global efforts to combat climate change since the early 1990s. It has consistently advocated for ambitious measures to mitigate climate change and has taken a leading role in shaping international climate policies. In 2007, the EU unilaterally committed to reducing its greenhouse gas (GHG) emissions by 20% by 2020, reaffirming its position as a climate change leader. Over time, the EU has made significant progress in strengthening its leadership on climate change, driven by various factors.

One key factor contributing to the EU's leadership on climate change is its commitment to multilateralism and its aspiration to expand its global influence. The European Council, driven by widespread public support for European-level action, has pledged to take decisive steps to address climate change. Additionally, the EU's pursuit of effective climate policies is fuelled by concerns over energy security and rising energy costs. The EU has actively worked towards securing commitments from developed nations to reduce GHG emissions, going beyond the requirements of international agreements like the Kyoto Protocol. The European Commission has emphasized the importance of avoiding loopholes that allow rich countries to avoid domestic pollution reduction by relying solely on carbon sinks. This stance enhances the credibility and moral weight of the EU's climate actions. Looking ahead, Europe should continue to take further action and build on its achievements in reducing GHG emissions and supporting developing nations.

However, new policies should also consider the issue of immigration from regions affected by climate change, particularly the Gulf Cooperation Council (GCC) countries. Europe has a moral obligation to provide aid and support to migrants who face hardship due to climate change, as it shares responsibility for the suffering caused by its own atmospheric pollution. This policy should specifically address the mitigation of suffering caused by Europe's contribution to climate change, and Europe should be prepared to accept a significant number of migrants from the most affected countries. Europe's leadership on climate change should be sustained by the aforementioned factors. The EU must bear both practical and normative burdens, as the United States has failed to adequately respond to the global climate crisis, and other countries have been slow in their actions. By leading by example through GHG reductions and assisting developing nations, Europe can send a strong signal and motivate major developing countries to take significant action to reduce their emissions and prevent potential disasters.

Ute Collier rightly points out that since the majority of greenhouse gases originate from industrialized Western capitalist societies, it is appropriate for initiatives for change to come from these regions. Addressing climate change becomes increasingly challenging if stable unions like the EU fail to take action. Therefore, Europe represents the primary hope for effective global action on climate change, although there are still obstacles to overcome. Strengthening legislative proposals and improving policy coherence across various domains are essential steps to enhance the EU's effectiveness. Additionally, better coordination of EU environmental diplomacy can strengthen its international role. Ultimately, the EU's actions, as well as those of the United States and major developing nations, will determine the

maintenance of its leadership position. While this may pose challenges for the EU, it would be positive news for international climate policy and the shared goal of addressing climate change. In conclusion, the EU has established itself as a frontrunner in addressing climate change, driven by its commitment to multilateralism, public support, energy security concerns, and the aspiration to expand its global influence. Going forward, Europe must continue to lead by example, support developing nations, address immigration challenges, and strengthen policy coherence. By doing so, the EU can contribute significantly to international climate efforts and inspire others to take decisive action in the face of the global climate crisis.

Flaws in the Sentencing Policy in Sexual Offences committed against Children

Adv. Ashirwad J[1]

Certain types of crimes are of such nature that the moral conscience of the society would be put to shame. Under such circumstances the lawmakers enact laws that are of extreme deterrent nature in the expectation that the wrongdoers are punished severely and the potential wrongdoers are warned of similar consequences. One such mode of extreme deterrent mode of punishment is the incorporation of mandatory minimum into the penalizing statutes that provides for the punishment of offenders of serious crimes against the society. The requirement of incorporating the mandatory minimum sentence is that once the guilt of the accused is proved, the punishment awarded to him must not be below the minimum sentence prescribed under the statute. A major issue with the Indian penal system is that it lacks proper sentencing guidelines. The judges were given discretionary powers in the area of sentencing where different punishments were given to the same offences. The legislature by understanding the need for having sentencing guidelines opted for providing provisions for including minimum punishments for serious offences. Once such legislation is the Protection of Children from Sexual Offences Act 2012(POCSO Act). The Act provides for mandatory minimum punishments for various offences. A serious issue that came along with the incorporation of minimum punishments is the issue of jury nullification and the dangers posed by the sentencing policy under the Act are discussed in detail in this Article.

Keywords: Mandatory Minimum, Discretion, POCSO Act, Discretion, Sentencing Policy.

Introduction

The legislature has lately been sending strong messages that certain criminal behaviors would not be tolerated by the society. One such message is the enactment of statutes with mandatory minimum punishments. The mandate of eliminating crimes that pose a threat to the quality of life, the dignity of individuals, the security of the nation have been a challenge to the legislature. Therefore, mandatory minimum sentences in statutes of such nature is aimed at deterring the criminal activity of the said nature by maximizing the possibility and predictability by incarceration because of the unambiguous and clear language regarding the provisions prescribing punishment are easily understood and serves an effective disincentive to potential offenders.[2] The mandate of the mandatory minimum sentence is that on the establishing of the guilt of the accused the punishment awarded to him must not go below the minimum sentence prescribed under the statute.

[1] ***Advocate, High Court of Kerala.***
[2] Robert S. Mueller, *Mandatory Minimum Sentencing*, Vol. 4. Federal Sentencing Reporter, 230, 230-231, (1992)

Minimum sentences in certain offences are provided similar to the cap put by maximum sentences in all offences. In the case of the offences that provides only for maximum punishment, the judges are having the discretion to decide what the minimum sentence would be for a particular offender considering the facts and circumstances of the offence. When judges are at complete discretion the punishment could even be for a single day. The process that has been evolved in the sentencing was generally by the judges prepare a balance sheet of the aggravating and the mitigating factors of the crime, and after balancing the two proportionately, an appropriate sentence is awarded.[3]

The legislature considering the gravity of certain types of offences and their impact on society and the individuals enacted statutes that provide minimum punishment that is attracted for such offences. The offences of rape, murder, drug offences, sexual offences have always invited the imposition of mandatory minimum sentences considering its seriousness. Therefore, giving paramount importance to the public safety and reduction in crime was the main driving factor behind the enactment of statutes calling for mandatory minimum punishments.

In the United States, an overwhelming majority of mandatory minimum punishment can be seen in federal crimes regarding offences involving drug or weapons.[4] In such cases depending upon the finding of certain facts, the Congress has mandated the imprisonment of offenders for periods not below five, ten, twenty years or more. The result of the sentencing policy, including the passage of mandatory minimum sentences have reduced the crime rate over the past years since 1980s.[5]

The penal policies demanding mandatory minimum punishments, takes out the law from the hands of the judiciary by the legislature by pre-defining the minimum punishment that shall be imposed for a particular crime.

Certain arguments in favour of imposing mandatory minimum punishment are the such penal provisions act as deterrent on committing certain crimes, Ensures that the criminals who pose a threat to the society are imprisoned for longer periods in jails and thereby reducing the crime rate, Also, the criminals are assured that they would not get any sympathy or personal bias from the part of the judiciary.

Therefore, we can see that when there are explicit provisions for mandatory minimum punishment and the purpose it serves are actually the consequences of committing the prohibited act are harsh and detrimental to the wrongdoer.

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[3] *State v. Raj Kumar Khandelwal*, CRL. Appeal No.294/2008

[4] Charles J. Ogletree, *Testimony of Charles Ogletree, Discriminatory Impact of Mandatory Minimum Sentences in the United States*, Vol. 18 Federal Sentencing Reporter, 273, 273-275 (2005)

[5] Mark Mauer, *The Impact Of Mandatory Minimum Penalties In Federal Sentencing*, Vol. 94, JUDICATURE, 6, 6-7, (2010).

A few questions that may arise regarding the imposition of mandatory minimum punishment are-

i. Under what theory of punishment could mandatory minimum punishment be brought under?
ii. Whether mandatory minimum punishments the panacea for resolving offences that are not tolerated by the society?
iii. Whether fixed penalties by the legislature in the statutes tie the minds and hands of the judiciary?

In India a looming issue that could be seen from a long time is that there is a lack of proper sentencing guidelines. The judges were given wide discretion in the area of sentencing where different punishments were given to the same offences while the judges applied their minds to the facts and circumstances of the case.

In many cases the courts have observed that there is no straitjacket formula or structured guidelines for sentencing in the Indian legal system. Courts have only evolved a few principles that are based upon the penal policies of correction, proportionality, deterrence and rehabilitation. And the punishment awarded to the offender should be proportionate to the nature, gravity and the manner of commission of the crime. Sometimes similar offences done would receive higher or smaller punishments. It all depends on the aggravating and mitigating factors. So, exercising discretion while awarding punishment by the judges lies the heart of the sentencing policy in India.[6]

In observations made by the Supreme Court in different cases, we could note that awarding the proper sentence to the wrongdoer form an important facet of the criminal justice system. The punishments warded should be proportionate to the crime committed. The proportionality was decided by the judges taking into account both the aggravating and mitigating factors as all crimes are unique in nature and no straitjacket formula could followed at all times. The Apex Court also condemned the absence of a sentencing guideline that could aid the judges in awarding punishments than solely relying on the judicial wisdom which may even cause discrepancies by way of bias or prejudices.

Therefore, as a solution to this problem there were many recommendations for a few law reforms committees and law commissions that emphasized on the need for sentencing guidelines.

The Malimath Committee report on criminal reforms has lashed at the lack of sentencing guidelines in India and expressed displeasure at the wide discretionary power of the judges while awarding a sentence to the wrongdoer.[7] The committee did not shy away from stating

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[6] *State of Punjab v. Prem Sagar* & Ors (2008) 7 SCC 550, *Soman v. State of Kerala* (2013) 11 SCC 382 & Alister Anthony v. State of Maharashtra (2012) 2 SCC.

[7] Malimath Committee Report on Committee On Reforms Of Criminal Justice System, 170-171, (Ministry Of Home Affairs, Govt of India 2003).

that judges exercising unguided discretion is detrimental to the criminal justice system. Further the report also emphasized on the need to have a comprehensive law that would arm the judges with guidelines with regard to the sentencing process to minimize the uncertainty in the matter. The committee recommended a statutory committee to be set up to issue sentencing guidelines.

The Draft national Policy on Criminal Justice, in 2007 also focused on the requirement of proper sentencing guidelines that has to evolve with respect to each type of crimes[8] and also if criminal justice in India is to retain its acceptance in the public minds, then policy planners should extend their urgent attention towards sentences and sentencing by establishing guidelines in this regard.

Therefore, a fact that comes to our mind is that there was always a requirement for sentencing guidelines to aid the judges in awarding proper sentence to the wrongdoers. If wide discretion is awarded to the judges such discretion would be used by the judge according to his judgment[9] and there would be no certainty or uniformity in sentencing.

Realizing the need for having sentencing guidelines, the lawmakers decided for another alternative i.e., the respective statutes of a category provide the penal policy for the respective offences. Offences and type of vary so no straitjacket formula is possible in sentencing. Therefore, enhanced punishment for offences that are too serious in nature by raising the minimum punishment to be awarded in such cases was extensively adopted by the lawmakers.

The offence of rape under Indian Penal Code was the first sexual offence to attract mandatory minimum punishment.[10] The underlying reason was the judicial decisions which stressed upon the consequences faced by the victim of rape. The Supreme Court has time and again reiterated the deep physical and mental trauma the victims are to face and also the destruction of the social equilibrium when an offence as heinous as rape is committed.[11]

In 2012, the Protection of Children from Sexual Offences was enacted in India where the legislation comprises of mandatory minimum sentences for most of the offences. The Act aims to punish all the sexual offenders who sexually abuse children below the age of eighteen years. Another salient feature of the Act is that the legislation is gender neutral.

The Protection of Children from Sexual Offences Act 2012 (hereinafter POCSO Act), was enacted with aim to protect Children from all kinds of sexual exploitation e.g., sexual assault, harassment and pornography. The Act has substituted to the offence of rape with ‘penetrative

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[8] DR. N R Madhava Menon Report of The Committee On Draft National Policy On Criminal Justice, 18-19, (Ministry Of Home Affairs Government Of India 2007).
[9] MALIMATH, *supra* note. 6.
[10] Criminal Law (Amendment) Act, 1983.
[11] *Rafiq v. State of UP* AIR 1981 SC 559, *State of Maharashtra v. Rajendra Jawanmal Gandhi* (1997) 8 SCC 386 & Jugendra Singh v. State of UP 2012 6 SCC 297.

sexual assault'[12] would cover penetration of vagina, urethra, anus, or mouth of the child by any body parts or any object punishable.[13]The Act also provides for the establishment of special courts for the trial of the matters concerned with sexual abuse of children. The Act could be mainly be linked to the shocking revelations found in the Child Abuse Report 2007[14] regarding the prevalence of the social evil of child abuse and the enactment could also be related to the requirements of the Conventions on the Rights of the Child[15] to which India is a party since 1992.

The Sexual exploitation and sexual abuse of children are heinous and serious crimes and such crimes needs to be addressed effectively. Therefore, to address the issue the POCSO Act prescribes harsh punishment for child sex offenders. The Act, also to ensure the certainty of punishment of criminals has deviated from the basic tenets of criminal law by overlooking the doctrine of the presumption of innocence by including the twin negative presumptions[16] that would operate against the accused in prosecution against them.

The serious and the heinous nature of the crime coupled with the vulnerability of the minor victim has influenced the lawmakers to impose mandatory minimum sentences for the offenders under the Act.[17] The minimum sentences vary according to the offences. For the most serious offence i.e., aggravated penetrative sexual assault,[18] the minimum punishment is for twenty years rigorous imprisonment and fine and the maximum could even be a sentence of death penalty.

Now we are going to study the impact of the mandatory minimum sentences the way they are included in this act and how far it has been successful in curbing the sexual crimes against the children. To have an understanding we are going to look at the judicial decisions of various courts and the interpretations the judges have given while justifying the decisions. Also, what factors are considered while judges award the appropriate sentence to the wrongdoers are also being looked into. And the primarily the influence of the judicial mind when there are readymade sentences provided by the statute are also analyzed with the help of case laws.

We should understand the fact that the POCSO Act is a relatively new legislation that was enacted in the year 2012 so, the POCSO judges may not be well acquainted with the provisions of the Act and may even interpret the provisions in ways that are against the spirit of the legislation. The Act being a significant one demands a high level of understanding and

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[12] Ved Kumari & Ravinder Barn, *Sentencing in Rape Cases: A Critical Appraisal Of Judicial Decisions In India*, Vol. 59, Journal Of The Indian Law Institute, 1, 4, (2107).
[13] POCSO Act, 2012, sec. 3, No.32, Acts of Parliament, 2012 (India).
[14] Study On Child Abuse India, p.iv (Ministry of Women and Child Development, Government of India 2007)
[15] Parties to the Convention are required to undertake all measures to prevent children from being coerced, exploited or induced into any unlawful sexual activity.
[16] POCSO Act, 2012, sec. 29 & 30, No.32, Acts of Parliament, 2012 (India).
[17] POCSO Bill 2011, PRS India, https://prsindia.org/billtrack/the-protection-of-children-from-sexual-offences-bill-2011, last visited Jan 09,2022.
[18] POCSO Act, 2012, sec. 6, No.32, Acts of Parliament, 2012 (India).

digestion of the provisions by the judges. The decision of the judge hangs on the lives of both the victim and the accused. The punishments being capped with mandatory minimum sentences gives little room for judicial discretion. This criterion even forces the judges to render wrong decision causing injustice to the victim as a result of jury nullification, which is a process by which the judge may acquit the accused even if his guilt is established but the sense of justness and farness of the judge might think the defendant does not deserve such a punishment.[19] Injustice could even be caused to the accused when the judges are not having any discretion to go below the mandatory minimum though the acts committed by the accused does not warrant such harsh punishment. Keeping these factors in mind we could move ahead.

The Madhya Pradesh High Court in *Vasudev v State of Madhya Pradesh*[20], reversed the sentence imposed by the Special Court on the wrongdoer under section 8 of the POCSO Act which provides for a minimum punishment of three years for any person found guilty of sexual assault under the Act. The Hight Court proceeded to observe that mere pulling the hands of the victim would not amount to an act with sexual intent. It should be understood that in order to attract section 8 of the Act, the act committed by the accused should satisfy the demands of section 7[21] of the Act which provides for sexual assault. So, a plain reading of the section 7 and the presumption of sexual intent provided under the Act[22] would imply that the Act of the accused would be punishable under section 8 of the Act unless he could rebut the prosecution case with credible evidence, which was not done by the accused in the present case. Hence, we could observe that the reversal of the decision by the High Court was in misdirection. An issue we observe here is that when judges are to award sentence to the wrongdoer, they are bound to award the proper and proportional sentence to the wrongdoer. When the judges observe that that the minimum punishment as prescribed by the Act is grossly harsh and disproportional to the act committed by the wrongdoer, then the judges tend to find a way to interpret the statute in such a way that it is favorable to the wrongdoer and acquitting him of the charges thereof.

A similar judgment could be seen in the case of *State v Bijender*[23], the facts were that the victim girl's jeans were torn off by the accused. The victim is a girl of seven years, the accused was charged under Section 9[24] of the POCSO Act which provides for aggravated sexual assault that invites a minimum sentence of five years. The Delhi Special Court has observed that tearing of jeans would not form part of the provision of 'any act done with sexual intent' as there was no intention to sexually assault the victim because the accused stopped by tearing of the pant and in order to attract section 9 the accused should've had sexual intent while doing the act. Therefore, the Court held the accused lacked sexual intent while doing the act. Here also the court construed the section in such a manner that is

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[19] Preeti Pratushi Dash, *Rape Adjudication In India In The Aftermath Of Criminal Law Amendment Act, 2013: Findings From Trial Courts Of Delhi*, Vol. 5. Indian Law Review (2022), 1, 7
[20] Criminal Appeal no. 490/2014
[21] POCSO Act, 2012, sec. 7, No.32, Acts of Parliament, 2012 (India).
[22] [22] POCSO Act, 2012, sec. 29, No.32, Acts of Parliament, 2012 (India).
[23] Sessions Case No:142/13, FIR NO:160/13
[24] POCSO Act, 2012, sec. 9(m), No.32, Acts of Parliament, 2012 (India).

beneficial to the accused and acquitted him of POCSO charges. The glaring issue in this particular case lies in the construction made by Court that is beneficial to the accused though the acts done by the accused would fall suitably within the provisions of section 9 of the Act.

