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CDLH

CHANGING DIMENSIONS OF LEGAL HORIZONS

Peer-Reviewed/Refereed International Journal

Bi-Annual

Volume-1, Issue-1, Jan-June 2025

MAHARAJA AGRASEN UNIVERSITY

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MAHARAJA AGRASEN UNIVERSITY
Atal Shiksha Kunj, Pinjore – Nalagarh Highway, Kalujhanda,
Near Brotiwala, Teh. Baddi, Distt. Solan, (H.P.) -174103
Website: mau.ac.in; Email- registrar@mau.ac.in Contact No. +91-9318029217

Members of the Editorial Board

It gives me immense pleasure to present this issue of *Changing Dimensions of Legal Horizons*, Peer Reviewed/Refereed International journal, a scholarly endeavor that brings together critical reflections and contemporary debates on diverse areas of law. The very title of this journal symbolizes the evolving character of law—shaped not only by statutes and precedents but also by social, political, and technological transformations. This edition showcases the interplay between traditional legal questions and emerging challenges, offering fresh perspectives to scholars, practitioners, and students alike.

The first paper in the journal presents a pertinent and sensitive subject: "The Death Penalty in India: Examining its Constitutional Validity and Contemporary Relevance." Capital punishment has remained a contested terrain in India, oscillating between the principles of justice, deterrence, and human rights. This paper interrogates its continued relevance in the modern era, inviting readers to reflect upon the constitutional morality underpinning criminal justice.

Continuing with personal law, "Property Rights of Illegitimate Children under Hindu Law: A Judicial Discourse" explores how judicial pronouncements have gradually infused equity and compassion into an otherwise rigid structure of personal laws. This contribution highlights the judiciary's evolving approach toward inclusivity and social justice.

The role of law in enabling empowerment is further emphasized in "Understanding Women Education as Catalyst for Empowerment through the Lenses of Feminist Jurisprudence." By situating education within feminist theory, the paper underlines how knowledge serves as a transformative tool for dismantling systemic barriers faced by women.

Administrative and constitutional laws find a place in the article on "Judicial Review & Locus *Standi* of Time-Barred Orders," which examines the fine balance between procedural limitations and substantive justice. Similarly, the paper on "Women's Sexual Health Rights *vis-à-vis* Assisted Reproductive Technologies" addresses pressing bio- legal concerns, underscoring the urgent need for robust regulation and rights- based frameworks in a rapidly advancing technological environment.

The journal also engages with the challenges posed by digital innovation through "Regulating Synthetic Media: Digital Identity, Privacy, and the Law in India and the United States." This comparative analysis brings to the fore the dilemmas of deepfakes, misinformation, and identity manipulation—issues at the very heart of twenty-first century jurisprudence.

Consumer protection receives attention in “Law on Product Liability in India with Comparative Perspective,” providing valuable insights into evolving liability regimes, while “Pragmatic Approach to Law: A Study of Indian Experience” situates Indian legal practice within the broader canvas of pragmatic jurisprudence.

The COVID-19 pandemic reshaped legal, political, and social realities, as reflected in “The Best Warning System: Whistleblowing as a Contingency Plan for Censorship during Covid-19.” This piece illuminates the role of transparency and accountability during times of crisis. Finally, “Judicial Activism and Refugee Rights in India: A Constitutional Perspective” reminds us of the judiciary’s role as the guardian of marginalized groups and its responsibility to uphold constitutional promises even in the absence of specific legislative frameworks.

Taken together, these contributions illustrate the dynamism of legal studies today—where classical questions of justice coexist with challenges posed by modernity. We hope this edition sparks critical dialogue, inspires deeper inquiry, and contributes meaningfully to the ever-changing horizons of law.

Chief Editor

Prof. (Dr.) Nitin,
Dean, School of Law
Maharaja Agrasen University

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Atal Shiksha Kunj, Pinjore – Nalagarh Highway, Kalujhanda,

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Website: mau.ac.in; Email- registrar@mau.ac.in Contact No. +91-9318029217

CHANGING DIMENSIONS OF LEGAL HORIZONS

Aim and Scope

Changing Dimensions of Legal Horizons (CDLH) is a bi-annual peer-reviewed academic journal dedicated to publishing high-quality research in the field of law and allied disciplines. The journal seeks to provide a dynamic platform for advancing legal knowledge by embracing originality, critical inquiry, and scholarly excellence. Its principal aim is to foster an inclusive academic environment that promotes intellectual engagement, constructive debate, and innovative thinking on diverse legal issues of contemporary and global significance.

The scope of CDLH extends to the entire spectrum of legal studies, ranging from foundational theories of jurisprudence to specialized areas of law, including constitutional law, criminal law, corporate law, international law, human rights, intellectual property, environmental law, cyber law, and emerging fields shaped by technological and socio-economic transformations. In addition, the journal is committed to exploring the intersections of law with disciplines such as political science, economics, sociology, technology, management, and public policy, thereby encouraging interdisciplinary perspectives on complex legal phenomena.

The journal particularly welcomes contributions that:

- Present **critical analysis of legislation** and evolving statutory frameworks.
- Provide **insightful interpretations of landmark judgments** and their implications for jurisprudence.
- Address **policy-making processes**, governance challenges, and regulatory reforms.
- Engage with **comparative legal studies**, drawing on experiences from different jurisdictions to inform best practices.
- Highlight **emerging issues in legal education**, curriculum development, and professional ethics in the legal field.
- Offer **innovative theoretical frameworks and practical solutions** for addressing pressing societal and legal challenges.

CDLH aims to serve as a repository of **knowledge, research, and informed opinions** that contribute meaningfully to the academic community, practitioners, policy makers, and the public at large. It actively seeks scholarship that not only advances academic discourse but also shapes **law-making, judicial reasoning, and public policy** in ways that promote justice, equality, and social welfare.

The journal's broader vision is to **encourage reform-oriented, forward-looking, and globally relevant legal research**, ensuring that it remains at the forefront of debates about the changing nature of law in the 21st century. By bringing together diverse voices from academia, legal practice, judiciary, and policy-making institutions, CDLH aspires to foster a vibrant exchange of ideas that will influence the evolution of legal systems and contribute to building a more equitable and sustainable society.

About Maharaja Agrasen University

Maharaja Agrasen University (MAU), Solan is a Private University located in District Solan, Himachal Pradesh and was established in the year 2013. The University is approved by the AICTE and is recognized by the UGC. It aspires to become the University of First Choice for potential students, teaching & research community and recognized for providing excellent opportunities for global success. MAU offers various Diploma, Undergraduate, Postgraduate and Doctorate Level courses in a wide variety of fields like Basic & Applied Sciences, Law, Management, Pharmacy, and Technology. MAU wishes to be acknowledged as a value-based campus where students, faculty and staff are creatively and actively engaged in scholarly activities of relevance to the community at large. Mission of the MAU is to contribute to the society through imparting vibrant, innovative learning and research at the highest international levels by providing intellectual environment built on a commitment of free and open enquiry. Committed to the cause of holistic development of students, the University endeavors to foster equality, initiative, integrity, and excellence while maintaining highest level of consciousness, civility and humility. Focus is given on personality development and judicious mix of academics with extra-curricular activities and social service.

About Maharaja Agrasen School of Law

Maharaja Agrasen School of Law, established in 2013, has emerged as one of the premier legal institutes of the region with a unique blend of tradition and modernity. The School of Law offers Ph.D., LL.M, LL.B., B.A.LL.B(H) (integrated 5 years course) and B.Com.LL.B (integrated 5 years course). Its mission is to equip the students with the skills to comprehend and analyze various legal and inter-disciplinary issues and devise solution to these problems. To achieve this objective, the School arranges a number of curricular and extra-curricular activities. Moot Court Competitions, Client Counselling Sessions, Quiz Contests, Seminars, Group Discussions and Guest Lectures etc. are regular features of the academic schedule of the School. The School of Law organizes International/ National Seminars, National Essay Writing Competitions, Intra Moot Court competitions to give the aspiring students the broader interactive environment to learn. The Faculty in the School is well qualified, most of them Ph.D. and UGC-NET having good record of publications in various International/ National reputed Scopus indexed, Peer Reviewed Journals.

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THE DEATH PENALTY IN INDIA: EXAMINING ITS CONSTITUTIONAL VALIDITY AND CONTEMPORARY RELEVANCE

Dr. Nisha Jindal
Assistant Professor, University Institute of Laws, PURC, Ludhiana, Punjab

Abstract
As the nation's highest court, the Supreme Court of India has occasionally rendered authoritative rulings on a range of legal issues. The Supreme Court has reviewed the method, constitutionality, and numerous other aspects of the death penalty and provided its views the decision on multiple occasions during the past 60 to 70 years. The death penalty's validity has been contested multiple times before the Supreme Court on the grounds that it violates clauses included in the Indian Constitution. According to Bhagwati, J., however, Sec. 302 of the I.P.C. (now section 103 BNS) does not conflict with the ultimate law of the land, as the Court has often stated. Since it does not establish any legislative guidelines regarding when life should be allowed to be extinguished by the imposition of a death sentence, its provision that allows the death penalty to be applied as an alternative to a life sentence is ultra vires and void as a violation of Articles 14 and 21 of the Constitution. Through a variety of case laws, the views of distinguished jurists, and the opinions of honorable judges, the author of this research paper will address the constitutionality of the death penalty and current trends surrounding it. Finally, the author would like to offer recommendations regarding the constitutionality of the death penalty.

Keywords: Death Penalty**,** Constitutional Validity**,** Capital Punishment in India**,** Human Rights**,** Judicial Interpretation**,** Contemporary Relevance

Introduction

The premise behind all penalties is the same: misconduct must have a consequence. The punishment is being administered for two primary reasons. One is the idea that punishing wrongdoers deters others from committing wrongdoing, while the other is the idea that it is both just and just for someone who has done wrong to suffer as a result. The same idea that underpins other forms of punishment also underpins the death penalty[1].

Given the circumstances of today, the debate over the death penalty is the one that is most broadly pertinent. An essential component of the criminal justice system in India is the death penalty. As India's human rights movement gains momentum, the death penalty is being questioned as unethical. However, this is a strange argument because it is implausible and, in fact, immoral to keep one person alive at the expense of the lives of many other members or prospective victims of society[2].

[1] Available at https://newindialaw.blogspot.com/2012/11/constitutional-validity-of-capital.html accessed on 24-11-24

[2] *Ibid*

There are ongoing discussions over the morality, effectiveness, and compliance of the death penalty with human rights norms in India. Though *Bachan Singh* v. *State of Punjab*[3] established that the death sentence has been affirmed in the "rarest of rare" situations, worries about its capricious implementation, judicial inconsistency, and socioeconomic biases still exist. The public has called for harsher punishments in response to the growing number of death sentences in sexual violence cases, like the Nirbhaya case[4], but detractors contend that these measures may actually undermine the criminal justice system's rehabilitation principle rather than deter crime.

Furthermore, as acknowledged in *Shatrughan Chauhan* v. *Union of India*[5], the protracted delay in the execution of death sentences, which frequently causes prisoners to endure protracted mental anguish, raises concerns about cruel and inhuman punishment. The stark contrast between retributive justice and the changing norms of human dignity is highlighted by India's resistance to abolishing the death sentence in spite of international trends and human rights organizations' recommendations.

Meaning of Death Penalty

Death penalty, also called Capital Punishment, execution of an offender sentenced to death after conviction by a court of law for a criminal offense. Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The term death penalty is sometimes used interchangeably with capital punishment, though imposition of the penalty is not always followed by execution (even when it is upheld on appeal), because of the possibility of commutation to life imprisonment[6].

"Capital Punishment" refers to the harshest type of punishment. It is the penalty meted out for the most horrible, egregious, and abhorrent acts against humanity. The death sentence has always been the connotation of the death penalty, even though the definition and scope of these offenses differ from nation to nation, state to state, and age to age. According to popular usage in criminology, penology, and jurisprudence, a capital sentence is a sentence of death[7].

History of the Death Penalty in India

When Shri Gaya Prasad Singh tried to introduce a bill in 1931 that would have abolished the death sentence for IPC offenses, it was an early attempt to do so in pre-independence India. This was defeated, though. Around the same time, in March 1931, after the British government executed Bhagat Singh, Sukhdev, and Rajguru, the Congress passed a resolution in its Karachi session calling for the death sentence to be abolished[8].

India’s Constituent Assembly Debates between 1947 and 1949 also raised questions around the judge-centric nature of the death penalty, arbitrariness in imposition, its discriminatory impact on people living in poverty, and the possibility of error[9].

[3] (1980) AIR 898 (SC)1

[4] *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, (2017) 6 SCC 1.

[5] (2014) 3 SCC 13

[6] Available at https://www.britannica.com/topic/capital-punishment 24-11-24

[7] Subhash C. Gupta, *Capital Punishment in India* 1 (Deep & Deep Publications, 2000)

[8]Constituent Assembly Debates on 3 June, 1949, Part II available at http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm (last viewed on 28.11.2024).

[9]See Constituent Assembly Debates on 3 June, 1949, Part II available at http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm (last viewed on 28.11.2024)

For example, on the possibility of error, Pandit Thakur Das Bhargava said[10]:

It is quite true that a person does not get justice in the original court. I am not complaining of district courts. In very many cases of riots in which more than five persons are involved, a number of innocent persons are implicated. I can speak with authority on this point. I am a legal practitioner and have been having criminal practice for a large number of years.

An issue of much debate had to do with the right to appeal a death sentence. In this context, Prof. Shibban Lal Saksena said[11]:

I do feel that the people who are condemned to death should have the inherent right of appeal to the Supreme Court and must have the satisfaction that their cases have been heard by the highest tribunal in the country. I have seen people who are very poor not being able to appeal as they cannot afford to pay the counsel. I see that article 112 says that the Supreme Court may grant special leave to appeal from any judgment, but it will be open to people who are wealthy, who can move heaven and earth, but the common people who have no money and who are poor will not be able to avail themselves of the benefits of this section.

Dr. Ambedkar was personally in favour of abolition saying[12]:

My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. That, I think, is the proper course to follow, so that it will end this controversy. After all, this country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

However, he suggested that the issue of the desirability of the death penalty be left to the Parliament to legislate on. This suggestion was eventually followed.

Death Penality Under the Bharatiya Nyaya Sanhita, 2023 (BNS)

The death sentence is still available for the most serious crimes under the Bharatiya Nyaya Sanhita, 2023 (BNS), which seeks to replace the colonial-era Indian Penal Code, 1860. This shows the legislature's dedication to striking a balance between justice, deterrent, and public safety. Crimes including terrorism that results in death, treason, extremely violent murder, and some sexual offenses that cause the victim's death are all punishable by death under the BNS. One Notably, Section 302 of the IPC and Section 103 of the BNS both stipulate that murder carries a death sentence or life in prison.

Reflecting current societal concerns, the BNS further broadens the use of the death penalty to include strict prohibitions against acts of terrorism and mob lynching. In keeping with the

[10] Constituent Assembly Debates on 3 June, 1949 Part II, available at http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm (last viewed on 24.10.2010)

[11] Constituent Assembly Debates on 3 June, 1949 Part II, available at http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm (last viewed on 24.10.2010).

[12] Constituent Assembly Debates on 3 June, 1949 Part II, available at http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm (last viewed on 24.10.2021).

guidelines established by the Supreme Court of India in the *Bachan Singh* v. *State of Punjab* case, which created the "rarest of rare" doctrine, the BNS also highlights the significance of judicial discretion, permitting courts to consider both mitigating and aggravating circumstances prior to imposing the death penalty.

Thus, by guaranteeing that the death sentence is applied only in extreme situations where alternative punishment is judged insufficient for the offense committed, the BNS upholds the constitutional obligation under Article 21—the right to life. Although the death penalty is being used in the BNS, there has been a noticeable change toward judicial supervision and human rights awareness, which is in line with international movements that advocate for the use of the death penalty sparingly.

Procedure Relating to Death penalty in The Bharatiya Nagarik Suraksha Sanhita, 2023

The BNSS 2023 simplifies processes and increases certainty while closely resembling the Criminal Procedure Code's approach to the death penalty. Only Sessions Judges, Additional Sessions Judges, or High Courts have the authority to impose death sentences, and any sentence imposed by a Sessions Judge needs to be approved by the High Court prior to execution[13]. Following confirmation of a death sentence by the High Court the Sessions Court issues a warrant, allowing execution to take place, subject to the required postponements during the appellate process[14].

The High Court must postpone execution until final resolution if an appeal to the Supreme Court is available, specifically under Article 134, or if petitions under Articles 132 or 136 are pending[15]. The prisoner must be given a 30-day opportunity to petition the governor for mercy before an execution warrant is issued. The petition may subsequently be referred to the President if the Governor rejects it. The President has a specified amount of time to make a decision, but there is no deadline, and the jail is informed of the decision within 48 hours[16]. The President's clemency decision is final and cannot be disputed in court once the President takes action, as section 473 of the BNSS notably eliminates any judicial review of the decision[17].

Section 456 requires that a death sentence be converted to life in prison for pregnant women. Furthermore, in order to maintain accountability and transparency, Section 393 mandates that any judgment that imposes the death penalty state the "special reasons" that support the punishment[18].

All things considered, the BNSS 2023 introduces more stringent deadlines and restricts post-clemency court control while maintaining established channels of judicial review, appeal protections, and mercy petition procedures.

Constitutionality of Death Penalty

The constitutional validity of capital punishment in India has been upheld by the Supreme Court, affirming that it does not violate Articles 14, 19, and 21 of the Constitution. The judiciary applies the "rarest of rare" doctrine to ensure that the death penalty is imposed only in exceptional cases, maintaining a balance between justice, deterrence, and human rights. The cases in which Constitutionality of Death Penalty have been examined by the judiciary can be analyzed as under-

[13] The Bharatiya Nagarik Suraksha Sanhita, 2023, Ss. 22–23,

[14] *Ibid,* Ss. 454–455

[15] *Ibid,* S. 455,

[16] *Ibid,* S. 472 (mercy petitions), S. 473 (timelines), communication within 48 hrs

[17] *Ibid,* S. 473, finality of President's decision—no judicial review S. 456 (pregnant women)

[18] S. 456 (pregnant women), S. 393 (special reasons in judgment)

Jagmohan Singh v. State of U.P.