A few other recent 2021 decisions by the Bombay High Court that became a topic for discussion and legal scholars pointed their fingers at the judge for being too lenient and construing the provisions deliberately to extend the benefit to the accused and resulting in acquittal of the accused from POCSO charges. One of the cases is *Libnus s/o Francis v State of Maharashtra*[25], a single bench decision which was presided by Additional Judge of Nagpur bench Bombay High Court Pushpa, Ganediwala, wherein the High Court has reversed the conviction of the accused for the offence of aggravated sexual assault[26]. The brief facts of the case are that the accused the neighbor of the complainant found her daughter i.e., victim girl in the company of the accused wherein he was seen holding hands with the girl and his pants were unzipped. The victim girl in her statement sated that the accused unzipped his pants and asked her to join him in bed. The High Court held that holding hand with a minor or opening the zip of one's own pants would not fall under the category of sexual assault[27] and the nature of the acts allegedly committed by the accused are not sufficient to fix criminal liability on the accused. The High Court further observed that while reading the ingredients of sexual assault the phrase 'any other act done with sexual intent' should be of the nature of the other ingredients mentioned in the section i.e., touching the vagina, penis, anus, breast. If such a connection is not brought between the physical contact without penetration and the other ingredients then the accused would not be attracted with the charge of sexual assault under POCSO Act.

Another case of similar nature is the decision made by the Bombay High Court presided by the same justice i.e., Justice Pushpa Ganediwala, the case is of *Satish Ragade v State of Maharashtra*[28], the decision made by the Justice gained wide criticism and public wrath. The facts of the case are that the accused pressed the breast of the victim and he attempted to move the dress of the victim. The complainant i.e., the mother saw the incident on time to raise alarm and rescue the victim. The Special Court convicted the accused for committing the offence of sexual assault[29] but on appeal at the Bombay High Court, the Court made the observation that since the nature of the punishment provided under Act is stringent in nature therefore, the proof and allegations should be stringent and serious. In the eyes of the Judge the act of pressing the breast of the victim in this particular case lacked specific details as to whether the accused pressed the breast of the victim from above the salwar or by inserting his hand into the salwar. The Court then made the controversial ratio that simply pressing the hand on the breast over the salwar would not fall under sexual assault under the Act. To be considered as an offence of sexual assault under the Act, there should be a direct physical contact that should be established by the prosecution i.e., the presence of specific details.

[25] Criminal Appeal No. 445 OF 2020.
[26] POCSO Act, 2012, sec. 9, No.32, Acts of Parliament, 2012 (India).
[27] *Vasudev, supra* note. 20.
[28] Criminal Appeal no. 161 of 2020.
[29] POCSO, *supra* note. 26.

Therefore, in the eyes of the Bombay High Court in *Satish Ragade case*[30], to constitute an offence of sexual assault under the POCSO Act there should be a direct skin to skin contact to satisfy the need of 'physical contact without penetration.' The decision we could term as a wrong decision as such a decision is against the spirit of the legislation. The sole purpose of the legislation itself was defeated when judgments of this nature is being rendered by a judge of a High Court. It is a well-established fact that judicial law making should not be inconsistent with legislative choice and large-scale innovation in that direction should be avoided at all cost.[31]

When we analyse the decision in *Satish Ragade*, we could consider two different scenarios, one is the legislation was so harsh that the act committed by the accused would attract a minimum sentence of three years imprisonment. There is little room for judicial discretion. The only thing the judge could do is to award a sentence not below three years and not more than five years. So, when a judge on finding the accused guilty of an offence of sexual assault, it becomes mandatory for him to award a sentence not below three years. So, the judge while giving second thoughts might have thought that the minimum sentence of three years if awarded to the accused would be detrimental and unfair to his life and societal status. The second scenario would be that the judge would have thought that the act committed by the accused is not that serious enough to warrant a punishment of imprisonment for three years, therefore she tried a way out to bring out the accused from criminal sanction under the Act. The point is the when there is legislative incompleteness coupled with ignorance of the judges would pave way for wrong decisions such as what we have observed in *Satish Ragade.*

Nevertheless, the Supreme Court has stayed the decision by the High Court in *Satish Ragade.* The Supreme Court heard a batch of petitions challenging the decision. Here the Attorney General K K Venugopal has stated that the decision by Justice Pushpa Ganediwala was setting a bad precedent and at the same time it would be bad and perverse in law considering the objective of the POCSO Act and the legislative intent of the Act.[32] Her decision was also highly criticized by a large section of the public as well. Subsequently the Supreme Court also withdrew the recommendation to make her appointment as a permanent High Court Judge stating her incompetence and lack of sensitivity towards sexual assault cases thereby raised doubts regarding her fitness in being a High Court Judge.[33] However, she was allowed to continue at her present position at the Nagpur bench of Bombay High Court for a couple more years. Could such an action against the judge be justified? The wrong decision could be partially attributed to the legislation which could have provided more room for discretion and

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[30] *Vasudev, supra,* note, 27.
[31] John Calvin Jeffries, Jr, Legality, *Vagueness, and the Construction of Penal Statutes*, Vol. 71, VIRGINIA LAW REVIEW (1985), 189, 196.
[32] Krishnadas Rajagopal, *Supreme Court Stays Bombay HC Order On 'Skin-To-Skin' Contact For Sexual Assault Under POCSO Act*, The Hindu, (Jan 17, 2022 5.20 PM), https://www.thehindu.com/news/national/supreme-court-stays-bombay-hc-order-on-skin-to-skin-contact-for-sexual-assault-under-pocso-act/article33675124.ece,
[33] Dhananjay Mohapatra, *Controversial POCSO Rulings Cost Bombay High Court Judge Her Confirmation*, Times Of India, (Jan 11, 2022 7.35 PM), https://timesofindia.indiatimes.com/city/mumbai/controversial-pocso-rulings-cost-hc-judge-her-confirmation/articleshow/80594664.cms.

the most of the judges would not have received any training, study classes or be sensitized with the nuances of the sentencing and the intention of the Act. We could also see many other instances where judges tend to make mistakes, even repeated mistakes would that call for detrimental actions against them? Even in POCSO cases there are cases which goes against the public conscience would that imply that action should be taken against all such judges? Probably 'no' is the answer. What is required is more sensitization and allowing more room for discretion.

Another flaw that can be observed in the POCSO Act is that it even if the sexual intercourse between the victim who is on the verge of attaining eighteen years and another person, though the intercourse being a consensual affair, the judge does have no discretion than to award the mandatory minimum sentence of ten years. Therefore, in such situations the judges are in a dilemma.[34] The issue that is underlying in this regard is that when it's a consensual affair and a mandatory sentence is passed, how could that be a solace to the victim especially when they are intending to marry in the future? It could be nothing other than injustice to both the victim and the accused. Such cases are mainly complaints by parents of girl children who have initiated proceedings against their child's boyfriends and eliminating his presence for years. A long term for incarceration just for a few children defying their societal boundaries, restrictions of the community, religion, class, caste and status set by the parents for choosing a perfect groom for marrying their daughters.

Justice Pushpa Ganediwala also presided in the case of *Jageshwar Wasudeo Kawle v State of Maharashtra*[35], a decision that also succeeded in gaining wide public attention and criticism. Here the blame should be attributed to the incompleteness associated with legislation. The accused was charged with the offence of penetrative sexual assault[36] committed on the victim who was of seventeen years and nine months and the victim's medical reports stated that she was pregnant. The Bombay High Court reversed the decision of conviction by the Special Court. The High Court Judge observed that due to lack of witnesses and the irrationality associated with the minimum sentence provided under section 4[37] i.e., of ten years. And such a decision sentencing the accused for ten years would be grossly arbitrary in nature. What we should take away from this judgment is that the legislation is incomplete in this regard as punishing for a period as long as for a minimum of ten years imprisonment when the accused is having a consensual affair with the victim who is nearing eighteen years, such a provision is detrimental to both the accused and the victim. But going by the provisions of the Act, then awarding the punishment would be inevitable. Though the judgment could be justified to an extent, it is in misdirection and wrong in the eyes of the legislation.

The decision by Karnataka High Court in *State of Karnataka v Raju*[38], presided by Justice B M Shyam Prasad and Justice M G Uma. The allegation against the accused was that, he

[34] Ved Kumari, *supra* note. 12.
[35] Criminal Appeal No. 20 of 2020.
[36] POCSO Act, 2012, sec. 3, No.32, Acts of Parliament, 2012 (India).
[37] POCSO Act, 2012, sec. 4, No.32, Acts of Parliament, 2012 (India).
[38] Criminal Appeal.No.100111/2016.

abducted the fifteen-year-old victim from the custody of her parents and had sexual intercourse with her. The accused was charged with offence of penetrative sexual assault punishable with a minimum imprisonment for a term of not less than ten years.[39] But when the decision was taken by the court both the accused and victim were living as husband and wife and were having two children. So, during the trial it was evident before the court that the accused and the victim were lovers and the complaint was filed by the victim's relatives to incarcerate the accused to distance the victim from her lover. It was a clear case of complaint by parents of girl child for defying the societal boundaries. But going by the provisions of the legislation, the acts of the accused would obviously attract the punishment of a minimum of ten years. But considering the situation and present matrimonial life of the both the accused and the victim the Court deliberately deviated from the stringent provision of the legislation and extended benefit of doubt to the accused and acquitted him.

Again, in the above-mentioned case we could see that the Karnataka High Court, has delivered a wrong decision in the light of the POCSO Act. Even though we could justify the decision of the Court, the decision is nevertheless in violation of the provisions of the Act. The reason could be attributed to the incompleteness of the legislation. The punishment in such scenarios should not be as harsh as that mentioned in the Act. Such harsh punishment would force the judges to acquit the accused due to their conscience and refuse to award the sentence.

An observation made by the Sessions Judge Pawan Jain in Delhi District Court decision in *State v Mohammed Zahid*[40], when the defense counsel asked for a leniency in sentencing considering the young age of the offender was that while a decision is to be made with regard to awarding minimum sentence is that the scope of section 7[41] of POCSO Act is very large, i.e., touching any part of the body of the victim would be covered under this section as the sexual intent would be presumed.[42] So, if the defence is not able to rebut the prosecution case then the accused would be presumed guilty. When the guilt is established the only discretion the judge is having with regard to the sentencing is that minimum sentence i.e., for three years could be awarded when the accused touches a less sensitive parts of the victim and higher sentences when more sensitive parts of the victim are touched by the accused. But such a criterion is not provided under the section, such is the discretion, the only discretion of the judge. Some judges may award minimum sentence to persons who touches a more sensitive part, some may even award maximum sentence to the accused who touches a comparatively less sensitive part. The judge also further opined that it would have been better if the legislation provided classification that touching more sensitive parts invite higher sentences and touching less sensitive parts invite lesser punishments. But as of now the Courts are bound to perform according to the law, unless a comprehensive amendment rectifies the present flaws in the legislation. Therefore, the judges cannot apply their minds to extend any

[39] POCSO, *supra*, note. 36.
[40] SC No. 103/13.
[41] POCSO, *supra*, note. 20.
[42] *Vasudev*, *supra*, note. 16.

leniency by awarding a sentence below the minimum sentence to the accused when his guilt is established.

By analyzing a few judicial decisions and the rationale given by various judges in awarding sentence and also while refusing to award any sentence as a result of judicial nullification, it is evident that there is a requirement of a comprehensive amendment into the POCSO Act considering both the seriousness of the offences and harshness of the punishments provided.

The changes required are first of all the offence of sexual assault should be classified keeping in mind the sensitivity of the body part that is touched. For example, touching the hand invites only a lesser punishment, touching the waist is requires graver punishment than that of touching the hand, same with touching the private parts which calls for the maximum punishment. So, if such an amendment is brought by there would not be much confusions or dilemmas in the minds of the judges when awarding sentences for commission of the offence of sexual assault. It could also be added that sentencing for touching of less sensitive parts such as holding or pulling hands could be solely a discretionary power of the judge to award a suitable sentence as the judge seems fit and a minimum sentence of say for example six months for subsequent convictions.

Another area that requires development is under section 4 of the Act,[43] that when the accused and the victim are lovers and such a fact inspires the court then the sentence that could be awarded to the accused on proved of sexual intercourse under a consensual affair could be left to the discretion of the judge. The rationale behind the requirement of such an amendment is that sentencing the accused for a minimum term of ten years for no serious offence does not serve the basic meaning of punishment itself. The parents of girl child would take unnecessary advantage of this provision to trap their child's lover to distance her from her lover. Such is not the intention of the legislation and provisions such as these would serve no good to the victim or to the society and a severe sentencing would turns worse when there is a child born to the victim. So, an amendment in this regard, like adding a proviso which provides for the judge to go below the mandatory minimum sentence or which reasons has to be recorded by him.

Next change required is the most essential part i.e., training and sensitization the judges. The judges should be made aware of the provisions and the modes of sentencing when cases of such seriousness come before them, they should have a solid idea and understanding of all the nook and corner of the provisions especially the area of presumptions which in most cases the judges overlook and call for more credible witness or evidence. Therefore, such comprehensive training of the provisions and subsequent training when amendments are made available to the judges.

From the above discussion we could understand that the lack of sentencing guidelines has been a glaring issue in the Indian Criminal justice system. Therefore, the legislation was

[43] POCSO, *supra*, note. 37.

giving messages to the public that certain criminal behaviour would not be tolerated by the society and enacted legislations calling for mandatory minimum sentences which provides very little or no room for judicial discretion. The penal policy provided under the Protection of Children from Sexual Offences Act 2012, adopted a heavily punitive approach which imposes stringent punishment for all physical sexual offences committed. The Act gives only a little discretionary power to the judges which even forces an approach of judicial nullification, which is evident from the case laws that we have analyzed in the study. We could see the judges shying away from awarding mandatory minimum sentence when faced with their own sense of justness. On a feeling that when the wrongdoer's act did not warrant such a severe punishment, the judges find a way out of it by going for an acquittal and forego a sentence under the POCSO Act. So, a significant amendment and a little more room for the judges in sentencing is required to make the legislation stand clear of the anomalies and to enable the legislation to serve its objectives.

Social Justice and Legal Aid Services

T.V.S. Bharathi[1]

Abstract

Legal Aid and social justice are fundamental rights that ensure equal participation and representation for all individuals in a society. However, marginalized communities and individuals often face significant barriers in accessing the justice system, leading to unequal outcomes and perpetuating systemic injustices. Legal aid services have been established to address these inequalities by providing legal assistance and representation to those who are unable to afford it. Legal aid services in India have evolved over time and have been instrumental in protecting the rights of the marginalized and underprivileged. However, there are still challenges in providing legal aid services, including funding, accessibility, and quality of services. Community-based approaches and partnerships between legal aid providers and civil society organizations have emerged as effective strategies to address these challenges.

Keywords: Legal Aid Services, Social Justice, Access to Justice, Technology, Marginalized Communities, etc.

Introduction

According to a report by the United Nations, approximately 80% of the world's population has no access to justice mechanisms[2].Legal aid is a fundamental right that is enshrined in many international human rights instruments. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, recognizes the right to a fair trial and the right to legal assistance. The International Covenant on Civil and Political Rights (ICCPR) also guarantees the right to a fair trial, including the right to legal aid for those who cannot afford it. The Convention on the Rights of the Child (CRC) also recognizes the right to legal aid for children.

In addition to these international instruments, many countries have established their own laws and policies on Social justice and legal aid. These laws and policies vary widely, depending on the legal system and social context of each country. Some countries have comprehensive legal aid systems that provide assistance to those who cannot afford a lawyer, while others have more limited programs that only cover certain types of cases or certain groups of people. A study by the Commonwealth Human Rights Initiative (CHRI) found that around 67% of undertrials in India were detained for up to six months, and 21% were detained for more than three years. Legal aid services can play a crucial role in helping undertrials access justice and secure their release[3]

The effectiveness of legal aid programs also depends on their implementation and the availability of resources. In some countries, legal aid programs are underfunded and understaffed, which can limit their ability to provide effective assistance. In other countries,

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[2] United Nations, Report of the Secretary-General on Access to Justice for Women, 2019
[3] CHRI, "Undertrial Review Committees in India: A Guide to Good Practice"

legal aid programs may face political opposition or lack support from the legal community. The judiciary also plays an important role in promoting Social justice and legal aid. Judges are responsible for upholding the rule of law and ensuring that everyone has equal access to justice, regardless of their social or economic status. In some countries, judges may also have the power to order legal aid for those who cannot afford it.

Social Justice

Meaning of social justice

Social justice refers to the fair and just distribution of resources, opportunities, and benefits within a society. It aims to ensure that all individuals have equal access to basic human rights, such as education, healthcare, housing, and employment, regardless of their social, economic, or cultural backgrounds.

The principles of social justice include equity, diversity, inclusion, human rights, and participation. Equity means providing resources and opportunities based on individual needs and circumstances. Diversity recognizes and values differences in individuals and groups. Inclusion ensures that all individuals are given equal opportunities and are not excluded based on their backgrounds. According to a report by the World Justice Project, more than 5 billion people worldwide lack meaningful access to justice[4].Human rights protect the basic rights and freedoms of all individuals, including the right to life, liberty, and security of person. Participation means involving individuals and communities in decision-making processes that affect their lives.

The importance of social justice in promoting equality and fairness in society cannot be overstated. In the United States, more than 10,000 people are wrongfully convicted of serious crimes each year, according to the Innocence Project[5].A study by the American Bar Association found that 80% of the civil legal needs of low-income Americans go unmet[6].Social justice is crucial in ensuring that all individuals, regardless of their backgrounds, have the opportunity to lead dignified lives and reach their full potential. It promotes equal access to education, healthcare, housing, and employment, and ensures that marginalized communities are not left behind. Social justice also helps to reduce social and economic inequalities, which are often the root causes of poverty, crime, and social unrest.

Social justice and Access to justice

The 2020 World Justice Project Rule of Law Index ranks India 69th out of 128 countries, indicating that there are significant challenges in ensuring access to justice for all[7].Access to justice is a fundamental human right that is essential for the protection and promotion of other human rights. However, marginalized communities often face significant barriers in accessing

[4] World Justice Project, "Rule of Law Index 2020"
[5] Innocence Project, About Wrongful Convictions, 2021
[6] American Bar Association, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans, 2017
[7] *Supra* note 3.

justice, including poverty, discrimination, lack of legal knowledge, and limited access to legal aid services. This is where social justice comes in.

The Access to Justice Project, launched in 2017, has provided legal aid services to over 3 lakh people in India's north-eastern states[8].Social justice plays a crucial role in ensuring that marginalized communities have equal access to justice. It aims to eliminate systemic inequalities and barriers that prevent individuals from accessing legal remedies and seeking redress for violations of their rights. By promoting equal opportunities and addressing systemic inequalities, social justice helps to level the playing field and ensures that all individuals have an equal chance to access justice.

Social justice also helps to ensure that legal systems are fair and impartial, and that they are not biased against marginalized communities. It promotes the rule of law, human rights, and democratic values, which are essential for ensuring that justice is accessible to all. Moreover, social justice seeks to address the root causes of injustice, including poverty, inequality, and discrimination, rather than just treating the symptoms. By addressing these underlying issues, social justice helps to prevent future injustices and promotes a more just and equitable society.

Historical development of social justice and legal aid

The concept of legal aid and social justice has a long history, dating back to the early 19th century. In the United Kingdom, the Poor Prisoners' Defence Act of 1836 was the first legislation to provide legal aid for criminal cases. This was followed by the Legal Aid and Advice Act of 1949, which established a comprehensive legal aid system in the UK. Similar programs were also established in other countries, including the United States, Canada, and Australia.

In the 20th century, the expansion of legal aid programs became a global phenomenon, with many countries recognizing the need for legal aid services for disadvantaged communities. The United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948, which recognized the right to a fair trial and the right to legal assistance. This declaration helped to set the stage for the development of legal aid programs around the world.

The evolution of social justice movements also played a significant role in the development of legal aid programs. The civil rights movement in the United States, for example, led to the establishment of legal aid programs to provide assistance to African Americans who were discriminated against in the legal system. Similarly, the feminist movement helped to establish legal aid programs to address issues such as domestic violence and gender discrimination.

[8] Commonwealth Human Rights Initiative, Access to Justice in India: An Overview of Recent Developments

In recent years, there has been a growing recognition of the importance of social justice in promoting access to justice. The number of people seeking legal aid in India has increased by around 60% over the past decade[9].

Many legal aid programs now incorporate social justice principles, such as addressing systemic inequalities and promoting human rights. The evolution of technology has also helped to expand access to legal aid services, with online platforms providing free legal information and resources to those in need.

Legal Aid

A. Definition of legal aid services

Legal aid services refer to legal assistance provided to individuals who cannot afford to hire a lawyer or pay for legal representation. The provision of legal aid services aims to ensure access to justice for everyone, regardless of their financial means. Legal aid services can be provided by a variety of organizations, including non-profit legal aid organizations, government-funded legal aid programs, and pro bono legal services provided by private lawyers.

The concept of legal aid services has a long history, with early forms of legal aid services dating back to the 19th century. The first legal aid society was established in Great Britain in 1876, followed by the establishment of legal aid programs in other countries around the world. In the United States, the first legal aid program was established in 1876 in New York City. Legal aid services play an essential role in promoting access to justice for marginalized communities who may otherwise be unable to navigate the legal system. The Legal Services Authorities have provided legal aid to more than 2.5 crore people in India since 1995[10]. Legal aid services are particularly important for marginalized communities, such as low-income individuals, minorities, and women, who may face additional barriers to accessing justice. They also help to ensure that individuals have the opportunity to exercise their legal rights and protections, regardless of their financial resources.

B. Importance of legal aid services in promoting social justice

1. Legal aid services as a means to achieve social justice for women

Legal aid services can be seen as a tool to address social inequalities and promote access to justice, particularly for marginalized communities. Legal aid services can help level the playing field in legal disputes and ensure that individuals have a fair chance to assert their rights. The highest numbers of legal aid cases in India are related to matrimonial disputes, followed by criminal cases[11]. In 2020, the Supreme Court of India directed all states and union territories to establish one-stop centers for legal aid services for victims of sexual assault and

[9] National Legal Services Authority, Annual Report 2020
[10] *Id.*
[11] *Id.*

harassment[12]. In 2019, the Legal Services Authorities provided legal aid to over 10 lakh women in India[13].

2. Benefits of legal aid services in promoting social justice

According to the Legal Services Corporation, every dollar invested in legal aid services for low-income Americans generates $11 in economic benefits[14].Legal aid services can help promote the rule of law by ensuring that all individuals have access to legal remedies and protections. They can also help promote social cohesion by ensuring that disputes are resolved fairly and justly. They can help reduce the burden on the justice system by ensuring that disputes are resolved before they escalate into more serious legal problems.

Types of legal aid services and institutions in India

Around 70% of India's population is eligible for free legal aid services, as per the Legal Services Authorities Act[15].In India, there are several types of legal aid services and institutions that provide assistance to people in need. Some of these include:

A. Free legal aid services

According to the National Legal Services Authority, over 3.6 million cases were disposed of through legal aid services in India in 2020[16].Free legal aid services are provided to the poor and marginalized sections of society who are unable to afford legal representation. The Legal Services Authorities Act of 1987 provides a statutory framework for free legal aid services in India. These services are provided by State Legal Services Authorities, District Legal Services Authorities, and Taluk Legal Services Committees. These bodies are responsible for providing legal aid services to those who are unable to afford it.

B. Legal clinics

As of 2020, there are around 30,000 legal aid clinics across India providing free legal aid to those in need[17].Legal clinics are set up by law schools and legal aid organizations to provide free legal assistance and advice to people who cannot afford a lawyer. These clinics are staffed by law students and lawyers who provide legal assistance to those who need it. Some of the popular legal clinics in India are the Legal Aid Clinic at NLSIU Bangalore, the Human Rights Law Network, and the Legal Aid Society of NLU Delhi.

C. Public defenders

Public defenders are government-funded lawyers who provide legal representation to those who cannot afford it. In India, public defenders are appointed by the court to represent accused persons who are unable to afford a private lawyer. The National Legal Services

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[12] Supreme Court of India, NALSA v. Union of India, Writ Petition (Criminal) No. 666 of 2015
[13] National Legal Services Authority, Annual Report 2019
[14] Legal Services Corporation, Documenting the Justice Gap in America, 2017
[15] Legal Services Authorities Act, 1987
[16] *Supra* note 8.
[17] *Id*.

Authority (NALSA) has been responsible for implementing the scheme of providing legal aid to the accused persons.

D. Pro bono services

Pro bono services are provided by lawyers and law firms who offer their legal services free of charge to those who cannot afford it. Pro bono services are not mandatory in India, but many law firms and lawyers provide these services voluntarily. The Advocates Act, 1961, provides for pro bono legal services by lawyers in India.

E. Community-based legal aid services

Community-based legal aid services are provided by NGOs and other community-based organizations to marginalized communities. These services are aimed at creating awareness about legal rights and providing legal assistance to those who need it. Some of the popular community-based legal aid organizations in India are the Human Rights Law Network, the Commonwealth Human Rights Initiative, and the Lawyers Collective.

Challenges faced by Marginalized Communities in accessing Justice and Legal Aid

Marginalized communities in India face several challenges in accessing justice and legal aid. Some of the challenges include:

1. Lack of Awareness: Many marginalized communities are not aware of their legal rights and the legal aid services available to them. This lack of awareness prevents them from seeking legal assistance when required. A survey conducted by the Centre for Social Justice (CSJ) found that 74% of people living in poverty in India are not aware of their legal rights, and 77% of those who are aware of their rights do not know how to access legal aid[18].
2. Geographical Barriers: Marginalized communities often live in remote and rural areas where legal aid services are not easily accessible. This makes it difficult for them to access legal aid services.
3. Language Barriers: Many marginalized communities in India do not speak the official language of the courts, which can make it difficult for them to access legal aid services and understand court proceedings.
4. Financial Barriers: Legal services can be expensive, and marginalized communities may not have the financial resources to access them. This makes it difficult for them to seek legal assistance when required. In Uganda, 98% of prisoners are unable to afford a lawyer, according to a report by the African Prisons Project[19]. Only 29% of low-income Americans facing civil legal problems receive the legal help they need, according to the Legal Services Corporation[20].
5. Discrimination: Marginalized communities in India often face discrimination from the legal system, which can prevent them from accessing justice and legal aid services.

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[18] CSJ, "Access to Justice for the Urban Poor in India".

[19] African Prisons Project, The Justice Report, 2019.

[20] Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans, 2017.

6. Lack of Representation: Marginalized communities are often not adequately represented in the legal profession, which can make it difficult for them to find legal representatives who understand their specific issues and concerns. In many countries, including Nigeria, Sierra Leone, and Zimbabwe, prisoners spend years in jail awaiting trial without access to legal representation, according to a report by the Open Society Justice Initiative[21].
7. Limited Legal Aid Services: Legal aid services in India are often limited in their scope and coverage, which can prevent marginalized communities from accessing the legal aid services they require.

Addressing these challenges and ensuring that marginalized communities have equal access to justice and legal aid services is crucial in promoting social justice and reducing inequality in society.

Case Studies on the impact of Social Justice and Legal Aid in India

According to a report by the National Legal Services Authority (NALSA), as of March 2020, a total of 4.38 crore legal aid cases have been disposed of in India since the Legal Services Authorities Act was passed in 1987[22].

Landmark Case Laws

Landmark cases where legal aid services played major role in achieving social justice:

1. Hussainara Khatoon v. State of Bihar (1979)[23]: In this landmark case, the Supreme Court of India held that under trial prisoners who cannot afford legal representation have the right to legal aid services, and directed the release of several under trial prisoners who had been in custody for several years without a trial. This case played a major role in establishing the right to legal aid as a fundamental right under Article 21 of the Indian Constitution.
2. People's Union for Democratic Rights v. Union of India (1982)[24]: This case involved the right to legal aid services for indigent workers, and the Supreme Court of India held that the state has an obligation to provide free legal aid services to workers who are unable to afford it. This case helped to establish the right to legal aid as an essential element of access to justice.
3. Olga Tellis v. Bombay Municipal Corporation (1985)[25]: In this case, the Supreme Court of India held that the right to livelihood is a fundamental right under Article 21 of the Indian Constitution, and directed the state to provide free legal aid services to the homeless in order to protect their right to livelihood. This case played a major role in recognizing the importance of legal aid services in promoting social justice.
4. State of Maharashtra v. Manubhai Pragaji Vashi (1995)[26]: This case involved the right of accused persons to legal representation, and the Supreme Court of India held that the state

[21] Open Society Justice Initiative, Pretrial Detention and Torture: Why Legal Aid is Critical, 2019.
[22] NALSA, Annual Report 2020.
[23] Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369.
[24] People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.
[25] Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.
[26] State of Maharashtra v. Manubhai Pragaji Vashi, AIR 1996 SC 238.

has an obligation to provide free legal aid services to accused persons who are unable to afford it, in order to ensure a fair trial. This case reaffirmed the importance of legal aid services in protecting the rights of the accused and ensuring access to justice.

5. Delhi Judicial Service Association v. State of Gujarat (1991)[27]: In this case, the Supreme Court of India held that the state has an obligation to ensure the independence of legal aid services and prevent interference by the executive or the judiciary. This case played a major role in ensuring the autonomy of legal aid services and protecting the right to legal representation.
6. Sheela Barse v. State of Maharashtra (1983)[28]: In this case, the Supreme Court of India held that prisoners have the right to access legal aid services, and directed the state to provide free legal aid services to prisoners who are unable to afford it. This case played a major role in protecting the rights of prisoners and ensuring access to justice.
7. Bandhua Mukti Morcha v. Union of India (1984)[29]: In this case, the Supreme Court of India held that legal aid services are essential for the protection of the rights of bonded laborers, and directed the state to provide free legal aid services to bonded laborers in order to ensure their release and rehabilitation. This case played a major role in protecting the rights of bonded laborers and ensuring access to justice.
8. National Legal Services Authority v. Union of India (2014)[30]: In this landmark case, the Supreme Court of India recognized the right to legal recognition of transgender persons, and directed the state to provide free legal aid services to transgender persons who are unable to afford it. This case played a major role in protecting the rights of transgender persons and ensuring access to justice.
9. Vishaka v. State of Rajasthan (1997)[31]: In this case, the Supreme Court of India recognized the right to a safe and dignified workplace, and directed the state to provide free legal aid services to women who are victims of sexual harassment at the workplace. This case played a major role in protecting the rights of women and ensuring access to justice.
10. People's Union for Civil Liberties v. Union of India (2002)[32]: In this case, the Supreme Court of India held that the right to legal aid is not limited to criminal cases, but also extends to remaining.

Case Studies

To further explore the impact of social justice and legal aid on marginalized communities in India, the following case studies can be examined:

1. Land Rights for Tribal Communities in Odisha: In Odisha, tribal communities were facing displacement from their land due to mining activities. Legal aid services provided by organizations such as the Human Rights Law Network (HRLN) helped these communities

[27] *Delhi Judicial Service Association v. State of Gujarat,* AIR 1991 SC 2176.
[28] *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.
[29] *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.
[30] *National Legal Services Authority v. Union of India,* (2014) 5 SCC 438.
[31] *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.
[32] *People's Union for Civil Liberties v. Union of India,* (2003) 4 SCC 399.

secure their land rights and prevent displacement. This example shows how legal aid services can be used to protect the rights of marginalized communities and promote social justice.

2. One-Stop Centers for Legal Aid Services: In 2020, the Supreme Court of India directed all states and union territories to establish one-stop centers for legal aid services for victims of sexual assault and harassment. These centers provide a range of services, including legal counselling, psychological support, medical aid, and police assistance. One such center, the Sakhi One-Stop Center in Jaipur, has provided legal aid and services to over 3000 women since it was established in 2017[33].
3. Access to Justice in Northeast India: The Access to Justice Project, launched in 2017, aims to provide legal aid and services to marginalized communities in India's northeastern states, including women, children, and indigenous populations. The project has established legal aid clinics and organized awareness camps and legal literacy programs to improve access to justice in the region. As of 2021, the project has provided legal aid and services to over 3 lakh people[34].
4. Protecting the Rights of Transgender Persons Transgender persons in India face discrimination and exclusion from society: In 2014, the Supreme Court of India recognized transgender persons as a third gender and directed the government to provide them with legal recognition and protection. Legal aid services provided by organizations such as the Naz Foundation have helped transgender persons navigate the legal system and assert their rights. This example shows how legal aid services can promote social justice by empowering marginalized communities.
5. Access to Justice for Dalit Women: Dalit women in India face multiple forms of discrimination and violence due to their caste and gender. Legal aid services provided by organizations such as the All India Dalit Mahila Adhikar Manch (AIDMAM) have helped these women access justice and obtain redress for rights violations. This example shows how legal aid services can promote social justice by addressing intersectional forms of discrimination.
6. One example of a successful legal aid program in India is the "Nyaya Sanjeevini" program, which was launched in 2017 by the Karnataka State Legal Services Authority (KSLSA). The program provides free legal aid and advice to people in rural and remote areas of the state who do not have access to legal services. It uses technology such as video conferencing to connect lawyers with clients in remote areas, making it easier for them to access legal services. The program has also trained para-legal volunteers from the local communities to provide basic legal advice and to identify legal issues that need more specialized support.
7. Another example of a successful legal aid program in India is the "iProbono" initiative, which is a platform that connects pro bono lawyers with individuals and organizations that require legal assistance. The program has a network of over 2,500 lawyers who provide

[33] Supreme Court of India, In Re: Prajwala Letter Dated 18.02.2015 Regarding Exploitation of Children in Orphanages, State of Maharashtra v. Dr. Praful B. Desai, SLP (Crl.) No. 10886 of 2016, India (February 28, 2019).
[34] UN Development Programme and Government of India, Access to Justice Project, India (2017).

legal aid services to marginalized communities, including women, children, and people from disadvantaged backgrounds. The program also partners with NGOs and other civil society organizations to provide legal aid services to their beneficiaries.

8. Tele-Law (India): Tele-Law is an initiative of the Indian government that uses technology to provide legal aid services to people living in remote and rural areas of the country. The program uses video conferencing technology to connect people with lawyers who can provide legal advice and assistance. Tele-Law has helped thousands of people in India access legal aid services and has been particularly helpful for people who live in areas where legal aid services are scarce.

Challenges in Providing Legal Aid Services

In India, only 0.4% of the population receives legal aid services, according to a report by the National Legal Services Authority[35]. There are several challenges in providing legal aid services in India, including:

Funding challenges

According to a report by the Commonwealth Human Rights Initiative, in 2016-17, only 53% of the total funds allocated for legal aid by the government of India were utilized. This highlights the challenge of inadequate utilization of funds. Another report by the Centre for Social Justice found that the allocation of legal aid funds across Indian states is highly uneven, with some states receiving only a small fraction of the total funds. This creates disparities in the availability and quality of legal aid services across the country.

Legal aid services require adequate funding to operate effectively. However, legal aid services in India often face a shortage of funds, which limits their ability to provide services to those in need. Some additional details on funding challenges faced by legal aid services in India:

1. Insufficient government funding: The government of India provides funding for legal aid services through the National Legal Services Authority (NALSA), but the amount is often inadequate to meet the demand for legal aid. For example, in 2020-21, the budget allocation for legal aid services was only Rs. 1,100 crore, which is less than 0.01% of India's GDP.
2. Inadequate utilization of funds: Even the limited funds allocated for legal aid are often underutilized due to bureaucratic delays, administrative inefficiencies, and lack of coordination between different levels of government.
3. Dependence on external funding: Many legal aid organizations in India depend on external funding sources such as international donor agencies, philanthropic foundations, and corporate social responsibility programs. However, these funding sources may be unreliable and subject to political and economic pressures.
4. Uneven distribution of funds: The distribution of legal aid funds is often uneven, with some states and regions receiving more funds than others. This can create disparities in the quality and accessibility of legal aid services across the country.