The first case to bring the constitutionality of the death penalty before the highest court was *Jagmohan Singh* v. *State of U.P.*[19]. The constitutionality of Section 302 of the IPC, 1960 (the death sentence for murder) was examined. The primary argument presented to the Supreme Court was that it violated numerous fundamental rights granted to citizens, particularly Article 14, citing the fact that in two comparable cases, the punishment for murder is life in prison and in other cases, the death penalty. The Apex court rejecting this contention held that the discretion of awarding death penalty or giving life imprisonment. The judges have to look into the merits of the case and even the circumstances of the crime and thus Section 302 of The Indian Penal Code, 1860 was not held to be unconstitutional.

Rajindra Prasad v. State of U.P

The Supreme Court considered whether the death penalty was constitutional in *Rajindra Prasad* v. *State of U.P*[20]. The court was asked to evaluate the grounds and circumstances under which the death penalty can be applied, even though the primary question was not whether the death penalty was constitutional. When delivering the court's majority ruling, Justice Krishna Iyer covered a wide range of topics related to the death penalty. Justice Iyer pointed out that *"Section 302 of Penal simply gave discretion to the judges to impose either death sentence of life imprisonment on the persons convicted for the offence for murder, without giving any guidelines as to the exercise of that discretion*[21]." He stated that *"unguided discretion in this matter even in the hands of the judges was grave risk as the question is of life and death. The matter should be reviewed because of the irrevocable nature of the death penalty. The error committed by the Judges in sentencing a person to death was beyond correction*[22].

The Doctrine of "Rarest of Rare"

In *Bacchan Singh* v. *State of Punjab*[23], the Supreme Court addressed the legitimacy of the death penalty once more in 1980. It focused on two issues to be taken into consideration: Was there anything unusual about the crime? The severity of the offense is demonstrated by the circumstances to the point where the accused must be executed.

By a vote of 4 to 1, the Supreme Court overturned Rajendra Prasad's ruling, ruling that the death sentence, which is an alternative punishment for murder under Section 302 of the I.P.C., does not violate Article 21. The Constitution's Article 21 acknowledges the State's authority to deny someone their life or personal freedom in conformity with a fair, reasonable, and just process set forth by lawful authority. The death sentence under Section 302, I.P.C., either in and of itself or because it is carried out by hanging, cannot by any means be considered an unreasonable, harsh, or unusual punishment in light of the constitutional clause. The death penalty for murder does not contravene any fundamental constitutional provisions. The death penalty is not always abolished by the International Covenant on Civil and Political Rights, to which India acceded in 1979. The death sentence should only be applied to the most heinous crimes and should not be applied arbitrarily. Therefore, the guarantees and restrictions found in Articles 20 and 21 of our Constitution are equivalent to the provisions of the International Covenant. The death penalty is only permitted by the I.P.C. as an alternative form of punishment for extremely serious offenses. As a result, Indian penal laws fully comply with international agreements.

[19] AIR 1973 SC 947
[20] AIR 1979 SC 916
[21] *Ibid*
[22] *Ibid*
[23] AIR 1980 SC 898

The Supreme Court has clearly formulated the dictums and circumstances in which death sentence should be given. In Bachan Singh the Court observed "*a real and abiding concern for the dignity of human life postulates resistance to taking life through law's instrumentality. That ought not to be done save in 'rarest of rare' cases when the alternative option is unquestionably foreclosed."*

The doctrine of the rarest of rare cases is further explained by the honorable court in the seminal ruling in *Macchi Singh and ors* v. *State of Punjab*[24], which illustrates the savagery of criminal activity. In a case of exceptional violence, Macchi Singh and eleven other persons massacred seventeen people in one night by raiding several homes without cause because of a family quarrel. The court is in a position to support the general public, whose reaction is so outraged that they want the accused to be executed by the judiciary's power holder regardless of their own personal beliefs106. Also court in this judgment mention the condition to be fulfilled for awarding of death penalty along with illustration those are[25]:-

a) When the murder was extremely brutal in nature which arouse intense and extreme indication of the community.
b) When the murder is committed for a motive which evinces total depravity and meanness.
c) Dowry deaths or killing due to infatuation with another woman, of a member of a scheduled tribe or scheduled caste on grounds of his caste/tribe; offences to terrorize people to give up property and other benefits in order to reverse past injustices and to restore the social balance.
d) In cases of multiple murders of a members of a particular family, caste, community or locality.
e) Where the victim is an innocent child, helpless woman, aged or infirm person, a public figure whose murder is committed other than for personal reasons.

According to court the five category of murder through which the doctrine of rarest of rare case shall be considered are[26]:

a) Motive
b) Manner of commission
c) The extent of crime
d) Anti social or repugnant nature of crime
e) Personality of victim

On the above provided guideline court will decide the punishment.

Since Jasbir Singh and Kuljeet Singh were cold-blooded killers and the murder was a heinous, savage, and heinous act, they were found guilty and given the death penalty in *State* v. *Jasbir Singh & Kuljeet Singh*[27], also known as The Chopra Children Murder Case. There were aggravating circumstances in the homicide.

In *Attorney General of India* v. *Lachma Devi*[28], it has been held that the execution of death sentence by public hanging is barbaric and violating Article 21 of the Constitution. It is true that the crime of which the accused have been found to be guilty is barbaric, but a barbaric crime does not have to be visited with a barbaric penalty such as public hanging.

In *Smt. Shashi Nayar* v. *Union of India*[29], and others, decided in 1991, a Supreme Court bench once more affirmed the death penalty's constitutionality. The court did not address the merits of the argument against it, stating that the nation's law and order situation had gotten worse

[24] AIR 1983 SC 957
[25] *Ibid*
[26] *Ibid*
[27] 17 (1980) DLT 404
[28] AIR (1992) SC 395
[29] (1983) Cri. L.J. 811(S.C.)

and that the time was not right to abolish the death penalty. Such circumstances are addressed by an argument that presumes executions.

Two capital case customs that had been followed for many years have been overturned by the Supreme Court. In cases when the judges hearing the case could not agree on a sentence or guilt, the first practice was to not inflict the death penalty. The second was not to execute someone who had already been found not guilty by a lesser court. It considers that anyone convicted of homicide while serving a life term in jail will be executed as punishment.

The Supreme Court's Full Bench considered the validity of Section 303 in *Mithu* v. *State of Punjab*[30]. According to the majority, this clause infringes upon both the right outlined in Article 21 of the Constitution and the guarantee of equality included in Article 14. It was believed that the part was intended to deter lifers from attacking prison workers, but the lawmakers chose wording that went well beyond that goal. Furthermore, it was decided that the part is based on an assumption that has no scientific backing. It primarily breaches Article 21 of the Constitution, according to the majority opinion.

This section has been ruled illegal in *Bhagwan Bux Singh and others* v. *State of U.P*.[31] due to its violation of Articles 14 and 21 of the Indian Constitution. It can no longer be used to convict any criminal. Section 302 will be used to change a conviction under this section. However, it must be proven that the case is extremely exceptional in order to grant a death sentence under section 302. The sentence would become a life sentence if the case could not be classified as rarest of rare.

Law Commission Report of 2015

India's Law Commission in its 262nd Report (August 2015) recommended that the concept of death penalty should be abolished for all crimes other than terrorism related offences to safeguard national security[32] .

The Law Commission in its previous review in the year 1967, the commission concluded that India couldn't risk the "experiment of abolition of capital punishment". But in 2015 the Commission stated that "the commission feels that the time has come for India to move towards abolition of the death penalty"[33].

Despite the fact that death sentences are rarely executed in India, still the commission suggested that the penalty should be abolished. The commission gave following reasons:- 1.) Times have changed. 2.) It's not a Deterrent. 3.) India's justice system is flawed.

Concluding Remarks

The question of retaining or abolishing capital punishment in India remains deeply contentious, reflecting a complex interplay of legal, moral, and societal considerations. While the Supreme Court of India continues to uphold the constitutionality of the death penalty, its application is restricted to the "rarest of rare" cases as established in *Bachan Singh v. State of Punjab*. This doctrine reflects judicial attempts to balance the demands of justice with respect for human dignity.

Based on human rights jurisprudence, there is a noticeable movement worldwide to abolish the death penalty[34]. However, it has been maintained in India because to political discourse, public feeling, and the seriousness of some egregious crimes. Critics contend that the death sentence disproportionately impacts the underprivileged, is

[30] (1983) 2 SCC 27

[31] (1977) MANU/SC/0079

[32] Report No. 262, The Death Penalty, Law Commission of India, 2015.

[33] *Ibid*

[34] Roger Hood, *The Death Penalty: A Worldwide Perspective* 8-15 (Oxford University Press, 2008)

arbitrary, and is prone to judicial error[35]. Furthermore, empirical research has not demonstrated that it has a deterrent effect on crime[36].

India must now consider whether the death penalty is consistent with the principles of justice, equality, and human rights outlined in its constitution. India's international human rights commitments and the slow but rising worldwide consensus towards abolition demand a reexamination of this harshest form of punishment. The sanctity of life may be preserved while the goals of justice and rehabilitation are better served by a move toward life in prison without the possibility of release.

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PROPERTY RIGHTS OF ILLEGITIMATE CHILDREN UNDER HINDU LAW: A JUDICIAL DISCOURSE

Dr. Sunny Sharma
Assistant Professor
University Institute of Legal Studies, Panjab University, Sector 14, Chandigarh-160014

Abstract
This study looks at how Indian courts have been interpreting illegitimate children's property rights under Hindu law. Due to progressive court rulings, the legal standing of these historically disenfranchised children has significantly changed. Key Supreme Court and High Court rulings that have broadened the interpretation of statutory provisions to protect the rights of illegitimate children—particularly under the Hindu Succession Act and Hindu Marriage Act—are critically analyzed in this article. The study emphasizes the judiciary's function in guaranteeing social justice, equality, and the defense of children's rights regardless of their place of birth.

Keywords- Legitimacy, Illegitimacy, Property Right, Constitution, HMA, MSA, HAHA, HMGA, Judiciary

Introduction

For millennia, Indian civilization has been based on the institution of the family, which is firmly ingrained in social, cultural, and religious ideals. But as society changes, judicial institutions are forced to deal with intricate family dynamics and connections that were previously disregarded or dismissed. The legal standing and property rights of illegitimate children—those born outside of a recognized marriage—are among these issues. Historically, the idea of validity has been central to deciding a child's inheritance rights, frequently resulting in prejudice against children who are considered "illegitimate" under conventional legal systems.

The status of illegitimate children was unstable and mainly devoid of legal recognition in ancient Indian civilization, as evidenced by the numerous *Dharmashastra* writings, because legitimacy was inextricably linked to religious ceremonies and social acceptance[1]. One The British imposed a strict codified framework with the introduction of colonial legal systems, which strengthened the divisions between legitimate and illegitimate children, especially with regard to inheritance and succession rights. Despite certain current statutory revisions and progressive judicial interpretations, India's personal laws have been shaped by this tradition and still distinguish between legitimate and illegitimate children.

With differing levels of acceptance and protection for illegitimate children, the Hindu Succession Act of 1956, the Indian Succession Act of 1925, and the Muslim personal laws all take distinct approaches to the topic of inheritance. Although there are statutory protections, they frequently have a narrow focus

[1] P.V. Kane, *History of Dharmashastra*, Vol. II, 538 (Bhandarkar Oriental Research Institute, Pune, 1974)

and do not grant unwed children the same status as their parents, which is a reflection of ingrained prejudices in society. For example, under Hindu law, the coparcenary system does not fully acknowledge the rights of illegitimate children, and property rights are mostly vested in legitimate heirs[2]. Similar to this, notwithstanding certain advancements brought about by legislative and constitutional interventions, Christian and Parsi personal laws have traditionally maintained strict divisions.

The United Nations Convention on the Rights of the Child (UNCRC) and other international human rights frameworks place a strong emphasis on the best interests of children and the nondiscrimination concept[3]. India is required to align its own legislation with these principles as a signatory. Nonetheless, there is still a considerable discrepancy between domestic legal realities and international obligations. By denying illegitimate children equal property rights, the Indian legal system has come under fire from academics for maintaining inequality and stigmatizing these children. The validity of a kid shouldn't be a hindrance to inheritance, as Paras Diwan notes in his work on family law. The law also needs to change to reflect the evolving social realities and preserve the equality and dignity guaranteed by the constitution[4].

The psychological and societal effects of denying illegitimate offspring legal recognition and property rights have been emphasized in a number of scholarly researches. These kids are more vulnerable in the family and the community because they frequently experience financial hardship, social disapproval, and legal ambiguity[5]. According to current family law studies, a child-centric approach is recommended, in which the child's rights are prioritized over the circumstances surrounding their birth[6]. Although comparative jurisprudence is progressively supports the legal notion that no children should suffer due to result of their parents' misdeeds. India's personal law regimes are still lagging behind in fully adopting this idea.

Through a progressive interpretation of statutory legislation and constitutional principles, the Indian judiciary has been instrumental in defining and extending the property rights of illegitimate offspring. Historically, the Indian Succession Act of 1925 and personal laws both prohibited illegitimate offspring from inheriting property. Nonetheless, courts are becoming more aware of the need to defend these children's rights and dignity, particularly in view of Articles 14 and 15 of the Indian Constitution, which ensure equality and nondiscrimination. The Supreme Court ruled in *Revansiddappa* v. *Mallikarjun*[7] that children of void or voidable marriages are entitled to a portion of their parents' ancestral property, stressing that the child shouldn't be made to suffer because of the parents' actions.

Legitimacy under the Hindu Marriage Act, 1955

The Hindu Marriage Act of 1955's notion of legitimacy is crucial in establishing the legal and social standing of children born inside or outside the parameters of a legitimate marriage. The acceptance of a child as the legal child of married parents is known as legitimacy. Children born outside of marriage were frequently denied the ability to inherit and social recognition under traditional Hindu law, which tightly linked legitimacy to the legality of the parents' union. But in order to rectify these injustices and guarantee children's safety regardless of their

[2] B.M. Gandhi, *Family Law* 212 (Eastern Book Company, Lucknow, 2019)

[3] United Nations, *Convention on the Rights of the Child*, 1989, Articles 2 and 3

[4] Paras Diwan, *Modern Hindu Law* 344 (Allahabad Law Agency, Faridabad, 2018)

[5] Archana Parashar, *Women and Family Law Reform in India* 105 (Sage Publications, New Delhi, 1992)

[6] LAW COMMISSION OF INDIA, "257th Report on Reforms in Guardianship and Custody Laws in India (May 2015)

[7] 2023 SCC ONLINE SC 1087

parents' marital status, the Hindu Marriage Act of 1955 brought about progressive reforms.

The validity of offspring is expressly covered in Section 16 of the Hindu Marriage Act of 1955. Over time, this clause has been changed to give legitimacy to children born out of void and voidable marriages. Section 11 defines a void marriage as one that, in the perspective of the law, never happened, such as a marriage consummated when one of the parties had a surviving spouse. According to Section 12, a voidable marriage is one that endures until it is dissolved by a court order, such as one that was obtained by coercion or fraud. The original version of Section 16 perpetuated discrimination by excluding children from invalid marriages and only granting legitimacy to children from voidable marriages. By extending the application of Section 16 to children from void and voidable marriages, the Marriage Laws (Amendment) Act, 1976, closed this loophole and confirmed the children's legal status as legitimate children for all purposes.

The 1976 amendment, which severed the customary connection between the legality and legitimacy of the parents' marriage, was a turning point in Hindu personal law. Regardless of the nullity ruling, children born from marriages declared void under Section 11 are considered legitimate under Section 16(1). In a similar vein, Section 16(2) guarantees the legitimacy of children born to voidable marriages that have been dissolved. This legal recognition is essential because it protects the rights of defenseless infants whose birth circumstances are beyond their control. It is consistent with Article 14 of the Indian Constitution, which ensures nondiscrimination and equality before the law.

The validity granted by Section 16 is not without restrictions, though. It is made clear in the Explanation to Section 16(3) that these children will only be entitled to their parents' property and not any other relatives' property. By separating the status of children from invalid or voidable marriages from those born in legitimate nuptials, this limited inheritance right creates a subtle distinction within the legal system4. In a number of judgments, the Supreme Court of India has given Section 16 a liberal interpretation, stating that the goal of the clause is to shield children from the negative effects of their parents' marital status rather than to punish them for actions over which they had no control.

Status of Property Rights of Illegitimate Children under the Hindu Succession Act, 1956

Ancestral property passes via the male lineage as coparcenary property under the Mitakshara school of Hindu law, which has historically governed Hindu succession. However, children from void or voidable marriages are not granted the status of coparcenary. Because of this discrepancy, these children are not entitled to a share of joint family property or to demand partition. They are only entitled to the property that the parents have gained on their own[8]. This limitation has been a topic of debate in legal studies, with many pushing for amendments to ensure equitable treatment for all children irrespective of their birth status.

The laws pertaining to intestate succession among Hindus in India were codified in the historic Hindu Succession Act, 1956. The property rights of illegitimate children—those born out of void or voidable marriages—are one of the important yet delicate topics covered by this legislation. The Act refers to children born from void and voidable marriages governed by the Hindu Marriage Act, 1955, rather than using the phrase "illegitimate child" specifically. The status and rights of these children are largely determined by Section 16 of the Hindu Marriage Act, 1955. Offspring of void marriages are

[8] Paras Diwan, *Modern Hindu Law* 251 (Allahabad Law Agency, 23rd ed., 2020)

considered legitimate under Section 16(1), while offspring of voidable marriages are given the same legality under Section 16(2)[9]. This provision was a progressive step towards ensuring that children are not punished for the circumstances of their birth.

The 2005 Amendment to the Hindu Succession Act, which conferred equal coparcenary rights on daughters, did not address the issue of children from void marriages it leaves a legal vacuum. Consequently, the judiciary continues to play a pivotal role in advancing the rights of such children through a progressive and constitutional interpretation of personal laws. The Law Commission of India, in its 110th Report, also recommended that discrimination against illegitimate children in matters of succession be removed to align personal laws with constitutional guarantees[10].

Illegitimate Children and Their Property Right- Judicial Discourse

Through a number of legislative changes and Supreme Court rulings, the property rights of children born outside of marriage—often referred to in the law as children of void or voidable marriages—have dynamically changed in India. Illegitimate offspring historically had relatively limited inheritance rights under Hindu, Christian, Muslim, and Parsi personal laws, particularly with regard to joint family wealth or ancestral property. Even though they are still only able to inherit from their parents[11], court rulings, especially in the context of Hindu law, have greatly expanded their claim to both self-acquired and inherited parental properties.