[35] National Legal Services Authority, Legal Aid and Access to Justice in India: An Overview, 2020

5. Lack of accountability: There is a lack of transparency and accountability in the allocation and utilization of legal aid funds. Many legal aid organizations do not have proper systems for monitoring and evaluation, which makes it difficult to assess their impact and ensure that they are using funds effectively.

Overall, funding challenges remain a significant obstacle for legal aid services in India, and there is a need for greater government investment and better coordination and accountability mechanisms to ensure that legal aid services reach the most marginalized communities.
Other Challenges include:

Accessibility challenges
Many people in India do not have access to legal aid services due to factors such as their location, language barriers, and lack of awareness about legal aid services. This is particularly true for marginalized communities in rural areas.

Quality of services challenges
There are concerns about the quality of legal aid services provided in India, including the qualifications and training of legal aid lawyers, and the lack of support and supervision for legal aid providers.

Challenges in providing legal aid services to marginalized communities
Marginalized communities such as Dalits, Adivasis, and women face unique challenges in accessing legal aid services. They may face discrimination, lack of resources, and cultural barriers that make it difficult for them to access legal aid services.

Role of Technology in providing Legal Aid and Services
Advantages of technology in promoting access to justice and social justice
A report by the International Bar Association's Access to Justice and Legal Aid Committee found that technology-based legal aid services have the potential to significantly improve access to justice, particularly in remote and rural areas. However, there are challenges related to data privacy and security that need to be addressed.[36]

The use of technology in legal aid services has several advantages in promoting access to justice and social justice. Some of the key benefits include:

1. Improved access to legal information: Technology can be used to provide legal information to people who may not have access to traditional legal resources. This can help to educate people about their legal rights and responsibilities and enable them to make informed decisions about legal matters.
2. Increased efficiency: Technology can help to streamline the legal process and make legal aid services more efficient. This can help to reduce costs and improve the quality of legal aid services.

[36] International Bar Association, "Access to Justice and Legal Aid Committee Report"

3. Enhanced quality of legal aid services: Technology can be used to improve the quality of legal aid services by providing access to legal professionals who are experts in their field. This can help to ensure that clients receive accurate legal advice and representation.
4. Increased outreach: Technology can be used to reach a wider audience and provide legal aid services to people who may not have access to traditional legal services.

Challenges in the use of technology in legal aid services

While the use of technology in legal aid services has several advantages, there are also some challenges that need to be addressed. Some of the key challenges include:

1. Privacy and security: There are concerns around the privacy and security of client information when using technology in legal aid services. Legal aid providers need to ensure that they have robust security measures in place to protect client information.
2. Accessibility: Not everyone has access to the internet or the necessary technology to access legal aid services. This can create barriers to accessing legal aid services for some people.
3. Technical proficiency: Some people may not be familiar with technology and may require additional support to access legal aid services.

Best Practices in Legal Aid Services

1. Community-based approaches: Community-based legal aid services involve the participation of local communities in the provision of legal aid services. This approach involves the identification of local needs and the development of strategies that address those needs. Community-based legal aid services can be more effective in addressing the legal needs of marginalized communities, as they are better equipped to understand the local context and culture.
2. Partnerships between legal aid providers and civil society organizations: Collaboration between legal aid providers and civil society organizations can help to address the challenges faced by marginalized communities in accessing legal aid services. Civil society organizations can play a crucial role in identifying the legal needs of marginalized communities and working with legal aid providers to develop strategies that address those needs.
3. Strengthening legal aid systems through policy and institutional reforms: Governments can promote access to justice by implementing policy and institutional reforms that strengthen legal aid systems. This can involve the development of legal aid legislation, the allocation of adequate resources to legal aid services, and the establishment of effective monitoring and evaluation mechanisms. Additionally, legal aid systems should be integrated into the broader justice system, to ensure that legal aid services are accessible and responsive to the needs of marginalized communities.

Conclusion

Social justice remains a pressing issue worldwide, various efforts have been made to improve legal aid services and ensure that marginalized populations receive adequate legal support. Reports and studies have highlighted the disparities in access to justice across different regions and socioeconomic groups. The legal aid services in India have made significant

strides over the years, with an increasing number of legal aid clinics and a higher number of cases disposed of through legal aid services. However, challenges such as lack of awareness of legal rights and limited resources persist, indicating the need for continued efforts to improve access to justice. Initiatives such as Innovation for Justice, technology-based legal aid services, and one-stop centres for legal aid services for victims of sexual assault and harassment demonstrate promising solutions for addressing these challenges.

The Concept of Criminal Justice (Delinquencies & Reformation)

Anamta Asif[1]
&
Paras Pradhan[2]

Abstract

This article gives a summary of the emergence of the Indian constitutional law and the Indian Penal code, their relation together with the evolution and present scenario. Preamble is the introductory part of the constitution of India stating sovereign, socialist, secular, democratic republic, and securing justice, liberty, equality and fraternity. The essential elements of the fundamental structure of the constitution are reflected in its preamble[3] *. The constitutional law is "The Supreme law of the land" so keeping The Indian Constitution as the base the legal code has been explained more broadly. Giving the highlights of Rights of an accused, furthermore depicting the difference between criminology and criminal justice. Stating facts about the evolution of the criminal justice System of India – (From Ancient to Present) . Starting with the sooner concept of 'DHARMA' which denoted the code of proper conduct or one's duty. Vedic period (1500-1000) to (1000-600) BCE the Vedic scriptures, like 'Puranas' and 'Smritis' denoted the code of conduct. King was considered for the concept of DHARMA; at that point, king's DHARMA was the duty towards his people and towards holding his position. The Dynasty classified laws into civil wrongs and criminal wrongs with the offense clarification. The Mauryan Dynasty had a system of rigorous penal system which prescribed mutilation still because the execution for even trivial offenses. Dharmasastra of Manu recognized assault and other bodily injuries and property offenses like theft and robbery. During the Gupta era, the judiciary consisted of the guild, the people assembly or the council, and the king himself. Judicial decisions conformed to legal texts, social usage, and therefore the edict of the king, who was prohibited from violating the choices. Currently, the criminal justice in India has a robust impact on individuals making them to fear the law made against crime.*[4] *Be it men or women laws are equal for everyone's equality before law".*

Keywords: *Dharmasastra, Manu, Preamble, Indian Criminal Law, Dynasty.*

Historical Attest

The constitution of India, the precursor of the new Indian renaissance, became effective on 26 January 1950. Before the arrival of the constitution, India was governed under the government[5]. The two major features of the Act were, firstly the act conferred only limited rights of self- government on Indians. The chief authority in an exceedingly province was vested within the Governor appointed by the Crown. He was to act ordinarily on the recommendation of the ministers who were to be responsible for the Provincial Legislature, which was elected on a limited franchise. However, the Governor could exercise certain

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[3] *Keshavnanda Bharti Vs. State of Kerala* , AIR 1973 SC 1461
[4] Available on https://byjus.com/free-ias-prep/criminal-justice-system-in india/#:~:text=An%20Indian%20Penal%20Code%20 (IPC,be%20followed%20in%20all%20stages.
[5] Government of India Act, 1935 (Act of 1937).

functions 'in his discretion' or 'individual judgment' within which case he was not bound by the ministerial advice and was subject to the control of the Governor-General.

Secondly, the act of 1935 sought to vary the character of the Indian government from unitary to federal. The Indian federation was to carry with its provinces during which British India was divided, and therefore the states under the native places.

Introduction

Crime- There are several definitions of crime betting on the sorts of conduct (nature), illuminating essential characteristics of crime. It includes the determination of causing crime, stating that intention as a crucial element to commit against the law and thus have criminal liability.

Intention

Actus Reus - The Guilty Act
Mens Rea - The Guilty Mind

Criminology is that the study of crime and criminal-behaviour, informed by principles of sociology and other non-legal fields, including psychology, economics, statistics, and anthropology. Criminology vs. criminal justice: what is the difference? The primary distinction when it involves criminology vs. criminal justice is that the former's emphasis on the study of crime and the latter concentrate on society's response to crime, as Balance Careers explains. Criminal justice applies principles and ideas developed by criminologists to enforcing laws and investigating crimes, moreover on the trial, punishment, and rehabilitation of criminals.

Criminal justice and criminology are distinct fields, but they're closely linked, theoretically and practically. From the perspective of potential criminologists and enforcement professionals, the massive difference is criminology's concentration is in science and research, and criminal justice's emphasis on application and administration.

The Legal Dictionary defines criminal justice as a group of procedures:

- Investigation of the criminal conduct
- Gathering evidence of the crime
- Making arrests
- Bringing charges in court
- Raising Defence
- Conducting trials
- Rendering sentences
- Completing punishments

By contrast, its definition of criminology emphasizes the scientific and academic aspects of the field's study of crime, criminal behaviour, and enforcement. Criminal justice includes the

work of Police, Criminal Courts, Prisons and Other correctional institutions, and Juvenile Justice Systems.

In-depth Criminal Law

Prof. Gillin stated that 'it's not the humanity within the criminal but the criminality within the individual which must be curbed through effective administration of Criminal Justice'.

In a democratic country like India, the constitution guarantee certain basic rights and liberties to the people while criminal justice administrations protect them by enforcing laws and punishing the offenders. If the constitution may be a chariot then the four components of the criminal justice system (the police, bar, judiciary, and correctional services), establish a harmonious relationship towards a just society in India.

According to **Salmond,** 'the administration of justice implies the upkeep of rights within a political community by means of physical force of the state. The expansion of the administration of justice is the image of the expansion of man. The social nature of man demands that he must sleep in a society. While living so, man must have experienced a conflict of interests, which created the requirement for providing for the administration of justice.

Types of Justice

Generally, there has been two basic types of justice, which are present in our legal system as,

Public Justice

- Public justice is that which is run by the state through its own tribunals.
- It is a relation between courts on
- the one hand and individuals on the opposite.

Private Justice

- Private Justice is distinguished as being justice between individuals.
- It is a relation between individuals.

Basic Principles of Criminal Law

Nullum crimen sine lege is a Latin term for "no crime without law" called the legality principle[6]. It is also identical with "***nullum poena sine lege***," which means no punishment without law. The meaning behind these principles are deep and descriptive in nature, which deals with different aspects likewise;

- The principle of minimal criminalization;
- The burden of proof is on the prosecution;
- The presumption of innocence;
- Proof of guilt beyond a reasonable doubt;

[6] Dr. Kumar Askand Pandey's *Principles of Criminal Law in India - Cases & Material* (Central Law Publications)

Another maxim ***"ei incumbit probatio qui dicit, non qui negat".***[7] States that the burden of proof is on the one who declares, not on the one who denies it. This implies the accused is innocent until proven guilty.

Process a Criminal Trial

The judicial process of trials India broadly classified into two main forms viz;

- **State criminal justice**- It involves a case of particular state and a crime committed in that state.
- **Federal criminal justice**- This looks after federal parts of India and matters of one or more states. Various bodies are involved here, playing a vital role in the form of judges, mental health professionals, attorneys, law enforcement officer, etc.

Despite all these process & Procedures of law for justice, there is only one basis, which acts as the ground for all the acts, statutes & rules for maintaining criminal justice proceedings. The main concept behind these systems and which is the root for evolution is none other than Constitution[8].

This concept of having ground was firstly given by German philosopher with term "***Grundnorm***"[9.] The word "grundnorm" is a German word meaning fundamental norm.

As per the theory, the constitution is regarded as the paramount source of law, and all other laws derive their legality and applicability from it indicating it to be a Grundnorm.

CONSTITUTION PARLIAMENT	CONSTITUTIONAL LAW	ORDINARY LAW,STATUTES OF PARLIAMENT	DECISIONS OF EXECUTIVE POWER

The Golden Triangle

As per Constitution of India, there are some of the articles, which are specifically drafted / adopted & inserted for providing the independence to justice system with freedom & equality principle *ab initio.*

The Right to equality/equality before law[10], Right to freedom[11] and Protection of life and personal liberty[12] is known as the golden triangle of the Indian Constitution[13-].

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[7] Legal Maxim , *available at* https://incometaxindia.gov.in/Pages/income-tax-dictionary.aspx?key=E (Last Visited on Sep 20, 2022)

[8] The Constitution of India , 1950

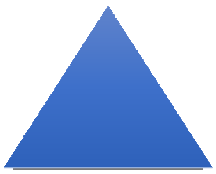
[9] Hens Kelson ; Theory of Grundnorm, *available at:* chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ili.ac.in/footnoting12.pdf (Last Visited on Sep 20,2022)

[10] Article- 14, Constitution of India.1950

[11] Article -19, Constitution of India.1950

[12] Article -21, Constitution of India.1950

ARTICLE 14



ARTICLE 19 **ARTICLE 21**

Hon'ble Supreme Court in the case of *Maneka Gandhi v. Union of India*[14]states that , if law deprives a person of 'personal liberty' it has not only stand the test of article 21 but also only to stand the test of Article 19 and Article 14 ,stating interconnection between the three articles opening a new dimension to the interpretation of law in defending individuals rights[15].

Moreover, The President of India has the power to grant pardons[16]. The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

Other aspects of constitution involves, no one can be deprive of life and personal liberty except procedure established by law[17], here "life and personal liberty" have broader aspects.

The Right to life

It means something more than mere survival of animal existence. It includes right to live with human dignity with basic necessity of life, it involves protection and conservation of life because it is very precious to one so that he enjoys the social, cultural, educational and intellectual enjoyment etc. The right to life includes protection of health and strength of workers, men and women and of the children against abuse, etc.[18] Right to life has its extended horizon including tradition, culture, heritage etc.

It was observed by Hon'ble Supreme court that the Right to life in Article 21 includes "not only physical existence of life but also the quality of life and for the residents of hilly areas, access to road is access to life itself"[19].

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[13] Why is Article 14, 19 and 21 called the Golden Triangle? , *available at:* https://byjus.com/ias-questions/why-isarticle-14-19-and-21-called-the-goldenriangle/#:~:text=Article%2014%20(Right%20to%20Equality,of%20the%20rule%20of%20law. (Last Visited on Sep 20, 2022)

[14] *Menaka Gandhi V. Union of India*, AIR 1978 SC 597

[15] Maneka Gandhi Case, *available at*: https://byjus.com/free-ias-prep/maneka-gandhi-case-1978-sc-judgements/ (Last Visited on Sep 20, 2022)

[16] Article -72, Constitution of India.1950

[17] Article-21, Constitution of India.1950

[18] *Bandhua Mukti Morcha V. The Union of India,* (1997) 10 SCC 549

[19] *State Of Himachal Pradesh V. Umed Ram,* AIR 1986 SC 847

In furtherance of Freedom, Article- 22 States that, no person shall be arrested, shall be detained in custody without informed and shall not be denied for right to consult of the grounds for such arrest.

Person being arrested and detained in custody shall be produced before the nearest magistrate within the period of 24 hours. The person has right not to be detained for more than 24 hours without the authority of the magistrate[20]. The person has right to be consult and be defended by a lawyer of his choice.

Rights of Accused

Even a person is accused means the person is not yet proven guilty prima-facie, therefore cannot be stated a criminal "*ei incumbit probatio qui dicit, non qui negat*";principle believes that, the burden of proof is on the one who declares, not on the one who denies.

The first and foremost the person has Right against Wrongful arrest, in India accused are provided only in cases where a warrant is issued. The provisions of Cr.P.C & Constitution states about the person being present before Judicial Magistrate within 24 hours of arrest[21]. The rights of the accused in India are divided into rights before trial, rights during the trial, and rights after the trial[19]. As per the judicial doctrines, one is taken into account innocent until proven guilty. Therefore, till the time the crime isn't proven, there are certain rights for persons accused of crimes.

In India, these rights to the accused are given on the lines of – 'Let hundreds go unpunished, but never punish an innocent person'. Some of them are -

- Right to know about the accusations and charges: Under the Cr. P. C.[22], the rights of an arrested person under Cr.P.C include to know the details of the offence and the charges filed against him/her.
- Right to have Family Visits in Jail.
- Right against solitary confinement.
- The Right to Appeal: The rights of arrested persons include the right to file an appeal against his conviction in a higher court[23].
- The Right to Humane Treatment in Prison: Accused persons have the right to have all their human rights when in prison. Also, be subjected to humane treatment by the prison authorities.
- Right to accused of privacy and protection against unlawful searches: The police officials cannot violate the privacy of the accused on a mere presumption of an offence. As per

[20] Article -22, Constitution of India.1950
[21] Section- 57, CRPC 1973, Article- 22(2), Constitution of India.1950
[19]What are the rights of the accused person in India*?, available at*: https://timesofindia.indiatimes.com/readersblog/your-life-your-decisions/what-are-the-rights-of-the-accused-personin-india-37467/ (Last Modified Sep 15, 2021)
[22] Code of Criminal Procedure , 1973 (Act 2 of 1973)
[23] Section – 374, Code of Criminal Procedure , 1973

right of accused in India, his/her property can't be searched by the police without an enquiry / warrant.

- The Right against the ex-post facto law: The rights of accused in India also gives a person the authority where he/she cannot be tried for an offence that was the earlier crime and now is not. This means that the retrospective effect law is not applicable. An act that was not a crime on the day when it was done, cannot be considered as an offence.
- Right to legal aid: In this, the rights of an accused person allow him/her to hire a lawyer to defend them and in case, he is not able to afford a lawyer, the State must provide free legal aid to him for his representation in court[24].
- Right to a free and expeditious trial: The rights of accused in India has the right to fair trial in India and an expeditious trial, which is free of any bias or prejudice.
- The Right to be present during a trial: Section 273 of the Code provides that all evidence and statements must be recorded in the presence of the accused or his criminal lawyer.
- Right to get Copies of Documents: It comes under the rights of accused persons in criminal cases to receive copies of all the documents filed by the prosecutor in relation to the case.
- Right to be considered Innocent till proven guilty: The accused has the right to be considered innocent until his guilt is proven in court on the basis of evidence and statements by witnesses.
- The Right to be present at the trial: The accused person has the right to be present during his trial and have testimony presented in front of him.
- Right to cross-examination: It's the right of the accused in criminal cases to be cross-examined by the prosecutor to prove their innocence.

When a person is declared innocent and acquitted by the court, the following rights are given to him: Accused persons have a right to get a copy of the judgment and Right to receive protection from police if there are reasons to believe there is a threat to his life post-acquittal.