Based on Sections 16(2) and 23 of HAMA, the Supreme Court ruled in the landmark case of *G. Lakshmamma* v. *G. Gangayya*[12] that the inheritance rights of illegitimate children from adoption-related property are unaffected by a legitimate child's adoption order under HAMA. The Court stressed that illegitimacy at birth alone could not be used as justification for exclusion from succession.

In *R. Lakshmana Reddy* v. *Ramachandra Reddy*[13], the Court upheld this line of reasoning, ruling that a child's birth status did not exclude inheritance from the father if the child was later recognized by the father and married to the mother. The Court once more ruled that Sections 23–25 of the HMGA recognize the duty of a biological father by extending guardianship and maintenance rights regardless of the father's marital status at the time of birth.

The Court extended its interpretation to the Indian Succession Act, 1925, as it applied to Hindus for intestate succession in *Shyam Narain Sharma* v. *Ram Narayan Sharma*[14] concluding that phrases such as "child" must encompass illegitimate children. The Court determined that such exclusion was unworkable due to a far too tight reading of legislative history and intent, which is embodied in Article 14 of the Constitution, even though the Act does not specifically mention illegitimacy. Citing its previous reasoning *in Lakshmamma* and *G. Mohanarangan v. G. Rajalingam*[15], the Court stated that exclusion based on legitimacy "shocks" the conscience of constitutional equality. In the case of *Bal Kishan Sharma* v. *Daya Shankar Sharma*[16], the Court acknowledged the right of an illegitimate Hindu daughter to seek maintenance under Section 24 (1) (a) of the HMGA, placing the daughter's rights on an equal footing with those of her legal offspring.

[9] Hindu Marriage Act, 1955, Section 16(1) & (2)
[10] Law Commission of India, "110th Report on Indian Succession Act, 1925" (1985)
[11] Section 16, Hindu Marriage Act, 1955
[12] AIR 1957 SC 425
[13] AIR 1962 SC 1200
[14] AIR 1972 SC 1344
[15] AIR 1970 SC 1554
[16] AIR 1971 SC 2075

Another critical milestone was *Amrit Lal v. Raj Kumari*[17], in which the Supreme Court, considering Sections 16–23 of The Hindu Adoption and Maintenance Act, 1956 (HAMA) and Sections 23–25 of The Hindu Minority and Guardianship Act, 1956 (HMGA) conjointly with the principle of natural justice, observed that children born out of wedlock, though conceived during illicit relationships, might not have been legitimized by formal marriage. However, their right to property cannot be defeated. The Court found that even after the father's intestate death, the children would stand in the same position as legitimate children for purposes of succession, as Sections 16 and 23(1) of HAMA do not distinguish between legitimacy, nor do they require legitimation, for purposes of inheritance.

These rulings' constitutional foundations are crucial. Discrimination on the basis of religion, race, caste, sex, or place of birth is forbidden by Article 15(1). In *Air India* v. *Nargesh Meerza*[18], the Supreme Court acknowledged that legitimacy may be attributed to one's "place of birth" and cautioned that any social or legal discrimination based on that must be constitutionally acceptable. In subsequent rulings, the broad interpretation of Article 21's guarantee of life and personal liberty in *Maneka Gandhi* v. *Union of India*[19] was used to guarantee that illegitimate children would not be denied their right to livelihood, or property and maintenance.

Notably, court rulings have consistently maintained that rights could be granted by ideas such as *ghatna-vidhi-sambandha* (a post-facto relationship) without the need for official marriage-based legitimation. The foundation of these interpretations is a social and constitutional perspective on equity and justice.

In *Revansiddappa* v. *Mallikarjun*[20], the Supreme Court affirmed a child born out of an illegitimate relationship's right to inherit the parents' self-acquired property under Section 16 of the Hindu Marriage Act, 1955 (HMA), ruling that the child is innocent and should not be punished for the circumstances of birth. Furthermore, the highest court highlighted in *Revanasiddappa* v. *Mallikarjun* (2011) and *Neelamma* v. *Sarojamma*[21], that Section 16 (3) of HMA protects such children's rights in their parents' property but not in joint family property. The Court also emphasized in the *Revanasiddappa* case that the law needs to change in order to eliminate the societal stigma associated with these kids.

The Supreme Court reiterated in *Revansiddappa* v. *Mallikarjun* (2023)[22] that children born of void or voidable Hindu marriages are regarded as legitimate under Section 16(1)–(2) of the HMA because of a statutory legal fiction, even though they are declared illegitimate at common law. The Court explained that this deeming fiction allows these children to inherit their parents' ancestral and self-acquired property, but it does not make them coparceners by birth. It also clearly restricts their rights to their parents' property alone, excluding claims on other relatives' properties.

The reference was necessitated due to divergent views taken by two benches of the Court in *Jinia Keotin* v. *Kumar Sitaram Manjh*[23]*i*, and *Revanasiddappa* v. *Mallikarjun*[24]. Jinia Keotin held that merely because a child born out of a void and illegal marriage has been safeguarded under Section 16 of HMA, he/she cannot be equated with the legitimate offspring or form part of a coparcenary. Per contra, Revanasiddappa

[17] AIR 1993 SC 909
[18] AIR 1981 SC 1829
[19] AIR 1978 SC 597

[20] (2011) 11 SCC 1
[21] (2006) 9 SCC 612
[22] *Revanasiddappa & Anr.* v. *Mallikarjun & Ors.*, (2023) 10 SCC 1 (2023 INSC 783).
[23] (2003) 1 SCC 730
[24] (2011) 11 SCC 1

held that once an illegitimate child is sanctioned with legislative legitimacy under Section 16 of HMA, he/she ought not to be discriminated against and he/she is on par with other legitimate children in respect of all the rights in the property of their parents, including self-acquired and ancestral property.

The Bench stressed a literal, limiting interpretation of Section 16(3) in connection with Section 6 of the Hindu Succession Act: legitimacy grants succession rights through testamentary or intestate succession, but cannot be interpreted to grant autonomous coparcenary status. The 2023 Bench declared that Congress purposefully restricted inheritance to parents' property only when it enacted Section 16(3), overturning earlier reasoning, particularly the 2011 two-judge Revansiddappa decision, which had granted broader coparcenary inheritance rights. In the end, the ruling achieved a legislative compromise by granting parental inheritance rights and eliminating the social stigma associated with illegitimacy without expanding the legal definition of joint family coparcenary property.

Concluding Remarks

Judicial rulings regarding illegitimate children's property rights under Hindu law have evolved throughout time, reflecting a progressive movement to uphold equality, justice, and human dignity. Illegitimate offspring have historically experienced harsh prejudice, being excluded from social and property rights. Nevertheless, Indian courts have progressively acknowledged the inherent rights of these children, regardless of their birth status, in a number of significant rulings. To protect the rights of illegitimate children, especially with regard to inheritance and maintenance, the judiciary has construed and broadened the provisions of the Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956.

In *Revansiddappa* v. *Mallikarjun*, the Supreme Court notably upheld the principle that an innocent child cannot be penalized for the actions of their parents, thus guaranteeing them equal rights to both self-acquired and ancestral property. These rulings demonstrate the judiciary's dedication to the equality and nondiscrimination principles outlined in the constitution. Judicial activism has been essential in bridging legislative gaps and lessening the severity of conventional personal laws, even though statutory amendments are still scarce.

However, legal ambiguity persists due to a lack of consistency and explicit statutory directives. To establish and uphold the rights of illegitimate children in accordance with modern human rights standards, broad legal intervention is urgently needed. In conclusion, comprehensive legal change is still necessary to guarantee the full social and legal acceptance of illegitimate offspring, even though court rulings have gradually improved their rights under Hindu law.

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UNDERSTANDING WOMEN EDUCATION AS CATALYST FOR EMPOWERMENT THROUGH THE LANCES OF FEMINIST JURISPRUDENCE

Prof. (Dr.) Richa
Professor
School of Law, Maharaja Agrasen University, Baddi, Solan (HP)

Abstract

Women's psychological, social, political, and economic development is greatly influenced by their level of education. Education is a crucial tool for marking a woman's existence and reflecting her individuality, in addition to being a way to attain economic independence. Numerous factors, including social, demographic, political, and economic ones, influence women's education. The low level of education among women can be attributed to these factors. Women's empowerment can be positively impacted by their education. The Indian Constitution gives the State the authority to implement affirmative action policies aimed at advancing strategies and tactics for women's empowerment.

Women's education significantly improves their quality of life. It is a significant step toward the empowerment of women. Therefore, the most crucial element in empowering women is education. A legal philosophy founded on the political, economic, and social equality of the sexes is known as feminist jurisprudence. Feminism is a contentious idea these days. The goal of feminist jurisprudence is to understand why women are in subordinate positions. This essay examines how education contributes to women's empowerment from a feminist legal perspective.

It is remarkable how education for women improves their life. For women's empowerment, it is a significant milestone. Therefore, women's education is the most crucial component of their empowerment. The legal concept of feminist jurisprudence is predicated on the equality of the sexes in society, politics, and the economy. Nowadays, feminism is a contentious idea. The philosophy of feminist jurisprudence aims to understand the causes of women's subordination. This essay uses feminist jurisprudential perspectives to examine the role that education plays in women's emancipation.

Key words: Education, women empowerment, Constitution of India, Legislative Provisions, Schemes, Policies, Feminist jurisprudence.

Introduction

There are men and women in society. Women and men are equal from birth. Both men and women are essential to the formation and growth of their families as well as to society at large. Women serve as both breadwinners and distributors of bread. With a man, she works shoulder[1]. She was

[1]Dr. S.R. Myneni, Sociology, Allahabad Law Agency, Reprint 2012, 481

regarded as "Saha Dharma Charani" since she and men participate in all activities equally. The socially assigned status of men and women in Indian society is what defines the position of dominance in relationships between men and women. Since ancient times, males have controlled women as a group, and women's standing in society has been subservient."[2] Despite making up half of the population, women are significantly less advanced than men in social, economic, and political spheres. It is important to note that women's journey from the past to the present has been a shaky one. One could describe the role of women in the modern era as remarkable. Previously regarded as the experts in domestic duties, women are now credited with helping to shape the nation. Let's examine ancient, medieval, and contemporary periods to have a better understanding of women's status.

Women in ancient India

Women held significant positions in ancient Indian civilization. It was a high-level role. The profusion of goddesses in antiquity was meant to promote respect for women. The god's place, Ardhanareeshwar, was worshipped by half males and half women. In Vedic society, women participated in religious ceremonies and tribal meetings. Women were dependent on their male husbands for the entirety of their lives, but there is no evidence that they were barred from social or domestic activities. Monogamy was common. Women may use a swayamvara marriage to choose their mate. After prospective grooms came at the bride's house, the bride in this type of marriage selected her spouse. Examples of the Swayamvara ceremony can be found in the epics of the Ramayana and Mahabharata. This continued into later class families. Widows could choose to separate from their husbands and remarry.[3]

The status of women changed in all spheres of life as the times changed. Women's political right to join assemblies was taken away from them in the later Vedic era. Child weddings also became a reality. Women seeds like Gargi, Maitreyi, and Hemadri are mentioned. As time went on, the Golden Vedic principles of equality and unity started to wane, and women's status steadily worsened. Women were excluded from studying the Vedas, reciting Vedic mantras, and performing Vedic rites during the time of Smritis because they were grouped with the Shudra. Epics and Puranas were composed during the Puranic Period, which came after the Vedic period. Women were completely denied the freedom to own property in the economic sphere. They were not allowed to perform penances, make religious pilgrimages, or offer prayers and sacrifices in the religious areas.

Buddhism emerged as a reaction to Hinduism. In the light of abovementioned disabilities during the periods of *Brahmans* and *Puranas,* during Buddhist period the status of women improved a little but there were no radical changes. In the religious field women got a superior position. They had their own "*Sangh*" called '*Bhikshuni Sangh*' guided by the similar rules and regulations as those of monks. The 'Sangh' opened to them many avenues for cultural activities, social services, and public discourses. In social fields they had honourable place. However, in economic and political arenas their status remains unchanged.[4]

Women in Medieval Period

According to historians, the medieval era was considered to be the worst time for women. The numerous foreign conquests that occurred in medieval India led to a decrease in women's status since the invaders brought their own culture with them. Indians also started treating their women in this way as a result of their worldview, which

[2]Navendu K. Thakur, An Introduction to Sociology, Central Law Publications, second edition 2011, 252

[3]Vinita Pandey, Indian Society and Culture, Rawat Publications, Reprint 2018, 456

[4]*Supra* note 2

views women as the property of their father, brother, or husband. Women were completely denied access to education as the "purdah" or "veil" system spread. The restriction on the women's freedom of movement caused their status to further decline. From this moment on, society began to view a girl as a source of suffering and a burden that required special attention and protection from the invaders. A terrible cycle began, with women at the bottom of it. New atrocities including child marriage, Sati, Jauhar, and restrictions on girls' education came forth as a result. Between the 11th century and the British occupation of India in the middle of the 18th century—nearly 700 years—there was a general deterioration in social institutions, political structure deconstruction, mass migration, and economic depression in India. All of these led to the overall deterioration of women's standing as well. However, the "Bhakti movement" that occurred in the 15th century brought new companions into women's social and religious lives. Women were urged to educate themselves throughout this movement. However, the women's lives did not significantly change as a result of this campaign.

Women in the British period

Throughout the 18th, 19th, and early 20th centuries, India was under British Domination, which altered the country's social and economic structure. A slight improvement in women's quality of life can be seen during this time, but there has also been significant progress in the eradication of gender disparities in areas such as education, employment, and social rights. The introduction of industrialization, the breakdown of the caste system, social reform movements, women's organizations, and the passing of social legislation all contributed to the improvement of women's status during this time. During this time, the concept of educating women first appeared. Christian missionaries began to trust women's education after the Bhakti movement. In 1824, the first school for girls was established in Bombay. In 1882, the Hunter Commission was established alongside Lord Dalhousie to highlight the importance of female education. Girls were not admitted to Calcutta, Bombay, or Madras universities until 1875. The literacy rate among Indian women rose from 0.6 percent in 1901 to 39.42% in 1991 after girls were permitted to pursue higher education in 1882. The rural literacy rate is still significantly lower than the urban one, but it can be inferred that, despite the low number of girls enrolled at all levels, there has been a notable increase in the number of female students at all levels starting in 1941.

Mahatma Gandhi, Annie Besant, Maharishi Karve, Ishwar Chand Vidyasagar, Raja Ram Mohan Roy, Swami Vivekanand, and Swami Dayanand Saraswati were among the social reformers who championed women's social and political rights. These reformers were successful in raising social awareness of women's equality and liberation.

Women in modern India (Post independence period)

In contemporary India, women's status is somewhat contradictory. Even though he is at the top of the achievement ladder, she is also suffering from the brutality that her own family member has inflicted upon her. Though they have made great strides in modern times, women still have a long way to go. Despite overcoming numerous obstacles and proving themselves, they have not yet received their just compensation in India. India's six ratio demonstrates that discrimination against women persists in Indian society. According to the 2011 census, India has 933 females for every 1000 males, far fewer than the global average of 990 females.

Significant progress has been made in the advancement of women since India gained its independence. During India's post-independence era in the 1960s and 1970s, women everywhere fought for equality with males. Gender equality is

recognized under the Indian Constitution. The following clauses give women rights:

1. The Preamble of our Constitution speaks of equality of status and opportunity and of social, economic, and political justice.
2. Article 14 assures equality before law and the equal protection of laws.
3. Article 15 and 16 prohibit any type of discrimination on the ground of sex. These Articles even provide for the special provisions relating to the protection of women.
4. Article 21 assures the Right to life and personal liberty. It has paved way for the upliftment of women in many ways like ensuring the right to have reproductive choices.
5. The Directive Principles of State Policy refer to women under following Articles:
    a. Article 39(d) asks the State to direct its policy to see that there is equal pay for equal work for both men and women.
    b. Article 39(e) seeks the State to see that the health and strength of men and women workers is not abused.
    c. Article 42 requires the State to provide for maternity relief and make provision for securing just and human conditions.
6. Political powers were given to women in local bodies as per Article 243 (D)(3), (4) of the Constitution. Nari Shakti Vandan Adhiniyam ensure the reservation of seats up to 33 percent for women in the House or Assemblies.
7. Article 51- A (e) of Fundamental Duties promotes to renounce practices derogatory to the dignity of women.

Legislative measures to uplift the status of women in India

1. **National Commission for Women Act, 1950**: The National Commission for Women was established under this Act with the aim to investigate and examine the matters relating to the safeguards provided for women under the various laws of the land.
2. **Hindu Marriage Act, 1955**: The chief aim of the Act is to prohibit the polygamy.
3. **Hindu Succession Act, 1956**: The women have the right to sue, sale, mortgage or dispose of the inherited property.
4. **Hindu Adoption and Maintenance Act, 1956**: This Act permits the Hindu Women to adopt a child and claim maintenance under certain circumstances.
5. **Hindu Minority and Guardianship Act, 1956**: This Act has sanctioned women to guard her daughter throughout her life and in case of a son for the first five years.
6. **The Dowry Prohibition Act, 1961**: The evil persists deep rooted in our society. This Act aims at destroying this dowry system by imposing the imprisonment and fine.
7. **The Equal Remuneration Act, 1976**: This Act provides for the equal pay to men and women for equal work.
8. **The Immoral Traffic (Prevention) Act, 1956**: The aim of this Act is to make the acts punishable where the women and children are sold like goods.
9. **The Child Marriage Restraint Act, 1976**: This Act has raised the age of marriage of a girl to 18 years and of boy to 21 years.
10. **The Medical Termination of Pregnancy Act, 1971**: This Act legalizes the abortion on health grounds.
11. **The Indecent representation of Women (Prohibition) Act, 1986**: This Act is made to prohibit indecent representation of women through advertisements or in publications, writings, figures or in any other matter.
12. **The Commission of Sati (Prevention) Act, 1987**: This Act is made to provide for more effective prevention of commission of Sati and its glorification and for matters connected herewith or incidental thereto.

13. **The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994**: This Act is made to prohibit the misuse of Pre-natal Diagnostic Techniques for the determination of sex of fetus, leading to female feticide and to punish for violation of the provisions of the legislation.
14. **The Family Courts Act, 1984**: This Act is enacted to provide for the establishment of Family Courts with a view to promote conciliation, and secure speedy settlement of dispute relating to marriage and family affairs and for matters connected therewith.
15. **The Maternity Benefit Act, 1961**: The aim of the Act is to regulate the employment of women in certain establishments for certain period before and after child birth and to provide for maternity benefit and certain other benefits to the working women.
16. **The Employees' State Insurance Act, 1948**: The E.S.I. 1948 also provides the maternity benefits to insured women in case of conferment or miscarriage or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage.
17. **The Muslim Women (Protection of Rights on Marriage) Act, 2019**: This Act intends to safeguard the interest of Muslim women by providing them the legal protection against the whimsical and irrational pronouncement of Triple Talaq.
18. There are number of protective provisions in the Criminal Procedure Code, Indian Penal Code and Evidence Act for the offences against women.

Women empowerment:

One definition of empowerment is the process of establishing a social setting where important choices that could lead to societal change can be made. By gaining experience, power, and understanding, it fortifies the natural talent. Women's empowerment has emerged as one of the most significant topics of our day. The phrase "women empowerment" basically refers to the ability of women to govern their daily life in terms of social, political, and economic aspects; this ability allows them to rise from the background to the forefront. Women's empowerment has long been a major concern in India. Even though there has been some improvement in recent decades, gender equality remains a major obstacle for Indian women. These difficulties include things like prejudice and limited access to jobs and education.

In India, women's standing has been drastically shifting. Given that women have been actively participating in all spheres of life, including politics, sports, education, and other areas, thanks to constitutional guarantees of equality and dignity, the government designated 2001 as the year of women's empowerment by enacting a national policy to provide Swashakti to women.

As previously said, governments have established numerous laws to enhance and promote women's status and to foster the ideal environment for women's empowerment. Women's empowerment in our nation has been made possible by constitutional protections against discrimination. India's approach to women's concerns has changed significantly since the fifth Five Year Plan (1974–79), moving from focusing on women's welfare to development while maintaining the importance of women's empowerment. The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), which India adopted in 1993, is one of several international conventions and human rights instruments that pledge to protect women's equality. Steps for Women Empowerment by the Government.

The Ministry of Women in Child Development is administering the Support to Training and Employment Program of Women (STEP)

Scheme with the goal of helping economically marginalized and asset less women become self-sufficient. The scheme also aims to provide training for the skilled upgradation development of entrepreneurial skills, asset creation, and mobilization into small viable groups to enable beneficiaries to take up employment-cum-income generation activities. The government established a National Commission for Empowerment of Women, which was notified on March 8, 2010. The commission's mission is to implement women-centric programs in a mission mode to achieve better coordination. The Ministry has also periodically introduced a number of programs to empower the disadvantaged population in a comprehensive and long-lasting way by addressing their economic, social, and political issues through capacity development initiatives and forming Self Help Groups (SHGs). A few of the Ministry's initiatives and initiatives are listed:

1. Priyadarshini Yojana;
2. Swarnajayanti Gram Swarozgar Yojana (SGSY);
3. Rashtriya Mahila Kosh (RMK) Scheme;
4. India Vision 2020 Document;
5. Help Lines for Women; etc.

Education of Women:

"If you Educate a man, you educate an individual; if educate a woman, you educate a family" -Mahatma Gandhi

Everybody's life is greatly impacted by education. It is a crucial instrument for attaining equality and a human right. Promoting women's empowerment via education is one of the main suggestions of the 2020 National Policy on Education. Self-governance, self-sufficiency, and self-maintenance are all components of empowerment. According to the 1993 International Convention on the Prevention of Discrimination Against Women (ICDAW), education is one of the most crucial ways to equip women with the knowledge, abilities, and self-assurance they need to fully engage in the process of development. Women's education improves society as a whole. Compared to men's education, it has a greater influence on poverty and development. For women to be economically empowered, education is essential. It takes center stage, but for a long time, most women, particularly those living in rural areas, have been denied this right and have been forced to endure extremely dehumanizing duties and practices. Girls who have an education are more equipped to succeed in their social, professional, financial, and familial life. It is also one of the most important elements lowering the infant death rate and enhancing child health. The duty of educated women is enormous, and they play a big part in influencing the mental and behavioral characteristics of the next generation.[5]

Her main responsibility is to raise and mould the next generation of women leaders. Educated women understand the importance of health care and know how to obtain it for themselves and their children. Education makes them more self-assured and conscious of their rights. Parents with a good education take their kids' academic performance very seriously. The children's lives will be more impacted by the mother's education than the father's. Women who are empowered can stand next to men. They are not less capable than men and can perform any task that a man can, frequently even better.

Women Education is Women Empowerment -Government initiatives:

Few are listed below:

- Beti Bachao, Beti Padhao
- Sarv Shiksha Abhiyan
- Kasturba Gandhi Balika Vidyalya Scheme
- Rashtriya Madhyamik Shiksha Abhiyan

[5]https://www.skillrary.com/blogs/read/role-of-education-in-women-empowerment; accessed on 10-02-2024

- National Scheme of Incentives to Girls for Secondary Education
- Support to Tribal Gilrs for Education
- Udaan Scheme
- Mahila Samakhya Program
- Saakshar Bharat Program
- National Rural Education Mission
- Pradhan Mantri Gramin Digital Sakshatrta Abhiyan

Women's education is desperately needed. Despite numerous laws and programs aimed at empowering women, women continue to face obstacles in achieving equal status because of a lack of knowledge and awareness.

Feminist Jurisprudence:

The legal theory known as feminist jurisprudence is predicated on the idea that men and women are equal in society, politics, and the economy. It is a new school of legal thought that covers a wide range of topics and legal issue theories. By investigating the connections between gender, sexuality, power, individual rights, and the legal system, feminist jurisprudence assesses and critiques the law. The goal of feminist jurisprudence is to develop and uphold equal social, economic, political, and legal rights for women through a variety of movements and philosophies. A feminist is someone who believes that women should have equal rights. The outcome of feminist movements, feminist theory looks at women's social roles and experiences in order to comprehend the nature of gender inequality. The goal of feminist jurisprudence is to understand why women are in subordinate positions. It looks for the underlying reasons why gender discrimination still exists in society. India has laws protecting women's rights, but these laws are not properly applied. In particular, societal perceptions about women must shift.[6]

Conclusion

The promotion of women in various fields is the goal of our laws, plans, programs, and developmental policies within the framework of a democratic polity. In order to protect women's rights, India has also ratified a number of international accords. The women's movement and a vast network of NGOs A strong grassroots presence and a deep grasp of women's issues have served as inspiration for initiatives aimed at empowering women. Nowadays, working women in particular are regularly mobilized to attain equality with men through women's conferences and seminars. The government and women's voluntary organizations have both been involved in the fight for a new social order. Indian women have achieved equality with males in all spheres of life, as well as empowerment and emancipation. In terms of politics, society, the home, and education, the majority of women still fall well short of their aspirations for empowerment.[7]

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JUDICIAL REVIEW & LOCUS STANDI OF TIME BARRED ORDERS

Sanjay Bansal
B.Com (Hons), LL.M, Senior Advocate
High Court of Punjab and Haryana, Chandigarh

Abstract
The concept of "locus standi" generally limits the ability to challenge "time-barred" orders (orders that have passed the legal time limit to be challenged). This means that even if a court has the authority to conduct judicial review, a party may not have the legal standing to do so because of the delay in action. However, depending on the particular circumstances and jurisdiction, there may be exceptions, especially in cases where there is a significant public interest or where there are procedural irregularities that could be contested. In this paper author has attempted to critically examine the provisions relating to Judicial Review & Locus Standi of Time Barred Orders in India.

Keywords: Judicial Review, Locus Standi, Time-Barred Orders, Administrative Law, Limitation and Remedies

INTRODUCTION

One of the most vexed question of all, particularly in respect of Orders of the quasi judicial authorities which have become time barred on account of failure on the part of the aggrieved to approach the appellate authorities under the Act is the question of locus standi, which means legal capacity of the aggrieved to invoke the jurisdiction of the Court under Articles 32 and 226 of the Constitution of India,. As Lord Denning[1] rightly states, "In administrative law the question of locus standi is the most vexed question of all". Locus standi asks the question whether the petitioner is entitled to invoke the jurisdiction of the court which must be distinguished from that of the justiciability which raises a question as to whether the judicial process is suitable for the resolution of this type of dispute at all, whoever may bring it to the Courts. It is also distinct from the issue known in the US as ripeness, under which abstract or hypothetical questions are not adjudicated upon.[2]

Locus standi, in other words means legal capacity to challenge an act or decision. Whether the decision is valid or not is seldom relevant to the determination of the question whether the applicant has locus standi to impugn it.[3] The object of the present paper is to examine the power conferred under Articles 32 and 226 of the Constitution of India on the Constitutional Court's in entertaining writ petitions where the Order(s) passed by the quasi judicial authorities which have become time barred, which though fulfill the criteria for judicial review, within the scope of jurisdiction exercisable under the said Articles.

The Supreme Court under Articles 32 and 136 and the High Court under Article 226 of the Constitution have the power of judicial review. No other court has such power. Article 226 of the Constitution of India provides for effective, efficacious and speedy remedies for enforcing

[1]The Discipline of Law (1979) 144.
[2]Craig, Administrative Law (2007) 717; Administrative Law by Justice C.K. Thakker, 2nd Edition, 2012 at page 933
[3]de Smith, Judicial Review of Administrative Action (4th Edn.) 416.

fundamental and legal rights against laws, Orders including action of the authorities which violate them. The said Constitutional power is exercisable for the purpose of judicially reviewing an Act of Legislature or a decision of an administrator, an order of a quasi-judicial authority and/or in a given case, a decision of judiciary. It is not intended either to review the entire governance under the rule of law nor the court steps into the area exclusively reserved by the *Suprema lex* to two other organs of the State, this Legislature/ Parliament and the Executive. Likewise, decisions and actions which do not have adjudicative disposition are not justifiable before the judicial review court. In our democracy governed by the rule of law, the judiciary has expressly been entrusted with power of judicial review as sentinel in *qui vive*. Basically, judicial review of administrative actions as also of legislation is exercised against the action of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to judicial review. The judicial control of administrative action affords the court to determine not only the constitutionality of the law but also the procedural part of the administrative action as a part of judicial review.[4]The State, therefore, is subject to *etat de droit*, i.e., the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and the Acts and within the limits set by the law, i.e., constitutionalism. In other words, the State is to obey the law. The more the administrative action in our welfare State expands widely touching the individuals, the more is the scope of judicial review of State action. Judicial review of administrative action is, therefore, an essential part of rule of law. The judicial control on administrative action, thus, affords the courts to determine not only the constitutionality of the law but also the procedural part of administrative action as a part of judicial review.[5] All statutory powers conferred on executive officers are subject to supervision by the courts exercising their classic and traditional powers of judicial review.[6] The purpose of judicial review is to keep public authorities within due bounds and for upholding the rule of law and to ensure that the administrative action is not in excess of power.[7]Independence of judiciary is a basic structure of our Constitution. The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law will be a "teasing illusion and a promise of unreality". If there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review. The judiciary has been made the interpreter of the Constitution and has been assigned the delicate task to determine what is the power conferred on each branch of the government and to ensure that it does not transgress such limits. It is for the judiciary to uphold constitutional values and to enforce constitutional limitations. That is the essence of the rule of law.[8]The abuse of power by the statutory authority or as a matter of fact by any authority created by an Act or under an Act does not bar the exercise of jurisdiction under Article 226/227 of the Constitution of India even there is an alternative remedy for the redressal of the grievance against such abuse of power provided on undisputed facts the authority is shown to have assumed jurisdiction.

[4] Interpretation of Statutes by D. P. Mittal, Second Edition, Page No. 397.

[5] State of Bihar &Ors v. Subhash Singh, (1997) 4 SCC 430 : JT 1997 (2) SC 463

[6] Observed by Lord Wilberforce in the case of Rossminster Ltd., (1979) 52 TC 160 : (1980) I All ER 80 (p. 84 of 1 All ER)

[7]Wade's Administrative Law, 8th Edition (pg. 33 – 35)

[8] Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625, 677 – 678; Fertilizer Corpn. Kamgar Union v. Union of India, (1981) 1 SCC 568, 574-575; Kumar Padma Prasad v. Union of India, (1992) 2 SCC 428.

SCOPE OF ALTERNATIVE REMEDY:

The Hon'ble Supreme Court of India has persistently held that when it comes to fiscal law statutes, rule of alternate remedy has to be applied with utmost rigour. One such case being, *Assistant Collector of Central Excise v. Dunlop India Ltd.*[9], wherein it has been pronounced:

> "... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. " (Emphasis supplied)

The Supreme Court in *Mafatlal Industries Ltd.* v. *Union of India,*[10] has observed that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

In *Calcutta Discount Co. Ltd. v. Income Tax Officer*[11], *Das Gupta, J.*, spearheading the majority view laid down the following propositions of law:

(i) The question of limitation is the question of jurisdiction.

(ii) It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.;

(iii) The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.; and

Similarly, the Supreme Court in the case of *Whirlpool Corporation v. Registrar of Trade Marks*[12], wherein with reference to, inter alia, the Constitution Bench decision in Calcutta Discount Co. Ltd.'s case (supra), held :

> "20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had

[9] (1985) 1 SCC 260.
[10] [1997] 5 SCC 536
[11] (1961) 41 ITR 191 (SC) : (1961) 2 SCR 241 : AIR 1961 SC 372
[12] (1998) 8 SCC 1

purported to usurp jurisdiction without any legal foundation."

RULE OF ALTERNATIVE REMEDY- EXCEPTIONS:

The correct legal position with regard to the grounds for entertainment of a writ petition despite the existence of alternative remedy has been highlighted in the case of *U.P State Spinning Co. Ltd. v. R. S. Pandey*[13] wherein it stands pronounced:

". . . There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute." (Emphasis supplied)

On the question of maintainability of writ petition the Hon'ble Supreme Court in *Radha Krishan Industries v. State of H.P.*[14], has culled out the following principles of law,despite the availability of alternative remedy:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

[13](2005) 8 SCC 264. See also: State of H.P. and Others v. Gujarat Ambuja Cement Ltd. and Another, (2005) 6 SCC 499.

[14] (2021) 6 SCC 771

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

In the case of *Commissioner of Income Tax v. ChabbilDassAggrawal*[15],the Hon'ble Supreme Court considered the question as to whether the High Court could interfere with an Order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 of the Constitution of India. While answering the aforesaid question, the Supreme Court ruled that the High Court would have jurisdiction to entertain the writ petition questioning the correctness of the notices issued under Section 148 of the Act, the reassessment Orders passed and consequential demand notices issued thereon only if the alternate remedy under the Act was ineffectual or the High Court ascribed cogent and satisfactory reasons for exercising its jurisdiction on the facts of a given case. The said decision rendered by the Hon'ble Supreme Court of India cannot be considered to be an authority for the proposition that the assessee is debarred from challenging the Order passed on the Objections and/or the notice issued under Section 147/148 of the Act on the ground of assumption of jurisdiction by an authority not warranted by the said provisions and/or lack of inherent jurisdiction etc. A decision will have to be understood in the context in which it has been rendered. It cannot be read like a statute.[16] A decision must be read in the context in which it appears to have been stated. Such a decision cannot be read in the manner as to nullify the express provisions of an enactment and/or assumption of jurisdiction by an authority which is a nullity. The exceptions to the doctrine of exhaustion of alternative remedies would not curtail the exercise of power at the hands of the Hon'ble High Courts under Article 226 of the Constitution of India, merely, because alternative remedy under the Act is available to an assessee, more so in view of the settled principle of law that judicial review is a part of basic structure of the Constitution of India[17] and a fundamental right; and an alternative remedy cannot take away such a fundamental right for the enforcement of which Constitutional Court like the High Court under Article 226 of the Constitution of India exists. It is true that when a statutory forum is created by law for redressal of grievance, a writ petition should not be entertained ignoring the statutory dispensation. But, such principles, in a given case, maybe given a go-bye, if the Court is convinced that on the face of it, the impugned Order of reassessment and/or notice under Section 147/148 of the Income Tax Act, 1961 is not sustainable in law.[18] Significantly, the decision rendered in *ChabbilDass case (supra)* has not considered the decision of the Constitutional Bench rendered in the case of *Calcutta Discount Co. (supra).*

The exceptions to the doctrine of exhaustion of alternative remedy may not apply where after the writ petition has been admitted and taken up for consideration for final hearing, unless the case falls in the exceptions. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except

[15](2013) 357 ITR 357 (SC)

[16]Amar Nath Om Prakash v. State of Punjab AIR 1985 SC 218.; Haryana Financial Corporation v. Jagadamba Oil Mills (2002) 110 Comp. Cas. 20 (SC); Indian Charge Chrome Ltd. v. Union of India (2003) 2 SCC 533; Rekha Mukherjee v. Ashish Kumar Das AIR 2004 SC 443; General Electric Co. v. Renusagar Power Co. (1987) 4 SCC 137; Rajeswar Prasad Misra v. State of West Bengal AIR 1965 SC 1887; CIT v. K. Ramakrishnan (1993) 202 ITR 997 (Ker.)

[17]L. Chandra Kumar v. Union of India (1997) 3 SCC 261 : AIR 1997 SC 1125

[18]Engineering Professional Co. (P.) Ltd. v. Deputy Commissioner of Income-tax, [2020] 424 ITR 253 (Guj)

in cases falling within the well-defined exceptions.Thus, the well-known exceptions to the doctrine of exhaustion of alternative remedy are:

i. If the impugned action is violative of the principles of natural justice; or

ii. If it is vitiated by an apparent bias or is mala fides the authority taking the decision; or

iii. If the decision has been taken in flagrant disregard of a fundamental statutory provision; or

iv. If the situation is such that the remedy will become fruitless, viz., the authority which is to give remedy has expressed its mind or has committed itself to an unalterable stand in the proceeding; or

v. Where the action taken is wholly without jurisdiction; or

vi. Where it infringes any fundamental right of the person aggrieved; or

vii. Where the assessee has raised a prima facie and strong case that the action has been taken under a law which is *ultravires* the Constitution; or

viii. Where gross injustice is done justifying interference, the existence of alternative remedy by way of appeal or revision would be no bar to exercise writ jurisdiction. That also provides safeguard against the assessing authorities passing a highhanded or palpable illegal Order.