Article 20 and Article 22 provides certain protection to the persons being accused of a crime. These clauses of article 20 deals with different kind of protections as[25] …

ARTICLE 20(1)	EX POST FACTO LAWS
ARTICLE 20(2)	DOUBLE JEOPARDY
ARTICLE 20(3)	SELF-INCRIMINATION

Essentials for Rights

1. There must be a person accused of an 'offence'. Offence is described under the IPC & General Clauses Act[24].

[24] Article- 39 A, Constitution of India,1950.
[25] The Constitution of India - Bare Act (Universal LexisNexis, 2022) 24 Section – 40, IPC 1860, Section- 3 (38). General Clauses Act, 1897.

2. The second prosecution must be for the same offence and he must have been already prosecuted and punished for the same offence.
3. No person accused of any offence shall be compelled to be a witness against himself[26]. States that nobody accused of any offense shall be compelled to be a witness against himself.

It was observed by Hon'ble SC that admission of tape recorded evidence i.e. telephone, offended Article - 20(3). The submission was that the manner of tape recorded conversation was not procedure established by law and the appellant was incriminated[27].

Dual nature of Defamation

Defamation is both a criminal i.e. which carries a jail sentence and a civil offence i.e. which is punishable through the award of damages in India. The IPC codifies the criminal law on defamation, whereas defamation is penalized as a civil offence under the law of torts[28]. Punishment for defamation consist simple imprisonment for a term which may extend to two years, or with fine, or with both[29].

Female Criminality

In society, it is considered that crime is generally done by males. Still this society is Patriarchal society. Women are considered as preserver of traditions. The share of women in crime is increasing rapidly as reflected by the report of NCRB. [30.] This was a total neglected issue according to an article researched in Bangladesh women commit more crime than any types of crime. Based on percentage distribution, female have committed more violent crime (66%) than any types of crimes in 2012[31].

Murder /Attempt to Murder (65.2%)	Assault/Collision (10.6%)	Grievous Hurt and Hurt (11.3%)	Abduction/Attempt to abduction (6.9%)

In India it is a belief, that women are less crime prone and law abiding. Family system is Patriarchal in nature When she is young she is dependent on her father, when she is married she is dependent on her husband and when she is old she is dependent on her son. The women in the family is protected by the male members only.

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[26] Article - 20(3), Constitution of India.1950
[27] *R.M. Mallkani V.State of Maharashtra,* (1986) SC 3 (30,147,219)
[28] Section- 499 Indian penal code, 1860
[29] Section- 500, IPC, 1860.
[30] Ahmad Siddhiqui's, *Criminlogy Penology and Victimology* -Sm Afzal Qadri (CLA Publication)
[31] Theories of Female Criminality, *available at*: https://www.researchgate.net/publication/334113027 Theories of Female Criminality_A_criminological_analysis (visited on Sep 29, 2022)

Women criminals comprise 6.15% of criminals convicted for crimes under the IPC in 2019. The number of women offenders arrested for committing cognizable offenses between the age 18-30 years in 2018 were 64,369 (4.13%) has hiked up to 1,91,508 in 2019 (6.15)[32].

Phoolan Devi was just 11 year old when she was a victim of domestic violence, marital rape, gang- raped for 3 weeks by a man of 30's public humiliation. She eventually turned into a dacoit to take her revenge. It states that women marital life deserves attention while studying female criminality[33].

Corporations often consciously decide to employ married men over married women as they want to cut the burden of paid maternity leave thereby contributing to the ever-present discrimination against women in workplaces.

Theory of Reformation

It states punishment to be curative, quite to be deterrent. In line with this theory, crime is sort of a disease, which cannot be cured by killing instead of curing it with the drugs with the assistance of process of Reformation. The object of punishment is to bring out moral reform of the offender. He must be educated and taught some art or industry during the amount of his imprisonment so he is also able to start his life again after his release from jail. While awarding punishment the judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the thing with which he committed the offence and other factors. The object of doing so is to acquaint the judge with the precise nature of the circumstances so he may provide a punishment, which suits the circumstances.

According to the view of *Salmond,* if criminals are to be sent to prison to be transformed into good citizens by physical, intellectual and moral training, prisons must be was comfortable dwelling places.

According to the supporters of the Reformative theory, punishment isn't imposed as a way for the advantage of others. Rather, punishment is given to coach or reform the offender himself. Here, the crime committed by the criminal is an end, not a way as within the Deterrent theory. This view is usually accepted within the modern world. The Act[34] has been passed with the same object see-able. About the Act, the Supreme Court observed that the Act could be a milestone within the progress of the trendy liberal trend of reform within the field of penology[35].

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[32] National Crime Record Bureau, Reports: *Female Criminality* (2019)

[33] Female Criminality: Another dark side of Patriarchy, *available at:* https://www.legalserviceindia.com/legal/article-5184-female-criminality-another-dark-side-of-patriarchy.html#:~:text=Women%20criminals%20comprise%206.15%20percent,Code%20(IPC)%20in%202019. (visited on Sep 26, 2022) .

[34] The Probation of Offenders Act, 1958 (Act 20 of 1958).

[35] *Rattan Lal v. State of Punjab,* AIR 1965 444.

The Hon'ble Supreme Court observed that this Act may be a piece of social legislation which is supposed to reform juvenile offenders with a view to preventing them from becoming hardened criminals by providing educative and reformative treatment to them by the government[36].

Conclusion & Suggestion

Today the criminal justice system is so upgraded that whether an accused or the guilty everyone seems to be regarded to be with self-respect regardless of an accused or a criminal no one can be treated like an animal and therefore the system is meant to be non-biased, which suggests laws are applicable to everyone no matter about their gender, sex, caste & creed. If the person has committed a criminal offense with mala-fide intent, he will certainly pay the penalty - punishment.

However, within the Indian Justice System, if an individual is found guilty then females are speculated to pay less penalty or lenient as compared to males. This implies as a loophole within the system. Talking about criminals today, the primary thing that clicks within the mind may be a 'man must be committing anything against the law'. This has to follow the system of Equality before the law in order that things may get balanced together with gender neutrality.

[36] *Musa Khan v. State of Maharashtra,* AIR 1976 SC 2566.

Privileged Status Bestowed on Matrimonial Communication: Critical Analysis

Ashlesha Suryawanshi[1]

Abstract

Privilege communication is a right of spouses, they can exercise such right when it comes to give testimony against the other spouse. The privilege communication provisions mentioned in Section 122 of the Indian Evidence Act 1872, the objective behind the protection of the private communication between the spouses is to protect the sanctity of marital relationship between couples. However, the state seizes the authority of privacy and privilege when the culprits themselves misuse the sanctity, throwing the social order out of balance. The article addresses section 122 of the Indian Evidence Act and places special emphasis on situations in which the privilege between spouses is prohibited.

Keywords: *Marriage, Privileged, Matrimonial Communication, family, testimony, competent witnesses.*

Introduction

Privileged communication is an exchange of Information between two individuals in a confidential relationship.[2] Marital Communication is one of the Privileged Communications. Matrimonial Communication falls under ambit of public interest and hence such communications excluded from admissible evidence[3]. A Matrimonial Communications are private communications between the Spouses that must not be disclosed by the recipient for the benefit of the communicator[4]. Considering the Public Policy, the Spouses are not competent to give their evidence against their partners and such evidence is inadmissible[5]. The one reason behind this could be that Husband and Wife considered as one entity and therefore testimony of such evidence cause Marital discord because, the marital relationship between a man and woman is the most sacred relationship which is represented by marriage, and the conjugal privilege exists because it is necessary to preserve chastity and preserve the bond of absolute trust between husband and wife.

The relationship between husband and wife is considered sacred and disclosure of communications between them during their marriage is not permitted by law, even if it means

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[2] Marital Privileges and the Right to Testify, The University of Chicago Law Review, Vol 34 No. 1, pp. 196-210, JESTOR, https://www.jstor.org/stable/1598630

[3] Phipson & EiuaiT, Manual of the Law of Evidence 10- 11 (D.W. Elliott ed., 2001); Cross & Tapper on Evidence 55-57 (Colin

[4] Ram Bharosey v. State, A.I.R. 1954 S.C. 704; Bhalchandra Namdeo Shinde v. State of Maharashtra, (2003) 2 Mh.L.J. 580.

[5] Donald A. Gillies, Privilege communication between husband and wife: Extension of the privilege to acts in criminal cases, Journal of Criminal Law and Criminology, Vol 47 Issue 2, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=4483&context=jclc

that the process of asking for evidence becomes more difficult. It is widely acknowledged that everyone has the right to privacy in the modern world. The marital relationship does not require proof of transparency to a third party.[6] No one may be required by law to reveal any conversations they had with him prior to being married. They also involve their spouse in this. Additionally, he or she must not reveal any such communications in instances involving married people or the prosecution of any crime committed by one married person against another without the person or his representative's approval.[7]

This rule is incorporated under Section 122 of the Indian Evidence Act, of 1872.[8] The Evidence Act's section 122 addresses "spousal privilege" in relation to legal proceedings. The terms "testimonial privilege" and "spousal confidence privilege" are commonly used to describe two sorts of spousal privilege[9]. The "spousal confidence privilege" safeguards communications between spouses that could be used against a spouse in court whereas the "testimonial privilege" forbids a spouse from testifying against the other in court. Section 122 provides the latter with privileges to protect the sanctity of private conversations between two persons in marriage.

This section prohibits a person from disclosing any communications made by his or her spouse during his or her marriage.[10] Prohibition of disclosure of any communication between spouses during the maintenance of marriage. The rationale behind this provision is to protect marital harmony and the State can intervene if the privacy of spouses is replaced by abuse or exploitation[11]. The current research study aims to explore the English law section's origins as well as the history and evolution of Section 122. It also looks at the justification for this section, analyses its parts, and identifies how it might hamper the administration of justice. The failure of the provision to support the logic will be emphasised. A set of recommendations for legal reform will be put out in the last part.

History and Evolution of Matrimonial Privilege

Marriage Privilege or spousal privilege was established by the English Evidence Act of 1843 and has its roots in common law jurisprudence. [12], *which stated that neither husband nor wife could be compelled to disclose any communication made during the marriage*[13]. A wife could not be called as a witness for or against her husband, according to Sir Edward Coke. He provided

[6] Marital Privileges and the Right to Testify, The University of Chicago Law Review, Vol 34 No. 1, pp. 196-210, JESTOR, https://www.jstor.org/stable/1598630

[7] Yamini Patel and Ritu Shamra, Privilege in Matrimonial Communication and the Abuse of its sanctity, legal Service India, https://www.legalserviceindia.com/article/l96-Privilege-In-Matrimonial-Communication-And-The-Abuse-Of-Its-Sanctity.html (May 19, 2023)

[8] Indian Evidence Act, 1872, Sec 122

[9] 6 C Muller & L.C Kirkpatrick, Evidence under the Rules 939 (2000)

[10] Ibid, Section 122

[11] Anne N DePrez, 'Pillow Talk, Grimgribbers and Connubial Bliss: The Marital Communication Privilege' (1980) 56 Ind LJ 121.

[12] English Evidence Act, 1843

[13] The Evidence Act of 1843

two explanations for this, the first of which was that the wife lacked the necessary capacity to testify and that her testimony was otherwise inadmissible due to public policy.[14]

In the Case of *Trammel vs United States*,[15] it was observed that the concept of spousal privilege is rooted in two mediaeval concepts, namely that a person having an interest in the proceedings and a married couple being one, and therefore cannot incriminate themselves in absence of a woman's separate legal existence. This led to the assumption that if a relationship disclosed by one spouse was still not acceptable, then the other spouse could not do the same. The notion that a person's property could not testify against the owner of that property arose from the fact that women did not have any rights at the time and were therefore seen as men's "property."[16]

This Provision flows from certain legislative changes mentioned above

1. Evidence Act of 1853: Under common law, the problem was that there were four rules for the spousal privilege, firstly the party or his/her spouse was not a competent witness for the party, secondly, the party was not a compellable witness against himself, and thirdly the spouse was not competent[17] witness against his or her spouse, fourth marital communications are protected from disclosure by a witness against their spouse. Once the marriage is dissolved, the protection of marital communications is terminated but the statute further prohibits disclosure of marital communications even after the marriage[18]. Nevertheless,

   In *Shenton V. In Tyler's* case[19], the court rejected the existence of a further rule that post marital communications are protected from disclosure. The spousal disqualification rule was based on the legal presumption that a husband and wife are a one entity and the fact that the accused was not permitted to testify on his side since he had an interest in the proceedings. The decision in question was an example of English common law. It was not in the public interest to grant a general privilege over communications pertaining to marriage. Since the marriage in question was already over, maintaining marital harmony through the protection of such communications was impossible. Consequently, the decision left in place a rule that seeks to reject evidence without purpose.

[14] Tanmay Amar, 'Matrimonial Communications: Wedded to the Irrational', (2005) Vol.17, Student Bar Review, pp. 59-72.
[15] *Trammel v. United States*, 445 U.S. 40 (1980)
[16] Dipendu Das and Shubhangi Kumari, Right to Privacy and Family law: Analyzing the Section 122 of the Evidence Act, 1872 within the Constitutional conundrum, Manupatra, Mar 25, 2022,
[17] Tanmay Amar, 'Matrimonial Communications: Wedded to the Irrational', (2005) Vol.17, Student Bar Review, pp. 59-72.
[18] Evidence Amendment Act), 1853, S.3, *"No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage"*
[19] Shenton v. Tyler, 1939 Ch 620: (1939) 1 All ER 827, 831-832.

2. Civil Evidence Act 1968: By section 16(3) of the Evidence Act 1968[20], the rule relating to matrimonial communication was repealed and thus the spouse was admitted as another witness in civil cases.
3. Police and Criminal Evidence Act 1984[21]: The Act has already established a provision and under Section 80 of the Act, a spouse can testify against the other spouse both during and after a divorce if they are a competent witness against them. And thus, the court can compel an ex-spouse to appear as a witness in cases where the other ex-spouse is accused.[22]

4. Although the clause has undergone numerous amendments, the issue of maintaining marital harmony has not been fully addressed, and neither spouse can still be forced to testify against the other. This provision forbids coercion against matrimonial communication in the event of sexual offences, assaults, or injuries to individuals under the age of 16 years.[23]

Analysis Of Section 122 Of Indian Evidence Act 1872

Exchange of information between two people in a confidential relationship is referred to as "privileged communication."[24] A privilege communication is a secret statement that the recipient must keep private for the communicator's advantage.[25] *Section 122 of Indian Evidence Act*[26] States that, "Section 122: Communication during the marriage- No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other".

This Provision prevents a person from disclosing any communications made by his or her spouse during their marriage. The rationale behind this provision is to protect marital harmony and the State can intervene if the privacy of spouses is replaced by abuse or exploitation. A protected communication cannot be used as evidence in court, even if it is pertinent to the case, with several exceptions. [27].

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[20] Civil Evidence Act, 1968, Sec 16(3).
[21] Police and Criminal Evidence Act, 1984, Sec 80.
[22] Avani Maheshwari, Spousal Privilege under the Indian Evidence Act, Lex Research Hub Journal, Vol II Issue III, July 2021 ISSN: 2582– 211X, (May 10 2023).
[23] Police and Criminal Evidence Act, 1984, Sec 80(3).
[24] Yamini Patel and Ritu Sharma, Privilege In Matrimonial Communication And The Abuse of Its Sanctity, legal service India, https://www.legalserviceindia.com/article/l96-Privilege-In-Matrimonial-Communication-And-The-Abuse-Of-Its-Sanctity.html (May 10, 2023)
[25] Yamini Patel and Ritu Sharma, Privilege In Matrimonial Communication And The Abuse of Its Sanctity, legal service India, https://www.legalserviceindia.com/article/l96-Privilege-In-Matrimonial-Communication-And-The-Abuse-Of-Its-Sanctity.html (May 10, 2023) .
[26] Indian Evidence Act 1872, Sec 122.
[27] Privileged Communication, https://law.jrank.org/pages/9428/Privileged-Communication.html#:~:text=A%20privileged%20communication%20is%20a%20private%20statement%20that,they%20exclude%20relevant%20facts%20from%20the%20truth-seeking%20proc https://www.bing.com/ck/a?!&&p= (May 10 2023).

Conditions need to be fulfilled under Section 122

1) A third party was not present during the communication because its confidentiality would have been destroyed by their presence.
2) The communication was meant to be kept private and confidential by both parties.
3) It excludes correspondence sent or received prior to marriage or following a divorce.
4) Either spouse may use this privilege to prevent their spouse from testifying or to refuse to testify against their spouse.

Essentials

1) A prohibition against disclosing any communications between spouses made while the marriage was still in force unless the person who made them or their legal representative agrees to it.
2) The prohibition extends to situations in which the spouses may be inclined or willing to disclose the information without being forced to do so.

Condition To be eligible for the privilege

1) The most important condition for its use is a legal marriage.
2) The consent must be given voluntarily and cannot be derived from a simple waiver.
3) Although the court has granted exceptions for the presence of children, the confidentiality is typically destroyed and the privilege is destroyed when a third person is present at the time of communication.
4) The privilege is not available in certain circumstances, such as when one spouse is being investigated for a crime

When Disclosure is permissible

1. The unique According to Section 122, certain circumstances, such as when one spouse is being investigated for crimes against the other or the couple's children, preclude the use of the privilege.
2. This served to uphold the public interest principle and preserve the sacredness of social institutions in society.

The theory behind the concept is that the government would intervene in citizens' bedrooms if it thought that abuse and exploitation were taking the place of privacy[28]. Section 120 of the Evidence Act made spouses as Competent Witnesses in Civil as well as Criminal Proceedings.[29] The Spouses testifies against each other and therefore this creates Strife between the Husband and Wife. Now there are two main conflicts involved in this issue one is that withholding relevant evidence create frustration on the Public Interest that follows the Administration of Justice and on the other hand prohibition of Such spousal Evidence protect the public interest that preserve the harmony between the husband and wife. In various judgments the Court

[28] Yamini Patel and Ritu Sharma, Privilege In Matrimonial Communication And The Abuse of Its Sanctity, legal service India, https://www.legalserviceindia.com/article/l96-Privilege-In-Matrimonial-Communication-And-The-Abuse-Of-Its-Sanctity.htm l (May 10, 2023).
[29] Gazal Preet Kaur, Does Section 122 of the Evidence Act need reform? The Leaflet, Feb 25, 2022.

clarified the bar of inadmissibility and those situations when the Contents of such private communication shall be admissible.