The decision of the Hon'ble Supreme Court in the case of Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer – cum- Assessing Authority[19] may usefully be referred, wherein it has been pronounced that:

> "A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (State of Uttar Pradesh vs. Mohd. Nooh) had the occasion to observe as follows:
>
> "10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

Significantly, the Hon'ble Supreme Court in the aforesaid case while drawing distinction between maintainability and entertain-ability of a writ petition, has observed:-

"Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative

[19](2023) 109 GSTR 402 (SC); 2023 SCC OnLine SC 95; AIR 2023 SC 781; See also: Misty Meadows Pvt. Ltd. v. Union of India (2024) 465 ITR 630 (P&H).

remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertain-ability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper."

EFFECT OF FORE-CLOSURE OF STATUTORY REMEDY:

No period of limitation is prescribed by Article 32 or Article 226 of the Constitution of India within in which an agreed party can institute the petition. The writ proceedings are not governed by the provisions of limitation Act, 1963. In view of the wide amplitude of the jurisdiction of the Supreme Court and the High Court's enjoined upon them by Article 32 and Article 226 of the Constitution of India respectively, the real difficulty which arises is whether the High Court in exercise of its writ jurisdiction could entertain a challenge to the Order of assessment where the statutory remedy of appeal against such an Order stands foreclosed by the limitation provided under the statute for filing appeal before the appellate authority under the Act.

In Prem Chand Garg v. Excise Commr., U.P.,[20] the question before the Constitutional Bench was whether the Supreme Court could frame a rule or issue an order which would be inconsistent with

[20] AIR 1963 SC 996/1963 SCR Supl.(1)885.

any of the fundamental rights. While answering the question in negative, Gajendragadkar J., for the majority observed that an order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even being consistent with the substantive provisions of the relevant statutory laws. The proposition of law expounded in the Prem Chand Garg case (supra) was approved by a seven judges' bench of the Hon'ble Supreme Court in the case of A. R. Antulay v. R. S. Nayak.[21] Thesaid view was further reiterated by a three judges' bench of the Hon'ble Supreme Court in Arjun Khiamal Makhijani v. Jamnadas C. Tuliani[22]holding that – "... Article 142 does not contemplate doing justice to one party by ignoring mandatory statutory provisions and thereby doing complete injustice to the other party by depriving such party of the benefit of the mandatory statutory provisions".

In Nidhi Kaim & Anr. v. State of Madhya Pradesh &Ors.,[23]a three judges' bench of the Hon'ble Supreme Court after expressing its concurrence with the judgment rendered in the case of SCBA (supra) held that the power to do 'complete justice' under Article 142 of the Constitution does not include the power to disregard statutory provisions or declared pronouncements of law under Article 141 of the Constitution. The observations of the Supreme Court read as follows:

> "Yet under the law as now declared by the Constitution Bench, the highest court whilst deciding a particular case before it cannot consciously overlook or bypass enacted law when exercising its wide powers under Article 142." (Emphasis supplied)

In Oil and Natural Gas Corporation Limited Vs. Gujarat Energy Transmission Corporation Limited & Ors.[24], a statutory appeal filed in the Supreme Court was barred by 71 days and the maximum time for condoning the delay in view of Section 125 of the Electricity Act, 2003 was only 60 days, therefore, the Hon'ble Supreme Court could not have condoned the delay of 71 days. However, while admitting the appeal, the Court condoned the delay in filing the appeal. At the time of filing hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue. The Hon'ble Supreme Court while referring to various decisions[25] concluded that Section 5 of the Limitation Act, 1963 could not be invoked by the Court for maintaining an appeal beyond maximum period prescribed in Section 125 of the Electricity Act, 2003 pronounced:

> "… when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case … the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it

[21] (1991) 4 SCC 406.

[22] 1989 SCRSupl. (1) 380.

[23](2017) 4 SCC 1.

[24](2017) 5 SCC 42.

[25]Singh Enterprises v. Commissioner of Central Excise, Jamshedpur & Ors., (2008) 3 SCC 70; Commissioner of Customs and Central Excise v. Hongo India Private Limited & Anr., (2009) 5 SCC 791; Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission & Ors., (2010) 5 SCC 23; and Suryachakra Power Corporation Limited v. Electricity Department represented by its Superintending Engineer, Port Blair & Ors., (2016) 16 SCC 153.

> cannot be condoned taking recourse to Article 142 of the Constitution." (Emphasis supplied)"

In Mafatlal Industries Ltd. & Ors. v. Union of India & Ors.[26], the Supreme Court held that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the constitutional Court would certainly take not of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass Orders which can be settled only through a mechanism prescribed by the statute.

In Assistant Commissioner of Income Tax and Others vs. Glaxo Smith Kline Consumer Health Care limited[27], an assessment Order was passed against the assessee under the Andhra Pradesh Value Added Tax Act, 2005, against which under Section 31 of the said Act a remedy of appeal against the said Order was available to the assessee. The assessee did not file appeal against the assessment Order within the statutory period of limitation of 30 days provided therein. The assessee filed an application under the Andhra Pradesh Value Added Tax Rules, 2005 highlighting the error made in raising the demand based on its incorrect turnover. The said application was dismissed against which an appeal was preferred before the appellate authority which was also rejected, on the ground of being barred by limitation and also because no sufficient cause was made out for condonation of delay. Notably, the delay in filing the appeal could be condoned upto a period of 60 days by the appellate authority provided sufficient cause for not preferring the appeal within the prescribed time was made out. Thereafter, the assessee filed a writ petition for quashing the assessment Order being contrary to law, without jurisdiction and in violation of Principle of Natural Justice. The Hon'ble High Court allowed the writ petition by quashing the assessment Order thereby relegating the assessee before the Original Authority for reconsideration of the matter afresh after affording personal hearing to the assessee. The Hon'ble Supreme Court in appeal set-aside the judgment of the Hon'ble High Court in view of the following principles of law:

i. Where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of.

ii. An Act cannot bar an curtail remedy under Article 226 or 32 of the Constitution. The Constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass Orders which can be settled only through a mechanism prescribed by the statute.

iii. Indubitably, the powers of the Hon'ble Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that powers, this Court is required to bear in mind the legislative

[26] (1997) 5 SCC 536.

[27](2020) 19 SCC 681: (2020) 77 GSTR 342: 2020 SCC OnLine SC 440.

intent and not to render the statutory provision otiose.

iv. An Order under Article 142 can be passed to do complete justice between the parties but cannot be inconsistent with the substantive provisions of the relevant statutory laws.

v. It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142 of the Constitution to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, the Supreme Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass Orders concerning an issue which can be settled only through a mechanism prescribed in another statute.

vi. The power under Article 142 has to be regulated after taking note of the express provisions of any substantive statutory laws.

vii. It is unfathomable, what the Supreme Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, as to how the Hon'ble Court can take a different approach in the matter in reference to Article 226 of the Constitution.

A RIGHT OF APPEAL IS A SUBSTANTIVE RIGHT AND A CREATURE OF THE STATUTE:

An appeal confirms a right to enter a superior Court for invocation of its aid and interposition of redressal of an error of the Court and/or authority.[28]A right of appeal is created by statute and is not inherent and being statutory, statute can make it conditional or qualified[29]. The right to appeal can become vested and exercisable only upon fulfillment of condition laid down in statute. That is a matter of substantive right and not merely a matter of procedure[30]. The legal pursuit of a remedy of an appeal including condonation of delay are really but steps in a series of proceedings all connected by an intrinsic unit and are to be regarded as one legal proceedings. In other words, an appellate authority would acquire jurisdiction to hear an appeal after exercising the power of condoning the delay within the period of limitation prescribed and the provision laying down the maximum period within which such power of condonation of delay could be exercised, therefore, the period provided by the statute for entertaining the appeal including the provision providing for exercise of power of condonation of delay would be substantive and not merely a matter of procedure. There cannot be an appeal filed out of time with an application for condonation of delay and such an application having been dismissed[31]. The power of an authority to hear an appeal after the same has been presented outside the period of limitation prescribed for condoning the delay would cease to exist, therefore, the jurisdiction to hear an appeal and power of condoning the delay is intrinsically connected and the moment an appeal is preferred beyond the period of limitation for condonation of delay provided under the statute, even the Hon'ble High Court and/or the Supreme Court in exercise of its powers under Article 226 and 32 respectively would be disarmed in entertaining a writ petition, in view of the judgment rendered in the case of Glaxo Smith Kline Consumer Health Care limited (Supra).

[28]Dayawanti Vs. Interjit, AIR 1966 (SC) 1423 at p. 1427.

[29]Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of City of Ahmedabad (1999) 4 SCC 468 (SC).

[30]Hoosein Kasam Dada (India) Ltd. v. State of MP (1953) 4 STC 114; AIR 1953 SC 221; Garikapati Veeraya v. Subbiah Choudhry AIR 1957 SC 540.

[31]P.P.M.S. Nagarathinam v. CIT (1989) 178 ITR 304 (Mad); CIT v. Shahzadi Begum; Mela Ram & Sons v. CIT (1956) 29 ITR 607 (SC)

CONCLUDING REMARKS:

The pronouncement in Glaxo Smith Kline Consumer Health Care limited (Supra) may present some difficulty in cases arising under the Income Tax Act and/or other fiscal statutes where no limitation is prescribed with regard to condonation of delay in appeal preferred by the aggrieved party and/or an assessee; and such aggrieved party invokes the jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India on the ground that the Order and/or action of an authority falls within the well defined exceptions to the doctrine of exhaustion of alternative remedyfor entertain-ability of a writ petition.Unlike the provisions of Section 31 of Andhra Pradesh Value Added Tax Act, 2005 where delay could be condoned upto a period of 60 days, there is no such condition under Section 249 of the Income Tax Act which provides that the First Appellate Authority may admit an appeal after the expiration of period of 30 days if such authority is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period of 30 days. Despite given the availability of alternative remedies in the legal frame work, where sufficient cause is shown in not preferring an appeal within 30 days before the Hon'ble High Court by an assessee, provided the case falls within the exception to the rule of exhaustion of alternative remedies, the statutory command by the legislation as regards limitation would not come in the way of exercise of Constitutional Power under Article 226 of the Constitution of India. Indubitably, on principle, a Court cannot lay down a period of limitation, as that is a legislative and not a judicial function. The question of delay in approaching the Court and question whether an appeal is barred by limitation are two different questions. Power to condone a delay is concurrent on account of sufficient cause shown to the Court or the appellate authority for not having filed an appeal within the prescribed period of limitation. Therefore, if the appeal has become time barred on account of having not been filed within the period of limitation although an appellate authority has been provided with the power of condonation of delay, the High Court would be well within its powers in exercising its jurisdiction under Article 226 of the Constitution of India and the principle of law laid down in Glaxo Smith Kline Consumer Health Care limited (Supra) would not come into play, for then the Court must administer justice in accordance with law, and principles of equity, justice and good conscience. It would be unjust to defeat the right of an aggrieved party, after all Justice is a virtue which transcends all barriers and neither the rules of procedure nor technicalities of law can stand in its way. Even the law bends before justice.

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WOMEN'S SEXUAL HEALTH RIGHTS VIS -A -VIS ASSISTED REPRODUCTIVE TECHNOLOGIES

Dr. Anupam Manhas
Professor
HIET Group of institutions, Shahpur, Kangra,Himachal Pradesh

Bandna Shekhar
Research Scholar
Department of Law, Career Point University, Hamirpur, Himachal Pradesh

Abstract
The welfare of the family and individuals is the ultimate purpose of the right to procreate. Artificial insemination is now a viable substitute for natural procreation in the context of a marriage due to recent advancements in reproductive science. Techniques such as artificial insemination, in vitro fertilisation, embryo transfer, and surrogate mothering have expanded the options available to a person who wants to start a family in which they will be the only parent responsible for raising the child. Despite evidence that suggests significant care is necessary, IVF and related methods have transitioned from experimental to therapeutic status too quickly and easily. Regretfully, solid proof of IVF's effectiveness in expanding women's and couples' reproductive rights has come before, not after, its widespread adoption. Finding the causes of infertility and preventing fertility issues might be better uses of resources.

Key Words: Sexual and reproductive health, Fertility, Assisted Reproductive technologies

Introduction

Although reproductive rights are seen as fundamental human rights, it is unclear if these rights include the ability to use ART. This question depends on how human rights documents define the right to procreate and how legal regimes apply it. However, it is important to note that none of these documents really grant the right to procreate; rather, the right to procreate is presented as a key component of the rights to privacy, health, life, and marriage and family. Procreation no doubt is a biological procedure and take place naturally, yet, in case of infertile couples, could such couples take support of ARTs techniques or not. In recent years, a wide range of methods have been widely accepted as treatments for infertility problems and for preservation of sexual and reproductive health rights(SRHR). However, despite the rapid adoption of new treatments, basic questions remain about how ARTs affect reproductive rights and the allocation of scarce medical resources. This further move towards technology-mediated reproduction will make the legal, ethical, and policy issues we confront even more complicated. This article examines these issues in respect to in vitro fertilisation (IVF), a widely accepted treatment for infertility that is a form of artificial reproductive technology (ART).Protecting the rights to sexual and reproductive health is state's duty. The laws and rules that are now in place in India regarding

SRHR leave a lot of potential for improvement. Despite general agreement that such rights are crucial to a person's right to life, the method of implementing reproductive rights has long been contentious.

Evolution of the Definition of Sexual Health

International Conference on Population and Development

The Cairo Conference was place in September 1994. Family planning, unsafe abortions, and STDs are among the subjects covered in Chapters VII and VIII of its Program of Action, Reproductive Rights and Health. Penalties also apply to governments that enforce particular regulations in these areas.

This conference was the first worldwide declaration that the concept of reproductive rights includes complete physical, mental, and social well-being as well as all issues pertaining to the reproductive system, including its functions and procedures, in addition to the absence of disease or disability.

This was based on the idea that everyone has the right to the best sexual and reproductive health, the freedom to make reproductive decisions free from discrimination, violence, or torture, and the freedom and responsibility to choose how many children they want and how far apart they should have them, according to human rights documents.

Beijing Declaration and Platform for Action, was established following the Fourth World Conference, and it urges the international community to support women's economic, social, and political emancipation by supporting their right to procreate. The state of women's and adolescent girls' reproductive rights such as access to knowledge, privacy, respect, and consensus as well as the powerlessness of women who have been sexually abused are highlighted.

World Health Organization (WHO), "States must ensure that laws, rules, and policies pertaining to specific aspects of sexual and reproductive health comply with the United Nations Convention on the Rights of Persons and that these restrictions are removed."

Reproductive rights have also been incorporated into international criminal law and international humanitarian law. The International Criminal Court (ICC) frequently deals with reproductive issues. According to Article 2(d) of the Convention on the Prevention and Punishment of the Crime of Genocide and Article 6(d) of the ICC Statute, acts aimed at preventing birthssuch as forced sterilisation and abortionthat are committed against a national, racial, ethnic, or religious group can be considered acts of genocide. The ICC deemed them to be crimes against humanity.

Determinants of Sexual Health

They include "access to safe and potable water, adequate sanitation, adequate food and nutrition, adequate housing, safe and healthy working conditions and environment, and health-related education and information." These physical factors have an impact on (sexual) health. "Social determinants" are social norms and systems that, in addition to sexual orientation or gender identity, stigmatise, oppress, or marginalise persons based on their sex, marital status, age, aptitude, caste, race, or status as a member of a minority. Therefore, legal protection from abuse, torture, and discrimination is crucial for the health outcomes and vulnerability of various demographic groups.

Definition of Sexual Health

The World Health Organisation defines sexual health as "a state of physical, emotional, mental, and social well-being with regard to sexuality; it is not merely the absence of disease, dysfunction, or infirmity." Sexual health requires both the capacity to have happy and safe sexual experiences free from coercion, discrimination,

and violence, as well as a positive and respectful perspective about sexuality and sexual relationships. To achieve and preserve sexual health, everyone's sexual rights must be acknowledged, protected, and respected.

Evaluation of Reproductive Rights and Choices in India:

In India, legislators and national courts have played a significant role in abolishing discriminatory criminal laws, particularly those that may be hazardous to an individual's health.

Reproductive Health and Rights

Reproductive rights have been progressively recognised as human rights since the 1968 International Conference on Human Rights Declaration and the 1994 International Conference on Population and Development. The Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW) and the International Covenant on Economic, Social, and Cultural Rights of 1996 (ICESCR) both emphasise the importance of reproductive rights in advancing women's human rights. Reproductive rights are acknowledged both directly and indirectly in a number of Sustainable Development Goals (SDGs) and former Millennium Development Goals (MDGs) objectives. As a signatory to several covenants and conventions, India must ensure that these goals are reflected in its laws and policies. When national laws and regulations relevant to RHR are examined, a complex picture of compliance with notable gaps is presented. For example, the mapping of policies and programs and current empirical data from the field verify that the "continued implementation of goals of the family planning program has resulted in egregious forms of violation of reproductive rights and autonomy, particularly for women from marginalised communities."

Violation of Reproductive Rights

Reproductive rights are often defined as the freedom to maintain good reproductive health and to decide whether or not to have children. The ability to use contraception, choose when to start a family, terminate a pregnancy, receive reproductive health care, and learn about sex education in public schools are all examples of reproductive rights. The legal protection of these rights as human rights is crucial to achieving gender justice and equality for women. Numerous violations and disparities in access to reproductive rights have an impact on the occurrence of maternal death. Women are particularly harmed by infringement of their reproductive rights because of their capacity to get pregnant. Maternal mortality and morbidity, Unsafe abortion and poor quality of post-abortion care Lack of access to the full range of contraceptive methods Reliance on forced and substandard female sterilization Child marriage and Lack of information and education on reproductive and sexual health.

Provisions on Medical Termination of Pregnancy

In certain ways, India's Medical Termination of Pregnancy (MTP) Act of 1971 might be considered the country's first abortion law. It gave details on where abortion can be legally done as well as the qualifications needed to be eligible for the procedure. Within a year of the Act's passage, the lady had to obtain the written consent of one licensed physician. If the pregnancy continues over twelve weeks, two doctors will be needed. This rule's "sine qua non" was the "good faith" requirement, which meant that even if a woman wanted to terminate her own pregnancy, one of the primary criteria used to decide whether or not the abortion would be allowed was whether or not she posed a risk to her physical safety.

Other cases in which abortion may be granted were:

When pregnancy is caused by rape

A married couple may be responsible for any subsequent pregnancies if they do not use a contraceptive method or device to reduce the size

of their family. The law stated that no one under the age of eighteen or who was clinically diagnosed as insane could have their pregnancy terminated without the consent of their legal guardian, and that abortions could only be carried out in government-run hospitals or other facilities that were specifically designated by the government.

Due to its reliance on the term "women," the MTP Act of 2021, like its predecessors, has limitations in its application and does not provide rights to transgender individuals or those who identify as other gender minorities. This is true even though rape and sexual assault are among the most common forms of violence experienced by transgender people in India. When a transgender or intersex person conceives in this way, her options are limited compared to those woman. Cases such as *ABC* v. *Union of India* (2017) and *Suchita Srivastava* v. *Chandigarh Administration* (2017) have extensively examined the importance of bodily autonomy in relation to this Act.

According to the MTP Regulations, the Act places an additional maximum gestational age cap of 20 to 24 weeks on a certain subset of women. Benefits of the changes are not limited to women who have experienced violence (e.g., rape or incest victims) or who are otherwise vulnerable (e.g., children or women with impairments). One doctor's opinion is sufficient until the twentieth week of pregnancy. Though far from flawless, this is an improvement over the earlier acts. The fact that unmarried women can now have abortions for "failure of contraception" is a significant positive move.

Section 312 of the Indian Penal Code

The provisions of the IPC 1860 were never intended to provide instructions on how abortions must be performed, even though the law has been the focus of numerous publications on the topic. Many abortions were carried out illegally during this time due to a lack of legislation, putting the health of the women seeking them at risk. The most recent mention of this clause, which is still in force, occurred on August 7, 2014, in Smt. Sumita *Mukherjee* v. *The State of Madhya Pradesh*, in which the defendant filed an appeal with the High Court. According to the High Court, previous courts ought to have taken into account the potential that the prosecutrix's miscarriage was purposefully induced in order to protect her health. Therefore, Section 312 of of the IPC the law could not be used to prosecute the petitioner. Despite the significance of this clause, no legislation has been passed to support it. This indicates a deficiency of information regarding the true situation. Forced miscarriages caused by starvation, torture, or other brutal methods frequently go unreported since women are largely unable to report abuse to authorities, usually from their own or their in-laws' families.

ART and Reproductive Rights

According to one viewpoint, a person's reproductive sovereignty may justify their use of ART. Therefore, the state needs to assist infertile couples who require treatment in order to conceive. In actuality, exercising the freedom to procreate requires the ability to use ART. However, this right pertains to the right to use facilities and assisted reproductive technology (ART) in order to try to conceive, not the right to a child. It includes not only the option to reject to implant or abort a foetus with unwanted qualities, but also the freedom to alter an egg, sperm, or embryo to produce the desired offspring. Here, it is important to emphasise that procreative rights are not unqualified, and that reasonable limitations may be required for the child's wellbeing and for the good of society.

In order to address reproductive health issues where ART is required to become a parent or to freeze gametes, embryos, and embryonic tissues for later use due to infertility, illness, or social or medical concerns, the Indian government passed the 2021 Act on Assisted Reproductive Technology (Regulation) last year. This

legislation aims to regulate ART clinics, prevent exploitation, and ensure the safe and ethical use of ART services.The clinics will use assisted reproductive technology services in accordance with Section 21(g) of the Act, providing them to: i) women over the age of twenty-one and under the age of fifty; and ii) men over the age of twenty-one and under the age of fifty-five. Additionally, Section 22(1)(b) of the Act provides the commissioning couple or woman with insurance coverage of the prescribed amount for a period of twelve months from an insurance company or an agent appointed by the Insurance Regulatory and Development Authority, which was created in compliance with the provisions of the Insurance Regulatory and Development Authority Act, 1999.

Laws on Surrogacy

While commercial surrogacy is prohibited in India, altruistic surrogacy is permitted by the Surrogacy (Regulation) Act, 2021. This is done to stop human trafficking through surrogacy. The laws outline the conditions that must be met by the "intending pair" before surrogacy can be used. Again, this law's use of binary terms has the consequence of excluding the queer community; for instance, a no binary person cannot utilise a surrogate to conceive a child since they are not considered a "intended parent," even if they are biologically capable of bearing a child. Similar to adoption restrictions, the Bill discriminates against gay couples.

Judicial Response

The Supreme Court has adopted a somewhat progressive position with regard to women's reproductive rights. The court made it clear that women have a right to sexual autonomy, which is an essential part of their right to personal liberty, with the landmark ruling in **Navtej Johar**, which decriminalised homosexuality and adultery.

The **Puttaswamy** ruling specifically recognised women's fundamental right to choose how they wish to produce children, as stated in Article 21 of the Indian Constitution.

The Supreme Court held in the case of ***Independent Thought* v. *Union of India*** that a girl child's human rights should be respected and upheld whether or not she is married. The sexual and reproductive rights of women are significantly impacted by these rulings. We must defend their right to a safe abortion in order to uphold their rights to equality, bodily integrity, and life.

According to the constitutional provisions that place reproductive health rights there, the realisation of these rights is linked to and dependent upon the protection and fulfilment of other human rights, such as the right to life, the right to health, the right to non-discrimination, and the right to be free from gender-based violence.
In India, there are laws and policies that address the reproductive rights of individuals and couples in the areas of food and nutrition provision, employment, education, and protection from gender-based violence. Several fundamental rights are guaranteed by Part III of the Indian Constitution.

Article 13 forbids the State from enacting any legislation that limits or revokes basic rights. Some of the fundamental rights recognized in Part III of the Indian Constitution include the right to life, the right to equality before the law, the right against discrimination, and the right *to freedom and speech.*

In accordance with **Article 14**, no one may on Indian soil be denied equality before the law or equal protection under the law. The State is forbidden by **Article 15(1)** from discriminating against any citizen on the basis of their religion, race, caste, sex, place of birth, or any combination of those factors. The State is allowed to establish special arrangements under **Articles 15(2)** and **15(3)** for women, children, Scheduled Castes and

Scheduled Tribes, as well as any socially and educationally disadvantaged segments of citizens.

Article 16 guarantees equal opportunity in matters of public employment and states that no citizen shall be disqualified from or subjected to discrimination in relation to any employment or office under the State on the basis of religion, race, caste, sex, descent, place of birth, or residence, or any combination of these factors. According to **Article 21**, no one may be deprived of their life or personal freedom until a legal process has been followed.

Although the Indian Constitution does not directly recognize the right to health (or reproductive rights) as a basic freedom, the Supreme Court has ruled in a number of cases that the right to health and the right to prompt and adequate medical care are essential components of the right to life. The Supreme Court ruled in ***Parmanand Katara* v. *Union of India***, a public interest litigation (PIL) involving the provision of emergency medical care to injured victims of motor vehicle accidents, that Article 21 requires the State to protect life and that medical staff at government hospitals have a duty to provide medical assistance for doing so. This commitment of medical practitioners cannot be revoked or hindered by any law, practice, or State action. According to the ruling in ***Paschim Banga Khet Samity* v. *State of West Bengal***, the State is required to provide proper medical facilities, and it is against Article 21 for a government hospital to refuse prompt medical intervention to a person who is in need of such care.

If reproductive rights are taken to their logical conclusion, they include a woman's right to carry a pregnancy to term, to give birth, and to later raise children. The Directive Principles of State Policy, Part IV of the Constitution, contains several clauses that deal with health-related topics. According to **Article 47**, one of the state's main responsibilities is to promote the standard of life, nutrition, and health of its citizens. According to **Article 39(e)**, the State shall focus its policies on preventing abuse of children's health and strength and on preventing citizens from being compelled by economic need to choose careers that are inappropriate for their age or physical capabilities.

*According to **Article 42**, the State must establish policies to ensure fair and compassionate working and maternity leave conditions. The State shall endeavour to provide early childhood care and education for all children until they reach the age of six, according to **Article 45**. Because they are essential to the nation's governance, these clauses are not enforceable in any court, but the State is required to use them when creating laws and regulations.*

Evaluation of Important Reproductive Health and Rights Topics:

The rights to sexual and reproductive health are part of comprehensive health rights. To ensure that these rights are fulfilled, a nation has to establish a strong public health system. Comprehensive, excellent, universally available health care services that are free at the point of access and, most importantly, answerable to the local population must be provided by this system. Unfortunately, India's public health system is threatened by a variety of issues, such as low public investment, poor infrastructure, including medical and diagnostic facilities, and under qualified human resources. As a result, healthcare is now much less accessible, affordable, and of higher quality, putting more people especially women, girls, and marginalised groups farther away from health care on a social, economic, and geographic level.

Women have the right to:

Decide on their own, in a responsible manner, how many, how far between, and when to have children. Possess the knowledge and resources necessary to make an informed decision about how many children to have and when to have them. Attain the highest level of sexual and reproductive

health (you have the right to be physically, mentally, and socially healthy with access to facilities, services, and supports for exercising your sexual and reproductive rights). Avoid compulsion, aggression, and bias while making decisions about having children. Whether you have 0 kids, 1 kid, or 7 kids is entirely up to you. You can choose to get female sterilization now, when you become 50, or not at all.

Right to equality in reproductive decisions like:
Decide if and when to get married and have a family. The two people involved should give their complete, informed, and free consent before getting married. When it comes to your body, health, and family, you have the right to make decisions about reproduction that are considered appropriately. Right to security in sexual and reproductive life.

The right to Sexual and reproductive security:
Live a life free from gender-based violence, which includes sexual assault, incest, human trafficking, violence tied to dowries, and rape committed against you because you are a woman. Protection of one's physical and mental integrity (since you are a woman, you have the right to exist without experiencing violent and mental injury) management of gynaecological issues, prevention of infertility, and HIV/AIDS treatment and prevention, sexually transmitted illnesses, and other sexually transmitted disorders The high prevalence of STIs, HIV/AIDS, and infections indicates the use of unsafe sex. If you have one of these conditions, you have the right to medical care. The right to reproductive and sexual health services includes the right to affordable and secure family planning options.

You will be able to have children if you choose to do so in a secure setting with access to medical care and support. If you choose to use family planning services, you will be able to do so in a setting that is secure and sanitary. safe pregnancy You have a right to conceive and give birth.

Actions to strengthen women's sexual and reproductive health rights

Families and communities are also concerned about women's reproductive health; therefore, it is not the main priority. Communities and organisations should implement more inclusive and equal policies, according to a gender viewpoint. Since women are the main users of reproductive health care services, they must be involved in the creation and execution of policies and initiatives. In addition to evaluating how their actions impact men and women, policymakers also need to consider how gender norms either facilitate or hinder attempts to promote gender equality. The following elements must be included in reproductive health care:

Family planning*:* Strong government backing is necessary, as are knowledgeable, caring, kind, and amiable service providers coupled with a range of birth control options, affordable services are provided, coupled with discreet counselling to provide informed consent in the choice of contraception, hygienic, friendly facilities, and timely service.

As part of any safe motherhood campaign:It should be simple to get treatment for issues including bleeding, infection, hypertension, and obstructed labour. Promoting hospital visits, creating a network of local organisations to assist patients in getting to hospitals promptly, and offering counselling on issues like breastfeeding, caring for newborns, hygiene, vaccinations, family planning, staying healthy, and identifying and treating postpartum disorders are all interventions that may save lives.

Abortion and Post-abortion Care:Abortion is a major topic in the field of public health. Abortions are avoided and unintended pregnancies are reduced as a result of family planning initiatives. Safe abortion practices and high-quality post-abortion care will dramatically lower maternal

death rates in countries where abortion is permitted.

Prevention and treatment of STDs and HIV/AIDS:Women are more likely than men to get sexually transmitted illnesses due to biological and social factors. Reproductive health services that combine family planning and STD/HIV/AIDS services may reduce the prevalence of HIV/AIDS and other STDs. The delivery of male and female condoms, the diagnosis and treatment of sexually transmitted diseases, the development of contact tracing and 11926 prevention strategies, and the distribution of condoms could all help achieve this.

Men's Participation in Reproductive Health Program:A common focus is the family's overall pleasure. Men can promote gender equality and improve their homes by caring for their spouses' health and helping them make life decisions. As an example, think about using male-preferred methods of contraception, having candid conversations about reproductive health issues, and working together to find answers. Women will benefit from understanding potential threats to reproductive health, including sexually transmitted diseases (STDs), infertility, erectile dysfunction, aggressive or abusive behaviour, abstaining from violence against women, and being a good parent. Health and education initiatives will also be helpful.

Conclusion

It can be challenging to adjust to societal change in general, but it can be especially challenging when it challenges traditional gender roles in the home and community. It is becoming increasingly clear that the laws that control how men and women operate, interact in society, and access resources could make or break opportunities for rapid growth and equity. Finding regional solutions that are based on a common vision of justice and that are acceptable to local realities and cultures is essential in the era of globalisation and urbanisation. Reproductive health and access to reproductive health care are social and health issues that affect everyone in society, not just women. The welfare of the individual and the family is the ultimate goal of the right to procreate. In addition to protecting individuals' right to choose how they wish to have children, governments have an obligation to provide their citizens with access to high-quality reproductive health care while also taking into consideration cultural and local norms and preferences. Protecting the reproductive rights of those with disabilities, particularly those suffering from mental illness or retardation, requires greater attention from the political and legal systems. Furthermore, the requirement for the legal system to be aware of the abortion consent procedure is growing. In order to provide the greatest reproductive health care possible, male participation and active community involvement is required.

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REGULATING SYNTHETIC MEDIA: DIGITAL IDENTITY, PRIVACY, AND THE LAW IN INDIA AND THE UNITED STATES

Dr. Razit Sharma
Assistant Professor
ICFAI Law School, The ICFAI University Dehradun.

ABSTRACT
The creation of AI-generated content raises urgent issues of digital identity and privacy. Instances of AI-generated videos and audio recordings have been employed to impersonate individuals, resulting in cases of identity theft, fraud, and even extortion. This situation poses serious challenges for law enforcement agencies and legal systems, especially in jurisdictions where regulatory schemes are still in the process of development. The Indian legal system does not have a comprehensive approach to address the challenges of synthetic media, creating a wide gap in legal protection for individuals and organizations. This research paper delves into these challenges in more detail, keeping in mind privacy dangers, Indian and American legal contexts as well as regulatory hurdles. Through an evaluation of significant case studies and judicial tendencies, this research paper hopes to shed light on the intricacies of controlling synthetic media amidst unprecedented technological change.

Keywords: AI-generated, Deepfakes, Digital Media, Identity theft, Synthetic media

Introduction

The swift development of artificial intelligence (AI) has given rise to the use of synthetic media, such as deepfakes, AI-created content, and fabricated voices.[1] They have revolutionized digital communication and created opportunities along with challenges. Synthetic media adds creativity and innovation but also raises severe threats to privacy, trust, and security. The continually evolving nature of AI-generated content renders the distinction between original and manipulated media challenging, which is a major source of ethics and law-related issues.[2]

Among the most pressing issues around synthetic media is privacy. Manipulation of content using AI has been used to cause identity theft, unauthorized impersonation, and cyber fraud.[3] Deepfakes, for example, make it possible for cybercriminals to produce highly convincing but fully synthetic videos and voice messages that can be leveraged for monetary scams, reputational damage, and political propaganda. The victims of such manipulations tend to suffer greatly from reputational damage and emotional trauma, which means that there is a critical need for legal protections.[4]

[1] Karen Hao, 'Deepfakes and AI Ethics: Emerging Threats', MIT Technology Review (2021).
[2] Bobby Chesney & Danielle Citron, 'Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security', 107 Cal. L. Rev. 1753 (2019).
[3] Federal Trade Commission, 'AI and Consumer Protection', FTC Report (2022).
[4] Financial Times, 'Fraudsters Use Deepfake AI to Impersonate CEO', Financial Times (2020).

Loss of public faith in online communication is another imperative matter. Deepfakes or fake news being disseminated on social media, causing people to become more distrusting of information that appears on the internet. On the political front, deepfakes are now being utilised to share manipulated narratives, alter elections, and fuel unrest among the general populace.[5] This trust deficiency not just undermines individuals but democratic institutions, media, as well as civic engagement.

Legally, current frameworks are unable to keep up with the fast pace at which synthetic media is evolving. Cybercrime laws, data protection, and digital ethics differ by jurisdiction, and this creates challenges in enforcement.[6] The Information Technology Act, 2000, and the Digital Personal Data Protection Act, 2023, offer some protection from digital fraud and identity abuse, but no direct legislation against deepfakes exists in India.[7] By contrast, state-level regulations exist in the United States, with California's AB 730 (2019) and Texas' SB 751 (2019), which sought to limit the use of deepfake technology during elections and revenge porn.[8] At the federal level, however, overall laws on synthetic media are in the proposal stage.

The moral implications of synthetic media also complicate attempts at regulation. Content generated by AI creates issues regarding consent, responsibility, and the right to be in control of one's digital image.[9] Who should be liable for the abuse of synthetic media: AI creators, content producers, or platform operators? It is challenging to allocate responsibility in instances of deepfake misuse due to the absence of definitive legal requirements on AI ethics and responsibility. Furthermore, the balance of free speech freedoms and the regulation of harmful content created by AI is a debated topic, especially in the United States, since the First Amendment restricts how much the government can curtail online expression.[10]

With growing developments in synthetic media, international cooperation in regulation is necessary to confront cross-border legal issues.[11] The European Union's Artificial Intelligence Act, for instance, suggests strict requirements of transparency on AI-created content, such as watermarking and disclosure duties.[12] International standards with the same line of thinking can serve to lower the risks inherent in synthetic media while maintaining its proper applications in entertainment, education, and accessibility.

This research paper delves into these challenges in more detail, keeping in mind privacy dangers, Indian and American legal contexts, moral factors, as well as regulatory hurdles. Through an evaluation of significant case studies and judicial tendencies, this research paper hopes to shed light on the intricacies of controlling synthetic media amidst unprecedented technological change.