In the case of *Appu v. State*[30], the testimony of the witnesses who were present and overheard the confession of the husband to his wife was permitted to be used as evidence. In the case of *M.C. Verghese vs. T. J. Poonam*[31], the appellant produced the letters that the husband had written to his wife as evidence because they were in his possession, and the court determined that the provision did not bar him from disclosing the letters if another person came into possession of them.

In the Case of *Ram Bharose v. State of Uttar Pradesh*[32], the wife saw that husband comes from the place of crime and hide the murder weapon and the court held that it was Admissible as a testimony since it is related to acts done by husband and not communication made by him. In this case, *Colonel S.J. Chowdhury v. State*[33] The filing of evidence under Section 122 has the potential to foster mistrust between spouses, according to the Delhi High Court when discussing the scope of the provision. The privilege is based on the idea that high import cannot be waived arbitrarily by the court. These case laws help us comprehend the boundaries of matrimonial privilege in India and clarify the application of Section 122 of the Indian Evidence Act.

Infirmities Under Section 122

The Rational does not Justify prevention of Voluntary Testimony

Due to the fact that this clause was based on the idea of marital harmony, it does not address voluntary testimony. As a result, if one of the spouses is forced to testify against the other or reveal a private communication from the other spouse, he is unable to do so due to this restriction. If we take into account that one spouse wants to testify against the other, we realize that the husband and wife's relationship has already devolved to the point where there is no longer any harmony between them. The One spouse may feel cheated or betrayed even if such testimony were compelled and therefore preventing the disclosure of such communications would serve no sensible purpose.

The Kerala High court provided certain factual justifications for the admissibility of evidence under section 122 in the case of *Abdul Rasheed vs Secretary, Malappuram District Panchayath and Others*[34], the accused killed the deceased because he had seen his wife and the deceased conversing on the phone. According to her (the accused's wife's) statement, she and the accused

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[30] *Appu v State* 1970 SCC OnLine 123,

[31] M.C. Verghese Case, (1969) 1 SCC 37, the bar to admissibility attaches at the time of the communication is made and the party's status at the time of making such communication

[32] Ram Bharosey Case, AIR 1954 SC 704, the testimony of wife is admissible because it is related to act of husband and not communication.

[33] *Col. S.J. Choudhary vs. The State*, 1985 CriLJ 622, a prohibition against the disclosure of any communication between spouses made during the subsistence of marriage unless the person who made it or his representative-in-interest consents to the same.

[34] A Abdul Rasheed vs Secretary, Malappuram District Panchayath and Others, 2022 SCC OnLine Ker 936, the testimony of wife is admissible because it is more of an action or conduct than a communication.

got into a fight concerning phone conversations between the deceased and herself, and the accused even questioned her about it the day before the accused was killed. According to the court, the fact that the two have argued is admissible as evidence and cannot be a component of privileged communication because it is more of an action or conduct than a communication. The court further declared that the evidence of a dispute and its cause was inadmissible since it fell under a category of spousal privilege.

The Rational Does Not Justify the Prohibition beyond the Marriage:

The provision fails to address those cases in which the marriage has ceased to exist and after that there is no question of Matrimonial Harmony being preserved. Before revealing such communications, one would presume and take comfort from the existence of Section 122 that the communication would never be revealed before the Court even if the spouses went in for divorce[35]. The provision seeks to protect marital harmony which ceases to exist after separation. This can lead to absurd consequences, which can obstruct justice. Although this provision dates back to colonial times, English law has removed this provision. In the Police and Criminal Evidence Act, of 1984, an ex-spouse after divorce is considered a competent witness against the accused spouse. This allows the former spouse to appear as a witness not bound by privilege of matrimonial communication.[36]

The Rational fails to address the cases of child abuse

In the cases of Child Abuse, it is a duty of either parent to disclose the abuse caused to the child and if such communication made by the abusive parent to the other parent made inadmissible, then it will hard to prove such abuse based on child's testimony. Also, in this case medical evidence will not always be available or conclusive to prove the abuse and therefore reveal such communication made between husband and wife is necessary in this case of child abuse.

In the Case of *Fatima v Emperor*[37], the mother is accused and she killed her child though this is not a case of Sexual abuse but in this case a mother killed her child but her husband's evidence which would help her to convict made inadmissible under Section 122. Again, this would detract from the ends of justice and also not satisfy the rationale behind the provision.

The Rational fails to address disputes which causes disharmony to family

In many cases where a spouse harms relatives or friends of other such cases cannot address this section and can cause disharmony. In the case of *Nagraj vs Karnataka*[38] the accused was charged with raping and murdering his wife's sister, after committing the crime the accused deposed to his wife about the incident. The wife came forward readily to testify against her

[35] Avani Maheshwari, Spousal Privilege under the Indian Evidence Act, Lex Research Hub Journal, Vol II Issue III, July 2021 ISSN: 2582– 211X, (May 10 2023).
[36] The Police and Criminal Evidence Act, 1984, c. 60, § 80(5) (UK).
[37] *Fatima v Emperor* 1913 SCC OnLine Lah 81: AIR 1914 Lah 380
[38] *Nagaraj v State of Karnataka* 1995 SCC OnLine Kar 360:1996 Cri LJ 2901, testimony of wife was held inadmissible because it falls under category of privilege communication.

husband however the testimony of wife was held inadmissible and such communication made to her exclude from the evidence. This shows the incongruous results of section 122.

The Spouse is not compellable to testify

Under this section, the husband/wife is not compelled to witness the matrimonial communication against each other. A spouse may decline to testify about marital communications that their partner wants to use as evidence in their defence because they are more knowledgeable than anyone else about information pertaining to the other spouse. And we have also seen that no public interest is served in such a case that if the accused is unable to set aside the defence of Section 122 sought by his or her spouse, the trial may end because of lack of evidence.

In the case of *Bhalchandra Namdeo Shinde v. The State of Maharashtra*,[39] the accused disclosed to his wife that he is going to kill the deceased and he was searching for the weapon. He was suspecting the character of his wife on the ground that she had indecent relations with the deceased Mahesh Jadhav. Now the court held that the communication between the accused and his wife is inadmissible in evidence under section 122 but after having the examination of that communication the court held that it is not communication it is conduct or act which is showing the motive of the accused. In the case of *Preeti Jain vs Kunal Jain*[40], the husband filed a divorce petition on the grounds of cruelty and adultery. He claimed to have video footage of the wife's extramarital relationship captured using a pinhole camera. The wife filed an application under section 65B read with section 122 of the Indian Evidence Act claiming that the electronic record her husband had submitted with his affidavit in evidence did not meet the requirements under section 65B and section 122 and was thus inadmissible.

Protection under Section 122 was claimed because, among other things, the electronic record contained private communication between a husband and a wife. The husband's the wife's application was considered by the court and the husband's divorce application was dismissed. After then, an appeal was filed against the family court's ruling before the Rajasthan high court. The judge noted that regardless of whether or not it is admissible or pertinent under the Indian Evidence Act, 1872, the court may receive any report or evidence under Section 14 of the Family Court Act that it believes may help effective adjudication. The clause makes it clear that cases before the family court are exempt from the relevance and admission rules. The court has the discretion to accept or reject any evidence that is presented to it. The bench also observed that "the privilege concerning matrimonial communication under section 122 will not attract as section 14 of family court act eclipses that provision. Section 14 is a special law against general law which is section 122"[41] and therefore the application by the wife was rejected by the court.

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[39] Bhalchandra Namdeo Shinde vs The State Of Maharashtra, 2003 (2) MhLj 580.

[40] *Preeti Jain v. Kunal Jain*, (2016) SCC OnLine Raj 2838, Section 14 supersedes section 122's prohibition on matrimonial communication, thus that privilege will not apply. Section 14 is a specific law that contravenes section 122 of general law.

[41] Avani Maheshwari, Spousal Privilege under the Indian Evidence Act, Lex Research Hub Journal, Vol II Issue III, July 2021 ISSN: 2582– 211X, (May 10 2023).

Recommendation

The justification for defending a married couple's privacy through the application of this section is strong. It should be noted that getting both parties' approval before getting married is a mistake, means this privilege's main basic essential is marriage itself. This testimony ought to be admissible in court if a person is willing to confess against another without feeling unduly pressured by the prosecution. A participant in a crime never agrees to a confession against himself and never makes a statement that could be construed as self-harming. Therefore, non-disclosure of material facts may be prejudicial to justice.[42] The Court in the case of *A Abdul Rasheed vs Secretary, Malappuram District Panchayath and Others*[43] discussed in depth about section 122 in which it stated that The Indian Evidence Act's Section 122 has to be reviewed in light of the conflicting interests between public acts of severe cruelty on the one hand and family harmony on the foundation of mutual confidence and trust on the other[44].

The wordings of the Section 122 "*Communication during the marriage- No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other*"[45] this section is not clear about the requirements needed in such case where the Matrimonial communication should be disclose that are:

1) The case involves a sexual offence
2) Marriage in question does not subsist anymore
3) Spousal privilege is only limited to former spouses for the purpose of this section.

This clause eliminates the accused spouse's spousal privilege and, to a limited extent, transfers it to the witness spouse. By virtue of *Section 120 of the Indian Evidence Act*,[46] spouses are permitted to testify against one another; however, the witness spouse will have the option to decline to testify regarding matrimonial communications. Section 120 of the Evidence Act provide the test of Competency means law make spouses competent witness under section 120 and under Section 122 the test of compellability means law make them mandatory not to disclose the private communication between spouses. If the marriage is still in harmony, the witness spouse would have the option to preserve it by declining to testify; however, if the marriage is already in discord, this rule will help reveal important facts from matrimonial communications.[47]

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[42] Gazal Preet Kaur, Does Section 122 of the Evidence Act need reform? The Leaflet, Feb 25, 2022.
[43] A Abdul Rasheed vs Secretary, Malappuram District Panchayath and Others, 2022 SCC OnLine Ker 936, the testimony of wife is admissible because it is more of an action or conduct than a communication.
[44] Hannah M Varghese, Marital Confidence u/s 122 of Evidence Act Jeopardise public interest, requires a revisit: Kerala High Court, Live Law, https://www.livelaw.in/news-updates/kerala-high-court-marriage-communications-section-122-evidence-act-requires-revisit-192284?infinitescroll=1 May 12 2023).
[45] Indian Evidence Act 1872, Sec 122.
[46] Indian Evidence Act, 1872, Sec 120.
[47] Gazal Preet Kaur, Does Section 122 of the Evidence Act need reform? The Leaflet, Feb 25, 2022.

The three aforementioned exceptions, in which the witnessing spouse is no longer able to use the privilege, cannot waive it, and cannot testify as a marital communication, shall apply to this right of the witnessing spouse. The effect of Section 80 of the Police and Criminal Evidence Act, 1984[48] is similar as under the Indian Evidence act.[49] This clause will enable one spouse to forego a privilege that the other may desire in order to conceal their marital relationship from others. This communication will deal with circumstances in which a spouse is unwilling to testify information because of a subsequent separation, even if the information is confidential and in the spouse's favour. Spouses considered as one entity and therefore Statements regarding matrimonial communication will require corroboration from other spouses. Next, the provision will throw the exception Cases involving sexual offences, again similar as provided under English law. Moreover, the Privileges will be removed after the marriage ends, as required Sustaining marital harmony will cease to exist.

The 69th Law Commission Report[50] mentioned section 122 as a privilege as well a disability. In the first part of the section, it creates privilege stating that *no person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he or she has been married*. In the second part of the section, it creating disability by providing that *such person shall not be permitted to disclose any such communication unless a person who made it or his representative in interest consents except (i) in suits between married persons, or (ii) in proceedings in which one married person is prosecuted for any crime committed against the other.*[51] This report sheds some light on the application of Section 122, and points out that regardless of the subject matter or the nature of the proceedings, if the marriage relationship is established and it is established and proven that the communication was made during the marriage, this P regardless of whether the spouses can disclose the communication after the termination of the marriage or not.

Conclusion

The fundamental tenet of Section 122 is based on the long-accepted spousal privilege. The justification for defending a married couple's privacy through the application of this section is strong. It should be noted, though, that getting both parties' approval before getting married is a mistake. This testimony ought to be admissible in court if a person is willing to confess against another without feeling unduly pressured by the prosecution. A participant in a crime never agrees to a confession made against him or her. Therefore, withholding important information may harm the administration of justice. Certain conversations, such as those about sexual harassment of either spouse or sexual abuse of a child in the family of the spouse, should never be had[52].

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[48] Police and Criminal Evidence Act 1984, Sec 80.

[49] Tanmay Amar, Matrimonial Communications: Wedded to the Irrational, Student Bar Review,2005, Vol. 17 (2005), pp. 59-72.

[50] Commission On Common Law Procedure, 2 Report, At 13, Cited From Law Commission Of India 69 Report On The Indian Evidence Act 1872 ¶ 64.10 (1977).

[51] Indian Evidence Act, Sec 122.

[52] Sagnik Chatterjee, Privileged Communication under the evidence act, (May. 11, 2023, 4:00), https://lexpeeps.in/privileged-communication-under-the-indian-evidence-act/.

The original arguments in favour of section 122 have been overburdened by the inclusion of section 120 of the Evidence Act, which permits a husband or wife to testify against the spouse and refers to them as "competent witnesses" in this situation the law does not care about protection of marital institution and therefore here testimonial privileges in a marriage that are no longer applicable would have still been applied in the courts of law. The two divisions therefore disagree on the subject of marital harmony and peace. The state government was instructed by the high court to contact the Union Ministry of Law and Justice or the Law Commission with. It also said that this section is shocking for hundreds of criminal activities in India.[53]

The Court's concern about couples' Privacy and protecting the institutions of marriage is valid until it takes care of the greater good of those who have been the victim of crime and must be brought into the picture. There are various fundamental questions arises such as this matrimonial privilege trying to protect which institution? Even after marriage ceased to exist Why voluntary testimony against the accused is not admissible? To answer these questions there is need to reform Section 122 and remove prohibition on matrimonial communication.

[53] Gazal Preet Kaur, Does Section 122 of the Evidence Act need reform? The Leaflet, (Apr 11, 2023 9:00).

Global Administrative Law: In View of International Organisations and Its Impact on the Indian Legal System

Pragati[1]

Abstract

Global Governance paves its way towards the development of the concept of Global Administrative law. It can be understood as the administration that can be organised and shaped by the principles, which have an administrative law character. There are serious concerns of legitimacy and accountability arising out of increasing exercise of public powers in the area of global governance. It is important that the International Organisations move towards an innovative legal mechanism to fulfil the tasks allotted to them. Global Administrative Law provides basis for the criticisms and the effectiveness arising out of the activities of the International Organisations. It proposes to study together these practices and to understand them. This helps in knowing about the growing development in field of administrative law type mechanisms to hold the International Organisations accountable and to inquire about the challenges that the issues possess in the future ahead to both the international and domestic administrative law. So, it is the duty of the global regulatory body to follow the principles of the Global Administrative Law and also to safeguard the national administrative law which have a great impact of the principles of Global Administrative Law.

Key Words: *Administrative Law, International Organisations, Accountability, Governance, etc.*

Introduction

The concept of global administrative law begins from the idea that global governance can be understood as administration, and that such administration is often organized and shaped by principles of an administrative law character.[2] With the expansion of global governance, many administrative and regulatory functions are now performed in a global rather than at national level, yet through different forms, ranging from binding decisions of international organizations to non-binding agreements in intergovernmental networks and to domestic administrative action in the context of global regimes. Many regulatory functions in global governance are also performed outside such formally public, governmental structures, namely by hybrid private-public or purely private institutions, such as ICANN, the Internet Corporation for Assigned Names and Numbers, or the International Organization for Standardization (ISO). Despite these widely varying forms and institutions, we can observe in all these examples that the exercise of recognizably administrative and regulatory functions: the setting and application of rules by bodies that are not legislative or primarily adjudicative in character.

If similar actions were performed by a state agency, there would be little doubt as to their administrative character However, in this regard the administration would have been difficult

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[2]For a detailed exposition of global administrative law, see Kingsbury, Krisch and Stewart, 'The Emergence of Global Administrative Law', 68:3 Law & Contemporary Problems (2005) 15.

because of their international nature; the term 'administration' was closely tied to the state framework and could, at most, point to the domestic implementation of international norms.[3] This categorical distinction, however, has today become problematic: too intervening are the domestic and the international elements in these processes of regulation. This is common in government networks in which domestic officials are engaged in both the rule making on a global scale and the implementation on the domestic level, often without any intervening act. Likewise, when the UNHCR conducts status determination for individual refugees, the posited distinction of an international level for relations between states, and a domestic level for relations between states and individuals breaks down.[4] And, WTO dispute settlement can in many cases be regarded as another layer of judicial review of domestic administrative action. This intervention at different spheres leads us to regard the conglomerate of regulatory forms as part of one very variegated but recognizably 'global' administrative space.

The involvement of the domestic and international in governance also has important repercussions for the mechanisms through which administrative actions can be held accountable. In difference between the domestic and the international realms, international norms were agreed upon on the international level, but the state remained free to adopt them or not, as their obligatory character and effect depended on domestic ratification and implementation. Because of this freedom, domestic accountability mechanisms were thought to be reasonable and parliamentary process and administrative procedures could have a meaningful impact.[5] The more the domestic and international processes are interwoven, the more this freedom breaks down, and with it the effectiveness of classical accountability mechanisms. Decisions in an intergovernmental network though not formally binding for implementation but have a strong impact on any later domestic administrative procedure.

The resulting accountability and participation problems are beginning to be addressed, in part because of an interest of global regulatory institutions and actors in bolstering their legitimacy in the face of growing political challenges. In many areas of global governance, mechanisms are emerging that seek to enhance participate the accountability of global regulatory decision-making. The structural similarities between many of these disparate phenomena are striking: they testify to a growing trend of building mechanisms analogous to domestic administrative law systems to the global level; transparency, participation, and review are central among. Accountability can dissipate effectiveness, participation can result in capture by special interests, and transparency can mean populism triumphs over justice. Institutional design is important: there may be robust accountability but to the wrong people or on the wrong topics. Bracketing such issues in descriptive terms global administrative law as we understand it encompasses the legal mechanisms, principles and practices, along with supporting social understandings, that promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring these bodies meet adequate standards of transparency,

[3]See Cassese, 'Global Standards for National Administrative Procedure', 68:3 Law & Contemporary Problems (2005) 109, at 112–113.
[4]See Pallis, 'The Operation of UNHCR's Accountability Mechanisms', IILJ Working Paper 2005/12, available at www.iilj.org/papers/IILJ2005_12Pallis.htm.
[5]But see also Benvenisti, 'Exit and Voice in the Age of Globalization', 98 Michigan Law Review (1999) 167.

consultation, participation, rationality and legality, and by providing effective review of the rules and decisions these bodies make. We describe this field of law as 'global' rather than 'international' to reflect the enmeshment of domestic and international regulation, the inclusion of a large array of informal institutional arrangements (many involving prominent roles for non-state actors), and the foundation of the field in normative practices, and normative sources, that are not fully encompassed within standard conceptions of international law.

Global Administrative Law in lieu of International Organizations

Many of the contemporary operations of inter-governmental organizations (IOs) have not been well conceptualized in legal terms, nor even studied in much detail, in traditional approaches to the law of international institutions. In this paper, we argue that the emerging field of global administrative law (GAL) may provide a conceptual framework for addressing some of these under-theorized practical legal problems.[6] We suggest that this may contribute to the reframing and deepening of the existing field of international institutional law. More generally, the practice of IOs has some parallels with earlier national experience concerning such matters as the proliferation and fragmentation of public bodies; the growing use of private law instruments; the increase in administrative rulemaking[7]; and the establishment of multiple field offices. Any transposition from state legal systems to the complex real practices of inter-governmental institutions in global governance is challenged, however, by fundamental differences between these enterprises.[8]

That many important activities of IOs can be regarded as administrative in nature, does not remotely suggest the existence of a general global public administration; there is no global government or global parliament, nor are there real global equivalents of other structures within which national administrations are nested. Nevertheless, some normative demands and procedural principles are sufficiently common across diverse IOs to suggest a unified field may be discernible: transparency in rule making; due process in decisions that directly affect private parties; review mechanisms to correct errors and ensure rationality and legality; and in addition to review, a variety of other mechanisms to promote accountability. These are among the key ideas in the exploration of a unified field of legal practice and study of global administrative[9] law (GAL).

Many GAL principles are actively embraced in particular IOs, and these principles provide a basis for serious discussion and critique in the work of others. Thus transparency and

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[6]See B. Kingsbury et al, "The Emergence of Global Administrative Law", 68 Law and Contemporary Problems (2005) pp. 15-62;

[7]D.C. Esty, "Good Governance at the Supranational Scale: Globalizing Administrative Law", 115 Yale Law Journal (2006) pp. 1490-1563, at 1494, and R.B. Stewart, "The Reformation of American Administrative Law", 88 Harvard Law Review (1975) pp. 1667-1813.

[8]D. Sarooshi, "The Role of Domestic Public Law Analogies in the Law of International Organizations", 5:2 International Organizations (2008) pp. 237-239.

[9]S. Cassese et al (eds.), Global Administrative Law: Cases, Materials, Issues (2nd edition, 2008) (online GAL casebook, available at <www.iilj.org/GAL>.)

participation are current preoccupations in relation to the WTO, and due process is intensely debated in relation to sanctions against individuals imposed by the UN Security Council. In some other IO contexts, even consideration of such principles, let alone application of them, is incidental at most.[10] Some of the demands made by reference to GAL principles are unrealistic and potentially counter-productive: for example, too much accountability to the wrong people can be pathological; at the global level participatory rights should be accorded considering the different nature of actors involved, which can be either private or public or both; 'notice and comment' requirements for rule-making can facilitate the capture of the process by special interest groups.

Key challenges of international organisations in relation to global administrative law

The relation of international organisation with the global administrative law also faces some huge challenge in field of international law and inter-state relationship. These are the practical legal problems that are there with the international organisations if we check them in the prospective of global administrative law. Following are the five key challenges in this field:

Actions taken by the international organisations in crisis situation

Emergency actions by IOs in crisis situations can be extremely important. One central challenge has been establishing an adequate legal and political order for such actions. The growth of a field of humanitarian emergency action since the 1970s, with vastly-increased numbers of NGOs and volunteers operating on the ground (and in fund-raising) in the same space as numerous inter-governmental organizations and foreign and local state agencies, has been accompanied by an "emergency imaginary" in which emergency is "a sort of counterpoint to the idea of global order". Attempts by IOs to follow established legal and administrative procedures in such situations have been caricatured, often rightly, as hopelessly ponderous and as putting bureaucratic routines above human suffering. Overlain on this are demands, mainly from states, that IOs and hybrid or private international institutions respond rapidly to what are claimed to be security emergencies, whether by handing over personal data, ordering bank accounts frozen, withdrawing observers, sending inspectors, or even authorizing an invasion. The reality in many IOs, however, is that plenary and even executive board inter-state institutions may be ineffective at managing emergency responses: considerable discretion and authority may have to devolve on the secretariat and professional leadership (acting with support from specific states, or in collaboration with other IOs or state agencies or private actors), raising problems of mandate, powers (vires), oversight, and legal accountability.

Human Rights Scopes of International Organisation Operations: Global Administrative Law Aspects

[10]An overview is in C. de Cooker (ed.), Accountability, Investigation and Due Process in International Organizations (Martinus Nijhoff, Leiden-Boston, 2005).

The human rights elements of IO operations have several distinct dimensions from the standpoint of GAL.[11] First, IOs act in emergency contexts or other difficult situations, providing emergency shelter or food or water or sanitation, administering camps, negotiating with governments about treatment of dissidents, intervening to prevent abuses by armies and militias or even on occasion by NGOs. This is the frontline of human rights in emergency situations, in which every success and every failure or inability is of desperate importance**.**

Second, IOs may in their activities impinge on human rights, or trade off some human rights protection in pursuit of other objectives.[12] The familiar legal debates about the applicability of human rights law to IOs should not obscure the general feature of IOs: that accountability is strong (perhaps excessive) to funders and founders (i.e. states which in some sense delegate power to the IO), but often uneven with regard to other interests, in particular the interests of those third parties whom the IO affects. This issue is most acute with regard to human rights of individuals, particularly vulnerable individuals and groups with little ability to influence the IO directly or indirectly. Many IOs are now addressing these problems seriously, but the challenges remain formidable.

Third, the specific structural machinery of IOs aimed to promote and protect human rights requires much more systematic analysis from GAL perspective than it has yet received. This includes issues such as transparency and reason-giving (or not) in the work of the UN Human Rights Council and other bodies, transparency in appointment processes and mandate formulation and approved activities of special rapporteurs and special representatives, the use of review mechanisms and their effective operation, the effective and fair treatment of complainants/victims and other interested parties, the speed of work and the adequacy of the deliberative processes of human rights bodies, their criteria for taking up or not taking up particular cases, the adequacy of due process and notice to potential targets of international human rights investigations, and the robustness of fact-finding processes.

Public-Private Partnerships of IOs

Public-private partnerships (PPPs) involving inter-governmental organizations as one of the partners are important in the global governance of such areas as public health (including organizations such as the Global Fund and GAVI), nuclear safety (the IAEA acts in a framework built upon a complex set of conventions, agreements, and MOU, either binding or non-binding), environmental protection, the internet, and sports. The growing engagement by IOs in hybrid public-private bodies, and their use or concerted action with such bodies and with fully private bodies as well as with state military forces and agencies, raises heightened

[11]See H.J. Steiner et al., International Human Rights In Context. Law, Politics, Morals, 3rd edn. (Oxford University Press, Oxford, 2008), C. Tomuschat, Human Rights between Idealism and Realism, 2nd edn. (Oxford University Press, Oxford, 2008), T. Buergenthal, "The Evolving International Human Rights System", 100 American Journal of International Law (2006) pp. 783–807. From a wider perspective, A. Cassese, The Human Dimension of International Law. Selected Papers (Oxford University Press, Oxford, 2008).

[12]See F. Rawski, "Engaging with Armed Groups: A Human Rights Field Perspective From Nepal", in this symposium on "Global Administrative Law in the Operations of InternationalOrganizations" (ed. L. Boisson de Chazournes, L. Casini, and B. Kingsbury), 6:2 International Organizations Law Review (2009).

accountability problems. The use of PPPs and contractors can potentially contribute to evasion of IO accountability, diminished use of legal and legal-type instruments for organization and control of activities, extension beyond established mandates, and avoidance of transparency on grounds such as commercial confidentiality. Conversely, there are circumstances in which use of PPPs and contractors may improve accountability, raise the standard of operations to industry-leader levels, heighten controls of legality through contracting, improve specificity and clarity of mandates, widen participation, and enhance transparency. At the same time, IOs may come to bear a disproportionate or unrealistic share of accountability and responsibility (including through attribution to them of acts and omissions of others), especially as the IO may be a more visible, more responsive, and more enduring target for complaints than some states, many PPPs, and most contractors.[13] Insufficiency of accountability structures and responsiveness may lead to increasing pressure on immunities of IOs and IO staff in national courts. Some of the most difficult legal problems in relation to immunity are likely to concern IO PPPs and contractors, not least because the capacity of IOs themselves to impose strong accountability systems on such actors may be quite limited.

The Increasing Use of Recommendations, Guidelines, Informal Norms, and Technical Advice: The Production of "Soft Law" from the GAL Perspective

IOs influence general international law, and set specific norms which may be binding or non-binding but in any event can have significant implications for other IOs, states, national administrations, and private persons.[14] The processes for producing such norms vary from one IO to another, from one specific sector to another, from one time to another, and depending on what is sought to be achieved.[15] Some IOs have long histories of, and an explicit constitutional architecture for, use of norm-setting mechanisms more flexible than treaties or conventions. the ILO's recommendations, for example, which are monitored by its Committee of Experts. Similarly, the International Telecommunication Union (ITU) adopts hundreds of resolutions and recommendations every year that, even if non-binding, are accepted by its members as regulatory. ICAO's Standards and Recommended Practices, UNESCO Recommendations, and World Bank operational policies are among numerous other examples of this kind of normative activity of inter-governmental organizations. Even without such a clear constitutional architecture, the OSCE uses such techniques routinely, and the UNHCR has also done so out of operational necessity, as with the UNHCR's 2003 Procedural Standards for Refugee Status Determination, which are not directly binding, but are designed to provide important guidelines for the agency's field offices.

How GLA is helpful in overcoming the problems created by the growth of international organisations

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[13]K. Mujezinovic Larsen, "Attribution of Conduct in Peace Operations: The 'Ultimate Authority and Control' Test", 19 European Journal of International Law (2008) pp. 509-31; M. Sassoli, "State Responsibility for Violations of International Humanitarian Law", 84 IRRC (2002) pp. 401-434.

[14] A. Boyle and C. Chinkin, The Making of International Law (Oxford University Press, New York, 2007).

[15]See P. Roch and F.X. Perrez, "International Environmental Governance: The Strive Towards a Comprehensive, Coherent, Effective and Efficient International Environmental Regime", 16 Colorado Journal of International Environmental Law and Policy (2005) pp. 1-25.

GAL offers a potentially fruitful perspective from which to address the relevant contemporary problems created by the growth of IOs and their activities, for at least three sets of reasons. First, demands for accountability affect IOs in myriad ways, and if managed poorly may seriously limit the effectiveness of IOs. Thus, oversight and control by states of IOs (accountability to founders and funders) can distort priorities and effective structures, and may even worsen problems of IO misconduct and corruption; this is one of the lessons of the Security Council's involvement in the oil-for-food program.[16]

Second, in all of the four areas discussed above, an important feature is institutional differentiation in IOs and in the wider global governance environment on a particular issue. This phenomenon features both a horizontal dimension - such as for relations between IOs and other global actors - and a vertical one - e.g., the relationships between IOs, states, and national administrations. Most IOs can be now studied along these coordinates: thus, the WTO has both the vertical dimension represented by the relations between the WTO and its members' domestic administrations, and the horizontal dimension presented by the WTO's recognition of regulatory standards set by other global regulatory bodies.[17] Moreover, the proliferation and differentiation of IOs lead to the multiplication, on one hand, of IO field offices, and, on the other, of new specialized domestic bodies. The relations among all of these entities of global governance that themselves operate under public law principles, may usefully be analysed in terms of inter-public law.

Third, IO activities produce or entail a multiplicity of rules, principles, decisions, soft-law, and non-legal norms, which may be layered over each other historically.[18] These are now produced and administered in a bewildering variety of institutional settings and interpretive communities, in ways that are often fragmented and incompletely reconciled.[19] Fragmentation is not so much a problem, a solution, or an analytic idea: it is simply a feature. It entails that many practical and normative activities of IOs, and of the other actors in complex governance regimes, must be managed not simply by formal norms and rules of jurisdiction or hierarchical or interpretive solutions to overlaps, but by a dynamic process of regulation in which global administrative law can play a useful part.[20] Treaty law and traditional customary international law are relevant but not remotely sufficient for this. Regulatory approaches

[16]See also J. D'Aspremont, "Abuse of the Legal Personality of International Organisations and the Responsibility of Member States", 4:1 International Organizations Law Review (2007) pp. 91–119.
[17]R.B. Stewart and M. Ratton Sanchez Badin, "The World Trade Organization and Global Administrative Law", IILJ Working Paper 2009–7, <www.iilj.org>, forthcoming in C. Joerges and E.-U. Petersmann (eds.), Constitutionalism, Multilevel Trade Governance and Social Regulation 2nd edn. (Hart Publishing, Oxford and Portland Oregon, 2010)
[18]International Law Commission, Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law, UN General Assembly, A/ CN.4/L.682 13 April 2006, P.-M. Dupuy, "A Doctrinal Debate in the Globalisation Era: On the "Fragmentation" of International Law", European Journal of Legal Studies 2 (2007), Benvenisti and Downs, supra note 30.
[19]J.H.H. Weiler, "The Geology of International Law – Governance, Democracy and Legitimacy", 64 Zeitschrift für Ausländisches Recht und Völkerrecht (2004) pp. 547–562, and M. Koskenniemi and P. Leino, "Fragmentation of International Law? Postmodern Anxieties", 15 Leiden Journal of International Law (2002) pp. 553–579.
[20]B. Kingsbury, "The Administrative Law Frontier in Global Governance", 99 ASIL Proceedings (2005) 143.

emphasize process, directions of change, gradual improvement rather than instant results, and dynamic rather than simply static analysis. Law in such regulatory processes does not occupy the whole field; and is generated through accretion, accumulation, sifting, dialogue among regimes, and the honing of general principles in balances and interaction with one another for specific contexts. Incorporation of such global administrative law approaches, principles, and techniques may make a significant contribution to the law of international organizations.

Suggestions and recommendations to the challenges of international organisation in GLA prospective

1. One approach to overcome the problem of Emergency actions taken by IOs in crisis situations can be pursued through general international law doctrine: implied powers of IOs, responsibility of IOs, duties to cooperate including duties of states to admit necessary aid and personnel in natural disasters, and legal doctrines concerning protection of human rights and of community organizations in humanitarian emergencies.[21] A second approach focuses more on institutions. Efforts to structure emergency responses through bodies which clearly have powers to take such actions, the UN Security Council, (e.g.,) may contribute both to the political legitimacy of such actions and to the clarity of their legal bases. Some IOs have taken steps to provide an organized legal and policy framework for some of their actions in possible future emergencies.
2. The human rights can be protected by creating a hierarchy of values and public interests which may be recognized by the different actors involved: IOs, states, national administrations, courts.[22] Such arguments are often made by reference to wider claims concerning the globalization of law[23] or "global constitutionalism".
3. There is considerable imprecision, and tension, about what it means to be "public" in global governance. Given the absence of a decisive referent (beyond the simply inter-state nature of IOs), the public and indeed democratic interests at stake in use of PPPs by IOs call for especially careful procedures, attentive to administrative law mechanisms such as transparency and participation.[24]

Conclusion

Innovation in the focus and methods of work of IOs, exemplified in the five areas considered above but evident in many other areas also, poses many legal questions that necessitate a broadening, and probably a rethinking, of the field of international institutional law. GAL offers a potentially fruitful perspective from which to address the relevant contemporary

[21]See e.g., J. Klugman, Social and Economic Policies to Prevent Complex Humanitarian Emergencies: Lessons from Experience (United Nations University, World Institute for Development Economics Research, Helsinki, 1999).

[22]On the role of the Universal Declaration of Human Rights in contributing to this process, J. von Bernstorff, "The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law", 19 European Journal of International Law (2008) pp. 903–924.

[23]S. Cassese, "The Globalization of Law", 37 New York University Journal of International Law and Politics (2005) pp. 973–993, and D. Kennedy, "Three Globalizations of Law and Legal Thought: 1850–2000", in D.M. Trubek and A. Santos (eds.), The New Law and Economic Development: A Critical Appraisal (Cambridge University Press, Cambridge, 2006), p. 19 et seq.

[24]Aman Jr., supra note 106, p. 207 and 218.

problems created by the growth of IOs and their activities, for at least three sets of reasons. First, demands for accountability affect IOs in myriad ways, and if managed poorly may seriously limit the effectiveness of IOs. Thus, oversight and control by states of IOs (accountability to founders and funders) can distort priorities and effective structures, and may even worsen problems of IO misconduct and corruption; this is one of the lessons of the Security Council's involvement in the oil-for-food program.[25]

Second, in all of the problems discussed above, an important feature is institutional differentiation in IOs and in the wider global governance environment on a particular issue. This phenomenon features both a horizontal dimension – such as for relations between IOs and other global actors - and a vertical one - e.g., the relationships between IOs, states and national administrations. Moreover, the proliferation and differentiation of IOs lead to the multiplication, on one hand, of IO field offices, and, on the other, of new specialized domestic bodies (this often happens with hybrid public and private regimes, such as ISO, Internet, or sports). The relations among all of these entities of global governance that themselves operate under public law principles, may usefully be analysed in terms of inter-public law.