Risks to Privacy in Digital Communication

Concerns regarding privacy in digital communications have increased with the emergence of synthetic media. Data misuse, impersonation, and identity theft are some of the most relevant risks of AI-generated content. While AI solutions are bringing forth revolutionary innovations in diverse sectors, their abuse creates

[5] National Institute of Standards and Technology, 'AI-Generated Misinformation and Digital Trust', NIST Research Report (2021).
[6] European Commission, 'Artificial Intelligence Act Proposal', EUR-Lex (2021).
[7] Information Technology Act, 2000 (India); Digital Personal Data Protection Act, 2023 (India).
[8] California Assembly Bill No. 730 (2019); Texas Senate Bill No. 751 (2019).
[9] United Nations, 'AI Ethics and Digital Rights', UN Report (2022).
[10] United States v. Alvarez, 567 U.S. 709 (2012).
[11] Harvard Journal of Law & Technology, 'Global AI Regulation Challenges', 35 Harv. J.L. & Tech. 1 (2022).
[12] European Commission, 'AI Regulation and Synthetic Media Accountability', EUR-Lex (2023).

grave ethical and legal challenges requiring immediate regulatory responses.[13]

Identity Theft and AI-Generated Impersonation

Synthetic media has opened up new methods of identity theft, with attackers using deepfake technology for illegal purposes. Deepfake videos and voice clones created by AI have been utilized to impersonate company executives, celebrities, and politicians. In a 2020 fraud case in the UK, attackers employed AI-generated voice manipulation to impersonate a CEO and convince an employee to transfer $243,000 into a fake account.[14] These instances reflect the advanced methods that cybercriminals use to deceive others using AI.

Furthermore, the ease of access to deepfake tools has led to an increase in AI-assisted social engineering attacks. Cybercriminals exploit synthetic media to gain unauthorized access to financial institutions, manipulate authentication systems, and bypass biometric security checks.[15] Traditional legal frameworks on identity fraud struggle to address the complexities of AI-driven impersonation, necessitating enhanced legal protections and AI detection mechanisms.[16]

Data Misuse and Privacy Violations

AI content is based on large datasets for training purposes, which frequently scrape publicly accessible images, voice samples, and text data without direct consent.[17] This is a major privacy issue for personal data protection and ethical usage of AI. In jurisdictions like the European Union's General Data Protection Regulation (GDPR) and India's Digital Personal Data Protection Act, 2023, unlawful data harvesting and processing have legal limitations placed on them.[18] It is still lacking in enforcing those laws, though, especially concerning AI-generated deepfakes taken from publicly available sources.

Another hot-button issue surrounded Clearview AI, an American facial recognition startup that aggregated billions of images across social media sites without users' knowledge. Those images were applied for law enforcement purposes, raising privacy-related court battles.[19] The example showed how technology-enabled tools abuse personal information and requires more restrictive regulation to protect against abuse.

Non-Consensual Impersonation and Synthetic Media

One of the most damaging uses of synthetic media is the production of non-consensual deepfake porn. In 2019, an AI-based app called "DeepNude" was launched, which enabled users to create nude pictures of women using publicly accessible photos.[20] The app was rapidly removed after global criticism, but other such tools are still being created, subjecting not only top celebrities but also ordinary civilians to both public and private humiliation.

The legality of non-consensual deepfake materials differs between jurisdictions. Some countries in the United States, for instance, California and Virginia, have criminalized deepfake pornography.[21] Victims of deepfake impersonation in India take legal action based on the Information Technology Act, 2000, but

[13] Karen Hao, 'How AI Deepfakes are Changing Digital Crime', MIT Technology Review (2021).
[14] Financial Times, 'Fraudsters Use AI-Generated Deepfake Voices to Steal $243,000', Financial Times (2020).
[15] Federal Bureau of Investigation, 'Deepfake Technology and Emerging Cybersecurity Threats', FBI Public Announcement (2021).
[16] World Economic Forum, 'AI and Identity Theft: The Future of Cybercrime', WEF Report (2022).
[17] European Parliament, 'AI and Data Privacy: Regulatory Gaps and Solutions', EU Policy Paper (2022).
[18] General Data Protection Regulation (GDPR), Regulation (EU) 2016/679 (2016).
[19] Kashmir Hill, 'The Secretive Company That Might End Privacy as We Know It', The New York Times (2020).
[20] BBC News, 'DeepNude App Sparks Outrage Over AI-Generated Explicit Content', BBC Report (2019).
[21] California Penal Code § 647(j)(4) (2019) (criminalizing deepfake pornography).

deepfake pornography itself is not defined by any particular law as an offense.[22] The absence of a solid legal framework to handle deepfake pornography makes victims find it difficult to delete negative content and identify and prosecute criminals.

The Need for Stricter Rules and AI Detection Tools

With the shocking surge of AI-fabricated fraud, privacy intrusions, and non-consensual deepfakes, legal safeguards and technical countermeasures need to be enhanced. Governments and technology firms are working on AI detectors that can pinpoint synthetic media, yet their performance is still limited as deepfake technology improves.[23] Regulatory action needs to be directed towards compulsory watermarking of AI-created content, more stringent consent for data gathering, and better cybersecurity measures to prevent deepfake fraud.

The subsequent sections will also discuss in greater detail how legal frameworks in India and the United States are responding to these privacy threats and what challenges lie ahead in implementing digital media regulations effectively.

Legal Analysis: India vs. USA

India and the USA have developed their legal frameworks that regulate synthetic media based on increased privacy and security concerns. Despite this, the two jurisdictions also struggle to efficiently regulate AI-produced content. India has mostly depended on sweeping cyber laws like the Information Technology Act, 2000[24], and the Digital Personal Data Protection Act, 2023[25], whereas the United States has followed a more disjointed strategy with state-level legislation and pending federal bills. All this notwithstanding, enforcement issues, jurisdictional questions, and free speech concerns remain important hurdles in both nations.

In India, the Information Technology Act, 2000, is the main enactment dealing with cybercrimes and cyber offenses. Although it was initially intended to deal with old-fashioned cyber fraud and data leakages, provisions of the Act have been so expanded as to include identity fraud and impersonation online.[26] Fraudulent online behaviour under Section 66D of the Act has been criminalized, including identity fraud, and could be so interpreted as deepfake-based impersonation. Additionally, Section 67 prohibits the transmission of obscene material online, which could be applicable in cases involving deepfake pornography.[27] However, these provisions were not specifically drafted to address synthetic media, making their enforcement in deepfake-related cases legally complex. The lack of clear definitions and specific legal guidelines leaves a gap in effectively prosecuting cases of AI-generated media misuse.

Besides the IT Act 2000, the Digital Personal Data Protection Act, 2023, brings more stringent data protection provisions, giving individuals more control over their personal data. This Act follows international privacy legislations like the European Union's General Data Protection Regulation (GDPR).[28]But it has no direct mention of the implications of AI-generated content. The Act deals mainly with personal data protection and data processing laws but does not have direct provisions for synthetic media and deepfakes. The legal lacuna hinders the responsibilities of AI developers and platforms to provide accountability for misuse of AI-generated media impacting people's right to privacy. Judicial precedents have also influenced India's position

[22] Information Technology Act, 2000, S. 67 (India).
[23] Google AI Research, 'Developing Advanced Deepfake Detection Tools', Google Research Blog (2022).
[24] Information Technology Act, 2000 (India).
[25] Digital Personal Data Protection Act, 2023 (India).
[26] Information Technology Act, 2000, § 66D (India).
[27] Information Technology Act, 2000, Sec. 67 (India).
[28] General Data Protection Regulation (GDPR), Regulation (EU) 2016/679 (2016).

regarding digital privacy. The pathfinder case of Justice K.S. Puttaswamy v. Union of India, identified the right to privacy as a constitutionally guaranteed right under Article 21 of the Indian Constitution.[29] Though this judgement has played an important role in shaping privacy-specific policies, whether this will also be applicable for synthetic media cannot be determined clearly since deepfakes and artificially created content have still been mostly in an unregulated arena within India.

Conversely, the United States has taken a mixed approach to regulating synthetic media at both the state and federal levels. Perhaps the most important privacy legislation in the U.S. is the California Consumer Privacy Act (CCPA), which provides individuals with the right to know what personal information is gathered about them and how it is utilized.[30] The CCPA, though, does not directly regulate deepfake technology and thus is hindered in enforcing synthetic media privacy. Due to the decentralized system of lawmaking in the United States, other states have moved to enact laws that counteract the abuse of synthetic media. California's California Assembly Bill 730,[31] criminalizes the use of deepfake videos meant to manipulate an election, and Texas' Texas Senate Bill 751,[32] prohibits the use of deepfake content meant to mislead voters. Virginia has also legislated against non-consensual deepfake pornography under, criminalizing the dissemination of AI-created explicit content without permission.[33]

In the federal sphere, the U.S. Congress has tabled numerous bills to control synthetic media, such as the DEEPFAKES Accountability Act in the U.S. Congress.[34] This Act aims to require labeling for AI-created content and create criminal offenses for malicious deepfake usage. Another important proposal is the Honest Ads Act that seeks to regulate AI-created political ads and block election-related disinformation.[35] Yet, even with these legislative proposals, enforcement is a major challenge. The First Amendment to the U.S. Constitution guarantees free speech, and it is challenging to place broad limits on AI-created content without risking constitutional challenges. US courts have already decided on cases involving false speech, for example, United States v. Alvarez, where the Supreme Court held that false statements are normally protected by the First Amendment except when they cause particular harm.[36] This precedent puts into question the degree to which deepfake laws can be enforced without violating free speech rights.

In comparison between India and the United States, both nations have similar enforcement issues regardless of their different legal responses. India does not have a specific deepfake legislation and depends on general cybercrime laws, which might not be adequate to cover the intricacies involved in AI-generated content. The United States has more specific laws at the state level, but it does not have a general federal regulation and therefore has enforcement discrepancies across the various states. The other significant challenge is cross-border jurisdictional challenges, since the AI-based fraud and disinformation are usually from foreign sources, making it tough for prosecution. Moreover, both nations face challenges in balancing privacy protection and free speech concerns, especially when AI-generated material is used for purposes deemed to be satire, parody, or journalism.

[29] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[30] California Consumer Privacy Act, Cal. Civ. Code § 1798.100 (2018).
[31] California Assembly Bill No. 730, Cal. Elec. Code § 20010 (2019).
[32] Texas Senate Bill No. 751, Tex. Elec. Code § 255.004 (2019).
[33] Virginia Code Ann. § 18.2-386.2 (2019).
[34] DEEPFAKES Accountability Act, H.R. 3230, 116th Cong. (2019).
[35] Honest Ads Act, S. 1356, 117th Cong. (2021).
[36] United States v. Alvarez, 567 U.S. 709 (2012).

In response to these legal challenges, policymakers in India and the United States need to strive to create more effective and enforceable laws. India can use a specialized deepfake law that clearly delineates and criminalizes the abuse of synthetic media while making sure that current privacy legislation is adapted to include AI-generated content. The United States, however, requires a more cohesive federal policy on synthetic media regulation to promote consistency across various states. International cooperation will also be important in addressing cross-border AI-generated deception and disinformation. As the synthetic media are global in scope, regulatory authorities have to cooperate with each other to create unified legal standards and enforcement procedures.

With developing AI-generated content, legal instruments have to evolve to cover new threats to privacy while ensuring a balance between technological advancement and human rights. India and the United States have initiated measures to govern synthetic media, but major gaps exist. Legal protection must be enhanced, detection tools for AI must be developed, and ethical AI research should be fostered in order to counteract the threats posed by synthetic media to online communications.

Case Studies in Privacy Infringements: India

The growing maturity of synthetic media has resulted in a number of high-profile cases that demonstrate the privacy threats presented by AI-created content. Ranging from financial scams to election tampering and unwanted deepfake pornography, these case studies give a real-world insight into the challenges presented by synthetic media and the legal nuances involved in solving them.

Deepfake Political Manipulation in the 2019 Delhi Assembly Elections (India)

Another highly publicized case involved the application of deepfake technology in politics. During the 2019 Delhi Assembly election, deepfakes of a high-profile politician were shared in the form of videos, purportedly speaking various languages.[37] Though the original address had been doctored to widen reach across various linguistic sections, the experience did generate ethics-based questions over the manipulation of voters and genuineness of political communication via digital media. The Election Commission of India replied by releasing guidelines against the utilization of deepfake content during campaigns, but the absence of enforceable legal provisions enabled similar practices to continue in future elections.[38]

Indian Politics Deepfake Scandal(2023)

In a more recent example, deepfake technology was applied during India's 2023 state elections, with political leaders' videos being doctored to disseminate misinformation.[39] In some videos, candidates were shown uttering inflammatory remarks they had never made, and this created a lot of confusion among voters. This instance further proved the necessity for strict regulations to prevent AI-based political misinformation in India.[40]

RashmikaMandanna Deepfake (2023)

In November 2023, a deepfake video of Bollywood actressRashmikaMandanna went viral across social media platforms. The video was originally a clip of British-Indian influencer Zara Patel entering an elevator, but her face had been digitally replaced with Mandanna’s using AI-powered deepfake technology. The manipulated video falsely depicted Mandanna in a compromising situation, leading to widespread

[37] Election Commission of India, 'Guidelines on AI and Political Campaigns', ECI Report (2020).
[38] The Indian Express, 'Deepfake Manipulation in 2019 Elections', The Indian Express (2019).
[39] The Times of India, '2023 Elections and AI-Generated Misinformation', TOI Report (2023).
[40] Ministry of Electronics & IT, 'Need for AI Regulation in Digital Elections', Government of India White Paper (2023).

harassment, slut-shaming, and reputational damage.

The video spread rapidly on platforms like Instagram, Twitter (now X), and Telegram, amassing millions of views before being flagged. Mandanna publicly condemned the video, calling it "extremely scary" and highlighting how such misuse of technology could harm anyone. The incident sparked a national debate in India about the dangers of deepfakes and the urgent need for legal safeguards.[41]

Legal and Societal Impact: India

India's legal framework was ill-equipped to handle such cases at the time. While the **Information Technology Act, 2000** had provisions related to cybercrimes, none explicitly addressed deepfake-generated content:

- **Section 66E**: Punished "violation of privacy," but only if the content was captured without consent—not applicable to AI-generated forgeries.
- **Section 67**: Criminalized transmitting obscene material, but deepfake pornography was not explicitly covered.
- **Section 66D**: Addressed identity fraud, but enforcement was weak due to jurisdictional delays and lack of specialized cybercrime expertise.[42]

The case forced policymakers to take notice. India's **Ministry of Electronics and IT (MeitY)** issued an advisory in December 2023, mandating social media platforms to remove deepfake content within **36 hours** of reporting or face penalties under **IT Rules, 2021**. However, critics argued that this was reactive rather than preventive.[43]

Outcome and Reforms

- **No Arrests**: Despite investigations, the original creator of the deepfake remained unidentified, showcasing law enforcement's struggle with digital anonymity.
- **Public Outcry**: The incident led to demands for a dedicated **anti-deepfake law**, with discussions in Parliament about amending the **Digital Personal Data Protection Act (2023)** to include synthetic media.[44]
- **Tech Accountability**: Platforms like Meta and X were criticized for slow takedowns, prompting calls for stricter **AI content moderation policies** in India.

Case Studies: United States of America

Landmark U.S. Case: *United States* v. *Alvarez* (2012)

While not directly related to deepfakes, the United States Supreme Court case of United States v. Alvarez dealt with the boundaries of free speech protection of false statements.[45] The decision stated that false speech is protected by the First Amendment except when it results in direct harm, making it difficult to regulate AI-generated disinformation. The case remains cited in legal arguments regarding regulation of synthetic media in the United States.[46]

U.S. Midterm Elections – Deepfake Voter Suppression(2022)

[41] Deepfake Video of Actress RashmikaMandanna Sparks Outrage, THE INDIAN EXPRESS (Nov. 6, 2023), https://indianexpress.com/article/technology/tech-news-technology/deepfake-video-actress-rashmika-mandanna-outrage-9011025/ (last visited Feb. 7, 2025).
[42] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).
[43] Ministry of Electronics & IT, Advisory on Deepfake Content (Dec. 26, 2023), https://www.meity.gov.in/content/advisory-deepfake-content (last visited Mar. 17, 2025).
[44] Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).
[45] United States v. Alvarez, 567 U.S. 709 (2012).
[46] Harvard Journal of Law & Technology, 'Free Speech and the Challenges of AI Misinformation', 35 Harv. J.L. & Tech. 1 (2023).

Deepfake misinformation was a point of concern in the United States during the 2022 midterm elections. Videos created using artificial intelligence that showed election officials giving out misleading information about voting circulated on social media, causing voters to become confused.[47] A few videos falsely stated that polling centres had moved to new locations or that certain communities were no longer allowed to vote. This intentional application of artificial media to disseminate misinformation not only undermined the electoral process but also weakened public confidence in democratic institutions.[48] Even with increasing awareness of deepfake threats, implementation of legal provisions like the Honest Ads Act was inconsistent, enabling malicious actors to take advantage of loopholes in regulation.

Deepfake Pornography and DeepNude Case (2019)

One of the most alarming uses of artificial media has been the emergence of non-consensual deepfake pornography. In 2019, a DeepNude application powered by an AI was released, enabling users to generate explicit pictures of women from publicly available images. The app was later removed after mass outrage, but such technologies keep surfacing, and it becomes challenging for victims to stop the unauthorized sharing of their doctored images. Although some US jurisdictions have made deepfake pornography a criminal offense, Indian legal frameworks are still weak, and victims have few options under current cyber laws.