Third, IO activities produce or entail a multiplicity of rules, principles, decisions, soft-law, and non-legal norms, which may be layered over each other historically. These are now produced and administered in a bewildering variety of institutional settings and interpretive communities, in ways that are often fragmented and incompletely reconciled. Fragmentation is not so much a problem, or a solution, or an analytic idea: it is simply a feature. It entails that many practical and normative activities of IOs, and of the other actors in complex governance regimes, must be managed not simply by formal norms and rules of jurisdiction or hierarchical or interpretive solutions to overlaps, but by a dynamic process of regulation in which global administrative law can play a useful part.[26] Treaty law and traditional customary international law are relevant but not remotely sufficient for this. Regulatory approaches emphasize process, directions of change, gradual improvement rather than instant results, and dynamic rather than simply static analysis. Law in such regulatory processes does not occupy the whole field; and is generated through accretion, accumulation, sifting, dialogue among regimes,[27] and the honing of general principles in balances and interaction with one another for specific contexts. Incorporation of such global administrative law approaches, principles and techniques may make a significant contribution to the law of international organizations.

[25] See also J. D'Aspremont, "Abuse of the Legal Personality of International Organisations and the Responsibility of Member States", 4:1 International Organizations Law Review (2007) pp. 91-119.
[26] B. Kingsbury, "The Administrative Law Frontier in Global Governance", 99 ASIL Proceedings (2005) 143.
[27] S. Cassese, "Is There a Global Administrative Law?", in von Bogdandy et al, supra note 17, p. 772 et seq.

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Legal Aid and Access to Justice: Nurturing Equality and Fairness

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Abstract

This paper delves into the vital role of legal aid in nurturing equality and fairness through improved access to justice. Access to justice is a fundamental human right, ensuring that every individual has the opportunity to seek a fair resolution to their legal matters, regardless of their financial capacity. Legal aid acts as a critical instrument in bridging the gap between individuals who can afford legal representation and those who cannot, thereby promoting a more equitable and just legal system. By providing support and representation to vulnerable and underserved populations, legal aid plays a pivotal role in preventing discrimination and leveling the playing field. These abstract highlights the significance of legal aid in fostering a society where all individuals have equal protection under the law, emphasizing the need for continued efforts to enhance access to justice and promote fairness for everyone.

Keywords: Access to Justice, Legal Aid, Pro Bono, Public Interest Litigation (PIL), Speedy Trial

Introduction

Legal aid and access to justice are fundamental pillars of any democratic society, ensuring that individuals have the means and opportunity to seek justice and assert their rights, regardless of their financial status. These concepts strive to uphold fairness, equality, and the rule of law, safeguarding the rights of the vulnerable and marginalized in society. This research paper explores the significance of legal aid and access to justice, their role in fostering a just legal system, and the challenges that must be addressed to ensure their effective implementation.

Legal Aid and Access to Justice are fundamental principles that form the bedrock of a fair and just society. Access to Justice ensures that every individual, regardless of their socio-economic background, can avail themselves of the legal system and have their grievances addressed.

Legal Aid is a crucial mechanism that enables those who cannot afford legal representation to access justice. It ensures that financial constraints do not become barriers to seeking remedies for injustices they face. By providing financial assistance, legal advice, and representation, Legal Aid empowers individuals to navigate complex legal processes and safeguards their rights.

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Without adequate access to justice, marginalized and vulnerable populations may be left voiceless and unable to protect their rights. This lack of access can exacerbate existing inequalities, leading to a breakdown of social cohesion and a loss of faith in the legal system.

Efforts to promote Access to Justice and Legal Aid involve collaboration between governments, non-governmental organizations, and legal professionals. Pro-bono services, legal clinics, and technology-driven initiatives have emerged as crucial tools to bridge the gap between those in need and the legal resources available to them.

However, challenges persist. Limited funding, overwhelming caseloads, and geographical barriers remain obstacles to effective Legal Aid. Addressing these issues requires continued advocacy, policy reforms, and increased awareness of the importance of equitable access to justice.

In a society that upholds the principles of Legal Aid and Access to Justice, individuals can seek recourse, defend their rights, and participate actively in the legal system. This, in turn, fosters a more inclusive and fair society, where the rule of law prevails, and all members can find solace in knowing that justice is truly accessible to them.

Certainly! Let's delve deeper into the importance of Legal Aid and Access to Justice:

Legal Aid plays a vital role in promoting equality before the law. It ensures that individuals facing legal challenges, such as discrimination, housing disputes, or family matters, can receive appropriate representation regardless of their financial circumstances. This helps level the playing field and prevents a situation where only those with financial means can fully exercise their rights.

Access to Justice is not solely about affordability; it also encompasses awareness and understanding of one's rights and the legal processes involved. Many people might be unaware of their entitlements or intimidated by the complexities of the legal system. In this context, legal literacy programs and community outreach initiatives are essential to empower individuals with knowledge, enabling them to access justice more effectively.

Moreover, Access to Justice extends beyond formal courts. Alternative dispute resolution mechanisms, such as mediation and arbitration, can provide quicker and more cost-effective solutions to legal conflicts. Encouraging the use of these methods can relieve the burden on overloaded court systems and deliver timely resolutions to those seeking justice.

Another critical aspect is ensuring that Legal Aid services are tailored to the diverse needs of the community. This involves considering language barriers, cultural sensitivities, and the unique challenges faced by marginalized groups. Culturally competent legal aid providers can better understand the nuances of a case and offer appropriate support, ultimately leading to more satisfactory outcomes.

Efforts to strengthen Legal Aid and Access to Justice are closely linked to the principles of human rights and social justice. These concepts are enshrined in international conventions and declarations, emphasizing the duty of states to uphold the right to access justice for all their citizens.

In a broader context, a robust legal aid system can contribute to reducing crime rates and fostering a more harmonious society. When individuals have avenues to address grievances and resolve conflicts peacefully, they are less likely to resort to desperate measures. This enhances social cohesion and reinforces the rule of law, which are foundational elements of a stable and prosperous community.

The Importance of Legal Aid

Legal Aid programs provide critical support to those who cannot afford legal representation, empowering them to seek justice and assert their rights. It bridges the gap between the haves and have-nots, ensuring that marginalized and vulnerable populations have a voice in the legal system (UN General Assembly, 1985). By doing so, Legal Aid fosters a more equitable society and upholds the principle of equality before the law.[2] Access to Justice is not just a matter of convenience; it is a human right enshrined in various international treaties and conventions. The Universal Declaration of Human Rights proclaims that everyone has the right to an effective remedy by competent tribunals (United Nations, 1948). This implies that individuals should have access to legal assistance and be able to navigate the legal system without discrimination.[3]

Legal Aid is particularly crucial for marginalized communities, including minorities, women, and refugees. Research has shown that these groups often face barriers to accessing justice due to financial constraints and systemic discrimination (Legal Services Corporation, 2017). Legal Aid programs help address these disparities, empowering vulnerable individuals to challenge injustices and secure fair treatment under the law.[4]

Access to Justice requires not only financial support but also legal literacy. Many individuals are unaware of their rights or unsure about the legal processes involved in seeking justice. Legal literacy programs, such as those implemented by non-governmental organizations like Namati, empower individuals to understand their rights and advocate for themselves effectively.[5]

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[2] UN General Assembly. (1985). Basic principles on the role of lawyers. Retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_40_32.pdf

[3] United Nations. (1948). Universal Declaration of Human Rights. Retrieved from https://www.un.org/en/universal-declaration-human-rights/

[4] Legal Services Corporation. (2017). The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans. Retrieved from https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf

[5] Namati. (n.d.). Legal Empowerment. Retrieved from https://namati.org/our-work/legal-empowerment/

Innovative technologies have the potential to revolutionize Legal Aid delivery. Online platforms and mobile applications, such as Upsolve, have emerged to provide low-income individuals with self-help tools for navigating bankruptcy cases (Upsolve, n.d.). Integrating technology into Legal Aid services can increase efficiency, reach more people, and reduce costs.[6]

International Efforts

Access to justice is a global concern, and various international organizations and initiatives work to promote legal aid and access to justice worldwide. The United Nations, for example, has included access to justice as a Sustainable Development Goal (SDG 16.3), emphasizing the need to ensure equal access to justice for all by 2030. These global efforts highlight the importance of collective action and cooperation in addressing this critical issue.

The United Nations has been instrumental in promoting access to justice on a global scale. The Sustainable Development Goals (SDGs), particularly Goal 16, call for inclusive and accessible justice for all (United Nations, n.d.). Governments worldwide are urged to strengthen legal systems, support Legal Aid programs, and build robust institutions to ensure fair and effective justice mechanisms for their citizens.[7]

Asylum seekers and refugees often face complex legal challenges, and Legal Aid is crucial in safeguarding their rights and providing assistance throughout the asylum process (United Nations High Commissioner for Refugees, n.d.). Legal representation can make a substantial difference in determining the outcome of asylum cases and protecting individuals from persecution or deportation.[8]

Legal Aid and Criminal Justice

Legal Aid is not limited to civil matters; it also plays a pivotal role in criminal justice systems. The right to legal representation, even for those accused of crimes, is a fundamental aspect of a fair trial (International Commission of Jurists, n.d.). Legal Aid ensures that defendants have access to competent legal counsel, reducing the risk of wrongful convictions and enhancing trust in the justice system.[9]

Gender inequality often intersects with barriers to justice. Legal Aid initiatives that focus on women's rights and empowerment are essential in combating gender-based violence, ensuring access to property rights, and challenging discriminatory practices (UN Women, n.d.).

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[6] Upsolve. (n.d.). About Us. Retrieved from https://upsolve.org/about/.

[7] United Nations. (n.d.). Sustainable Development Goal 16. Retrieved from https://www.un.org/sustainabledevelopment/peace-justice/.

[8] United Nations High Commissioner for Refugees. (n.d.). Access to Legal Aid. Retrieved from https://www.unhcr.org/en-us/legal-aid.html.

[9] International Commission of Jurists. (n.d.). The Right to Legal Aid in Criminal Proceedings. Retrieved from https://www.icj.org/the-right-to-legal-aid-in-criminal-proceedings/.

Supporting women's access to justice not only advances gender equality but also strengthens societies as a whole.[10]

Technological Innovations

Advancements in technology have the potential to transform legal aid and access to justice. Online legal resources, virtual assistance, and remote hearings can improve accessibility for remote or underserved communities. Digital platforms can provide self-help tools and legal information to bridge the knowledge gap and empower individuals to address simple legal matters independently.

Technology offers tremendous potential to transform Legal Aid delivery and improve efficiency. Online platforms, legal chatbots, and e-filing systems can simplify legal processes and reduce the burden on overloaded courts (The World Bank, 2021). However, it is essential to ensure that these digital solutions remain accessible to all, including those with limited digital literacy and internet access.[11]

Mediation and Alternative Dispute Resolution (ADR)

Promoting mediation and alternative dispute resolution methods can reduce the burden on formal courts and facilitate quicker resolution of disputes. Mediation allows parties to discuss and negotiate their issues with the help of a neutral mediator, which can be more cost-effective and less adversarial than traditional litigation. Encouraging the use of ADR can help expedite access to justice and ease the caseload in courts.

Legal Aid is not solely limited to litigation; it also extends to alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration. ADR can offer faster and more cost-effective ways to resolve conflicts, making justice more accessible to individuals who might otherwise be deterred by lengthy court proceedings (American Bar Association, n.d.).[12]

Public Interest Litigation (PIL)

Public Interest Litigation allows citizens or NGOs to approach the courts to seek justice on behalf of marginalized groups or to address broader societal issues. PIL enables the judiciary to intervene and protect human rights, environmental concerns, and other public interests. It plays a pivotal role in holding authorities accountable and bringing about systemic changes for the benefit of society.

Proactive Legal Education

Promoting legal education and awareness from an early age can instill a sense of responsibility and respect for the law in society. Integrating legal education into school

[10] UN Women. (n.d.). Access to Justice. Available on https://www.unwomen.org/en/what-we-do/ending-violence-against-women/access-to-justice.

[11] The World Bank. (2021). How Technology is Transforming Access to Justice. https://www.worldbank.org/en/news/feature/2021/03/17/how-technology-is-transforming-access-to-justice.

[12] American Bar Association. (n.d.). Alternative Dispute Resolution. Available on https://www.americanbar.org/groups/dispute_resolution/resources/programs/alternativedisputeresolution/.

curricula can create a more informed citizenry that understands its rights and responsibilities, fostering a culture of legality and justice.

Promoting legal literacy and awareness is a crucial component of improving Access to Justice. Governments and civil society organizations should invest in public education campaigns to inform citizens about their rights, legal procedures, and available resources (Canadian Bar Association, n.d.). An informed populace is better equipped to assert their rights and navigate the legal system effectively.[13]

Measuring Impact and Outcomes

Evaluating the impact and outcomes of legal aid and access to justice programs is crucial for identifying areas of improvement and ensuring accountability. Implementing performance indicators and conducting regular assessments help measure the effectiveness of these initiatives.

To ensure the effectiveness of Legal Aid programs, regular evaluation and data-driven analysis are crucial. Monitoring outcomes and assessing the impact of Legal Aid initiatives on individuals and communities can inform policy improvements and resource allocation (World Bank Group, 2021).[14]

Supreme Court of India's role in promoting Legal Aid and upholding Justice for all

The Supreme Court of India has consistently recognized the importance of legal aid and access to justice as fundamental rights enshrined in the Indian Constitution. The Court has taken several steps to promote and uphold these rights, ensuring that justice is accessible to all sections of society.

Here are some key points highlighting the Supreme Court of India's stand on legal aid and access to justice:

1. **Article 39A of the Indian Constitution:** The Supreme Court has interpreted Article 39A, which is one of the Directive Principles of State Policy, as embodying the right to legal aid and access to justice. This article emphasizes the need to provide free legal aid to those who cannot afford it, ensuring that justice is not denied due to economic reasons.

2. **Legal Services Authorities Act, 1987:** The Supreme Court played a crucial role in the enactment of the Legal Services Authorities Act, 1987. This legislation established legal services authorities at the national, state, and district levels to provide free legal aid and assistance to marginalized and disadvantaged sections of society.

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[13] Canadian Bar Association. (n.d.). Legal Literacy. Available on https://www.cba.org/Publications-Resources/Resources/Legal-Literacy

[14] World Bank Group. (2021). Access to Justice and Legal Aid. Available on https://www.worldbank.org/en/topic/justice/publication/access-to-justice-and-legal-aid.

3. **Expanding the Scope of Legal Aid:** The Supreme Court has broadened the scope of legal aid beyond the traditional court representation. It has recognized the importance of pre-litigation advice, alternative dispute resolution, and mediation as part of legal aid services to expedite justice and reduce the burden on courts.

4. **Public Interest Litigation (PIL):** The Supreme Court has been instrumental in promoting Public Interest Litigations (PILs) as a mechanism for addressing systemic issues and protecting the rights of marginalized communities. PILs allow citizens and NGOs to seek justice on behalf of others and have been used to champion causes related to human rights, environmental protection, and social justice.

5. **Expanding Legal Aid Infrastructure:** The Court has emphasized the need to strengthen legal aid infrastructure, including legal aid clinics, para-legal volunteers, and awareness campaigns, to enhance access to justice for all.

6. **Right to Speedy Trial:** The Supreme Court has reaffirmed that the right to legal aid and access to justice includes the right to a speedy trial, ensuring that justice is not delayed or denied.

Supreme Court of India has delivered several significant judgments on legal aid, reaffirming its commitment to uphold the right to access justice for all citizens, especially the marginalized and disadvantaged. Some notable judgments include:

***Hussainara Khatoon vs. State of Bihar* (1979)[15]**
In this landmark case, the Supreme Court highlighted the issue of undertrial prisoners languishing in jails for long periods without legal representation. The Court held that the right to speedy trial is an integral part of the right to life and personal liberty guaranteed under Article 21 of the Indian Constitution. It emphasized the importance of providing free legal aid to undertrial prisoners who cannot afford legal representation.

***Khatri vs. State of Bihar* (1981)[16]**
In this case, the Supreme Court recognized that the right to free legal services is a fundamental right guaranteed under Article 21 of the Constitution. It held that access to justice must not be denied to any accused person due to lack of financial resources or illiteracy.

***Suk Das vs. Union Territory of Arunachal Pradesh* (1986)[17]**
The Court reaffirmed that the right to free legal aid is not only available to accused persons during the trial but also at the pre-trial stage when the person is first arrested and interrogated by the police. It emphasized that free legal aid should be made available to ensure a fair investigation and protection of the accused's rights.

[15] 1979 AIR 1369.
[16] 1981 AIR 1068.
[17] 1986 AIR 928.

***State of Maharashtra vs. Manubhai Pragaji Vashi* (1995)**[18]
In this judgment, the Supreme Court held that if an accused person is unable to engage a lawyer due to financial constraints or any other reason, the State is under a constitutional obligation to provide free legal aid to ensure a fair trial.

***Central Public Information Officer, Supreme Court vs. Subhash Chandra Agarwal* (2019)**
In this case, the Supreme Court held that the office of the Chief Justice of India (CJI) is a public authority under the Right to Information (RTI) Act, and hence, it is required to disclose information related to the appointment of judges and other administrative matters. This judgment highlights the Court's commitment to transparency and accountability, which are crucial in ensuring the effective implementation of legal aid and access to justice.

These judgments reflect the Supreme Court of India's consistent and unwavering stance on the importance of legal aid as a fundamental right and its role in upholding the principles of justice and equality enshrined in the Indian Constitution

Conclusion
Legal aid and access to justice are dynamic processes that require ongoing commitment, collaboration, and innovation. By addressing the unique needs of various marginalized groups, promoting legal literacy, and empowering individuals to participate actively in the legal system, we can foster a more inclusive and equitable society. Governments, legal professionals, civil society organizations, and individuals must work collectively to ensure that legal aid and access to justice are not merely aspirational ideals but tangible realities for everyone, regardless of their background or circumstances. Through these concerted efforts, we can build a legal system that embodies the principles of fairness, justice, and equality, creating a more just world for all.

[18] 1995 5 SCC 730.