Zelenskyy Deepfake Incident (2022)

There was a 2022 example of deepfake abuse in a geopolitical context, when a simulated video of the President of Ukraine Volodymyr Zelenskyy appeared online with him allegedly surrendering to Russians. The deepfake went viral before it was discredited, showing the use of synthetic media as a method of propaganda and psychological warfare. The incident reiterated the need to create AI-detecting solutions and global coordination to fight malicious synthetic content diffusion.[49]

Taylor Swift AI Porn Case (USA, 2024)

In January 2024, AI-generated explicit images of global pop star Taylor Swift flooded social media, particularly X (Twitter). The images, created using text-to-image AI tools like Stable Diffusion, depicted Swift in sexually explicit scenarios without her consent. The deepfakeswere viewed over 47 million times before being removed, highlighting the viral potential of AI-generated non-consensual intimate imagery (NCII).[50] The incident triggered outrage from Swift's fanbase, women's rights groups, and lawmakers. The White House even addressed the issue, calling for legislative action.[51]

Legal and Regulatory Response: USA

Unlike India, the U.S. had **state-level laws** against deepfake pornography, but no federal legislation:

- **California Penal Code Sec. 647(j)(4)**: Criminalized non-consensual deepfake porn since 2019, but the Swift case originated from unknown jurisdictions.[52]
- **Texas SB 751 (2019)**: Banned malicious deepfakes, but enforcement was patchy.[53]

[47] U.S. Senate Committee on Intelligence, 'Deepfakes and Election Security', Senate Hearing Report (2022).
[48] Reuters, 'AI-Generated Misinformation and U.S. Elections', Reuters Investigative Report (2022).
[49] United Nations, 'AI and the Threat of Synthetic Media in Geopolitics', UN Security Council Brief (2023).
[50]Kalley Huang, AI-Generated Explicit Images of Taylor Swift Spread on social media, N.Y. TIMES (Jan. 26, 2024), https://www.nytimes.com/2024/01/26/technology/taylor-swift-ai-images.html. (last visited Feb. 27, 2025).
[51] Press Release, The White House, Statement on AI-Generated Explicit Imagery (Jan. 27, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/27/statement-on-ai-generated-explicit-imagery/. (last visited Apr. 01, 2025).
[52] Cal. Penal Code § 647(j)(4) (West 2019) (non-consensual deepfake pornography).
[53] Tex. Civ. Prac. & Rem. Code Ann. Sec. 143A.001 (2019) (deepfake liability).

- **New York Proposed Bills**: Lawmakers pushed for "Taylor's Law" to criminalize AI-generated NCII at the federal level.[54]

Platform Accountability:

- X eventually removed the images under its non-consensual nudity policy, but critics noted the delayed response (some content remained up for 17+ hours).
- Microsoft (which invests in OpenAI) announced stricter AI content filters for tools like Bing Image Creator.

Outcome and Reforms

- **No Prosecutions**: The creators were shielded by anonymity and cross-border jurisdictional challenges.
- **Policy Shifts**: The case accelerated the **DEFIANCE Act** (federal bill proposing civil lawsuits for deepfake victims).
- **Industry Changes**: Google and Meta pledged to downrank AI-manipulated content in search/algorithms.

Concluding Remarks

These case studies capture the pervasive reach of synthetic media in various fields, ranging from finance and politics to individual privacy. Although regulatory systems exist in US and in many nations try to tackle these issues, yet legal enforcement is a key challenge. The Government of India is in the process of drafting exclusive legislation to address the challenges posed by deepfake technology. Although no statute specifically targeting deepfakes has yet been enacted, policymakers are actively moving toward a comprehensive regulatory framework.

The comprehensive legislative framework must clearly define unlawful uses. It includes the non-consensual intimate imagery, electoral interference, and financial fraud to eliminate ambiguity and facilitate enforcement.

The proposed framework must comprehensively define illegal deepfake uses such as non-consensual intimate content, election interference, and financial fraud. It must fix the clear liability of creators, platforms, and intermediaries with penalties scaled to the severity of harm. Further, the law must require the transparency through mandatory labeling of AI-generated content. To build technical capacity in law enforcement and the judiciary we require advanced forensic tools and specialized training.

However, legislation alone will not suffice. Efforts must be made to foster collaboration among government bodies, industry stakeholders, academic researchers, and civil-society organizations.

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[54] DEFIANCE Act of 2024, S. 4121, 118th Cong. (2024).

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LAW ON PRODUCT LIABILITY IN INDIA WITH COMPARATIVE PERSPECTIVE

Dr. Shridul Gupta
Assistant Professor
Department of Law, Maharaja Agrasen Institute of Management Studies, Delhi.

Abstract
Online marketplaces are being used by consumers to meet their demands for goods and services. The future of market apps will be impacted by the dependability and security of the goods and services offered by these marketplaces. Since both product responsibility and liability for intellectual property infringements are murkier areas, products offered by third parties on market platforms may have an impact on e-commerce platforms. Before 2019, courts regularly ruled that e-commerce sites were not responsible for any harm or accidents brought on by the goods they sold. These platforms are viewed by courts as nothing more than intermediaries for third-party transactions. Local suppliers supplied goods and services in pre-digital India. Customers addressed the manufacturer if they were harmed by defective products, but there was little legal recourse. However, global supply chains, increased international trade, and the quick development of e-commerce have all evolved in the contemporary consumer products and services sector. Customers now have additional alternatives, opportunities, and new delivery methods for both foreign and Indian items. Comprehensive products liability legislation is necessary in light of shifting production locations, new consumer behaviors, the digital revolution, and the sharp increase in faulty goods, consumer deception, and fraud. Additionally, e-commerce has made consumers more susceptible to new types of dishonest and fraudulent business practices, such as the sale of goods based on false information and advertisements. The Consumer Protection Act of 2019 was submitted by the Ministry of Consumer Affairs, Food, and Public Distribution as a legislative framework to regulate producers and safeguard customers' interests. This article looks at how new laws might be able to restrict e-commerce and product responsibility in the future.

Keywords: Negligence, Strict Liability, No-Fault Liability, Absolute Liability, Product liability

Introduction

Strict responsibility and absolute liability standards are outliers since they hold people accountable for actions that are not their fault. The "no-fault liability principle" is how these guidelines are stated. The main distinction between these two laws is that the rule of absolute liability offers no exceptions at all, whereas the rule of strict liability includes few. Two important rulings served as the foundation for these regulations. *M.C. Mehta* v. *Union of India*[1] established the notion of absolute liability, while *Rylands* v. *Fletcher*[2] established the norm of strict liability.

[1]AIR 1987 S.C 1086.

[2](1868) LR 3 HL 330.

According to the strict liability principle, a man who retains dangerous materials on his property bears responsibility if such materials leak and cause harm, even if the person who kept them was not negligent. According to the rule of absolute liability, an enterprise that engages in a risky or dangerous activity and injures someone as a result of a mishap due to that activity will be held fully accountable for compensating all parties impacted by the accident.

Origin of Strict Liability

The *Rylands* v. *Fletcher* decision in 1868 established the strict liability rule, which states that if someone retains a hazardous material on his property and it escapes and hurts someone else, he will be held accountable. Whether the defendant took proper care or not, or if he was negligent, would not matter. Even if someone had taken the right precautions, they would still be held accountable because liability is not based on their fault or carelessness, but rather on the fact that they kept something harmful on their property and it escaped and caused damage. It is known as the "rule of strict liability" because it applies even in cases where the defendant did not act negligently. However, there are requirements that determine whether a liability is a strict liability or not, and a strict liability can only be imposed if the following requirements are met.

Essential qualifications of Strict Liability

(i). Substance must be dangerous: Damages will only be attributed to the defendant if something "dangerous" breaks out of his premises. The word "dangerous" implies that if it left the defendant's domain, some sort of suffering would ensue. Items that have been deemed dangerous if they escape from the owner's property include gasoline, electricity, bombs, flagpoles, hazardous smoke, vibration, poisonous trees, sewage, and even electric lines.

(ii). Dangerous thing must escape

"Escape" is another crucial component of strict liability, which states that anything that injures someone else must leave the owner's property.

(iii). Use must be non-natural use

It indicates that if material is used for a natural use like home purpose, then person cannot be held liable for any injury caused due to it, but if it is used for any non-natural use like big quantity of water in Rylandsv. Fletcher[3]*, then defendant would be liable.*

Exceptions or defences to the rule of Strict Liability

1. Plaintiff's own fault: One strong defense is that the plaintiff's own fault caused the damage that resulted from the escape. The plaintiff has no right to file a complaint if his own encroachment onto the defendant's property causes him harm.

2. Act of God: The defendant cannot be held liable for any liability resulting from an incident that happens as a result of an unforeseen circumstance over which a human body has no control.

3. Plaintiff's Consent: The defendant will not be held accountable if the plaintiff has willingly agreed to endure injury for the mutual benefit of both parties.

4. Act of third-party: If the plaintiff suffers harm that is not the defendant's fault but rather the result of a third person who was neither the defendant's servant nor related to the defendant, the defendant will not be held accountable.

Therefore, there is no need to prove guilt, carelessness, or intent under the concept of strict responsibility. In this case, the defendant bears responsibility without assigning blame for things like negligence or malicious intent. The plaintiff only needs to demonstrate that the defendant is at fault and that an injustice has occurred. By taking all reasonable precautions, the Act discourages

[3]*Supra Note*1.

reckless behavior and needless damage by imposing strict or absolute liability on cases it deems potentially dangerous. In strict responsibility, a claimant may receive punitive damages in certain countries if they can show that the defendant knew about the flaw at the time the harm occurred.

Origin of the Principle of Absolute Liability

In the case of *M.C. Mehta* v. *Union of India*[4], also referred to as the Oleum Gas leak case[5], the legal idea of absolute liability was developed in India. There are no exceptions to this principle, which is similar to strict liability. It implies that the defendant will not be permitted to raise any defenses under this concept, unlike in *Rylands* v. *Fletcher*[6].

In M.C. Mehta v. Union of India, the Supreme Court of India ruled that the defendant must be held accountable for his actions and that such an offense should not be contested. The strict responsibility and absolute liability standards in tort law are nearly identical, with the exception that strict liability holds one accountable for damages caused by the use of dangerous objects, their escape, and their unnatural usage, but there are several exceptions. A much expansive definition of this responsibility is absolute responsibility. The problem was that if all tragedies resulting from massive productions were covered by the exclusions, then criminals would be protected from the consequences of their actions.The Supreme Court ruled that although the *Rylands* v. *Fletcher* ruling, which established the Rule of Strict Liability, also applied to the facts of this case, people who established risky and dangerous businesses in and around densely populated areas could escape the damage they caused by utilizing certain exceptions. Thus, Justice (Retd.) P.N. Bhagwati, the Chief Justice of India at the time, created the new idea of "Absolute Liability."According to the requirements of the law at the time, the Honorable Supreme Court ruled that the law established in Rylands v. Fletcher was justified. However, Indian courts are under no obligation to adhere closely to the 19th-century ruling. With the advancement of science and technology, industrial society has advanced to the point where it is now essential to operate industries that are hazardous or intrinsically dangerous in order to continue developing. Such advancements in science and technology had not occurred when the *Rylands* v. *Fletcher* ruling was made in the 19th century. The law must adapt to the demands of society; it cannot afford to stay the same. To effectively address the issues of a newly industrialized economy, we must develop new concepts and establish updated regulations. We cannot permit judges to limit their reasoning to the laws established in England or any other nation. Thus, the absolute liability idea was established.

Rules for establishing absolute liability

1. Hazardous or inherently dangerous activities: As per the principle of absolute liability, an individual who is involved in an activity that is inherently dangerous or hazardous and causes harm to another person as a result of an accident that occurs while performing such an activity will be held fully accountable for the incident.

2. No need to flee: It is not required to flee a dangerous object from one's own property in order to be held fully liable. It implies that both people hurt on the property and those hurt off it are subject to the law of absolute culpability.

3. No exception: If a case falls under one of the strict libility exceptions the defendant is not held accountable for that act. There is no defense of

[4]*Supra Note*2.

[5] Tyagi, Anamika, Reiterating the Principle of Absolute Liability in Light of Oleum Gas Leakage Case (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=36974513109; International Journal of Law Management & Humanities [Vol. 4 Issue 3; 3104] © 2021. Reviews evolution of absolute liability.

[6]*Supra* Note1.

exceptions under absolute liability, and the defendant is responsible for making restitution.

4. Applies to both natural and non-natural uses of land: While the Ryland v. Fletcher rule only applies to non-natural uses of property, the rule of absolute liability applies to even natural uses. If someone uses a dangerous material, which may be a natural use of the land, and it escapes, they will still be held responsible even if they followed the appropriate safeguards.

5. Extent of damages: While the Ryland v. Fletcher rule only applies to non-natural uses of property, the rule of absolute liability covers even natural uses. If someone uses a dangerous material, which may be a natural usage of the land, and it escapes, they will still be held responsible even if the right safeguards were followed.

Origin &Evolution of Product Liability Lawin India

Law of Product liability enables an aggrieved consumer a legal remedy for injuries suffered from any defective product. It is the responsibility of manufacturers and sellers to ensure the safety and quality of their product as per the prescribed standards. In earlierproduct liability cases, theprincipleadopted was *caveat emptor*which says that let the buyer beware.[7]However,Consumer Protection Act, 2019 (hereinafter referred as CPA 2019) introduced concept of product liability. The CPA 2019 introduced detailed ambit on product liability with specific responsibilities and liabilities of a 'product manufacturer'[8],'product service provider'[9] or 'product seller,'[10]of any product or service so that compensation for any harm caused to consumer by such defective product manufactured or sold or deficient in services may be fixed.

Caveat Vendor, which translates to "let the seller beware," is a common law doctrine that is the foundation of product liability law.It places the responsibility for any flaw or issue that the buyer may have with the seller's goods or services on the seller. Product liability refers to the obligation of a product's maker or seller to pay damages for harm brought on by faulty products that are sold. General principles of contract law and tort law were developed as a result of case law on product liability. In contract law, product liability is founded on the "warranty" basis, whereas in tort law, it is founded on the "negligence" and "strict liability" principles. A warranty, whether explicit or implied, is a crucial indication of the type or caliber of the product and is one of the main reasons for buying it. Therefore, any deviation from the guaranteed nature or quality of the goods could lead to a consumer's product liability case. However, the law of privity of contract, which stipulates that an injured party can only sue a negligent party if that person was a party to the transaction that impacted them, applies to the warranty principle. The courts decided on tort law concepts of strict liability and negligence to safeguard consumers because contract law was insufficient in protecting them in product liability claims. Negligence is defined as failing to exercise due or reasonable caution, creating flawed designs, failing to provide warnings, etc. Sellers are deemed negligent if they do not use the appropriate care or prudence. However, proximate cause, contributory carelessness, subsequent product tampering, product misuse, and the plaintiff's assumption of risk are defenses against a negligence claim. When the defendant's

[7]Don Mayer, Daniel M. Warner, George J. Siedel and Jethro K. Lieberman, "Basics of Product Liability, Sales, and Contracts". Available at https://2012books.lardbucket.org/pdfs/basics-of-product-liability-sales-and-contracts.pdf last accessed on 3rd April 2022.

[8]Sections 2(36) and 84 of the Consumer Protection Act, 2019.

[9]Sections 2(38) and 85 of the Consumer Protection Act, 2019.

[10]Sections 2(37) and 86 of the Consumer Protection Act, 2019.

carelessness and warranty failed to safeguard consumers, the courts adopted the strict liability concept, which states that if a product is unsafe and faulty, the seller is responsible for any human injury or property loss. This principle does, however, contain caveats regarding product liability, recovery limitations, and potentially non-recoverable economic losses. The Consumer Protection Act of 2019 (CPA2019) outlines a number of particular exclusions from a product liability lawsuit.[11]

Jurisprudence on Negligence and Strict Liability in Tort

Winterbottom v. *Wright* (1842) [12] maintained strict responsibility in torts and the privity criterion in the concept of negligence. The coach company in this instance entered into an agreement with the postmaster general to supply coaches for mail services and assumed responsibility for coach upkeep. The postmaster general hired the plaintiff's driver to operate the coach and deliver the mail. He filed a lawsuit against the coach firm after being hurt when the vehicle collapsed as a result of inadequate maintenance. However, because he was never a party to the maintenance agreement between the bus company and the postmaster general, the court determined that the driver could not get compensation from the coach company.

However, the condition of privity of contract for negligence was eliminated by the court in *MacPherson* v. *Buick Motor Co.* (1916) [13]. MacPherson, the plaintiff in this case, suffered injuries when his car's wooden wheel disintegrated. The car was made by the defendant, Buick Motor Company, but the wheel was made by a different company. However, the defendant mounted the wheel. There was evidence that a reasonable check might have quickly discovered the fault, yet the wheel was not inspected. Because the plaintiff had bought the car from a dealer rather than the company directly, the defendant denied any liability. Even though the company did not have a privity of contract with the victim, the New York Court of Appeals ruled that it was still liable if it was negligent. Thus, the idea of "privity of contract" was abandoned for the first time, which resulted in the "conquest of tort over the contract[14]."

Therefore, it is important to demonstrate the defendant's negligence in order to establish a tort claim of negligence. The plaintiff must demonstrate that the defendant's actions fell short of the applicable standards of care. However, establishing a standard of care, a breach, or the reasons for carelessness proved difficult. Therefore, strict liability was established by courts in the 20th century when they deemed it unjust to require a critically harmed consumer to show negligence claims against the makers or sellers.

Plaintiff watched its functioning as demonstrated by a retailer and studied brochure prepared by the manufacturer. Plaintiff's wife purchased and gave it to plaintiff. Plaintiff purchased necessary attachments for use of 'Shop smith' as a lathe. He worked with lathe several times without any difficulty, but it suddenly threw a piece of wood striking him on his headcausing serious injuries. Plaintiff sued both the retailer and manufacturer. Appellate Court affirmed lower court decision that consumer could sue manufacturer for breach of warranty. It was sufficient that the consumer proved that he was injured while using the product in a way it was intended and that his injury was as a result of a defect in the design and manufacturing

[11]Section 87 of the Consumer Protection Act, 2019.
[12]10 M & W 109.
[13]217 N.Y. 382.
[14]Werro, franz and Büyüksagis, Erdem, The Bounds between Negligence and Strict Liability (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=37927153110; International Journal of Law Management & Humanities [Vol. 4 Issue 3; 3104]© 2021. International Journal of Law Management & Humanities [ISSN 2581-5369].

of 'Shop smith' which made the product unsafe for its intended use which he was not aware of it.[15]

Theory of implied warranty of safety was applied in *Henningsen* v. *Bloomfield* Motors, *Inc*. (1960)[16], wherein plaintiff bought a car from defendant's dealer. Few days after delivery, steering of car malfunctioned and plaintiff's wife was injured in an accident due to it. Plaintiff sued the car dealer and manufacturer. But dealer argued that there was a clause in warranty which freed the defendant from any liability for personal injuries and it was signed by the plaintiff. The warranty was only for the replacement of defective parts for a period of 90 days or 4000 miles whichever was earlier. Court awarded damages to Henningsen holding that with sale of every object there is an implied warranty of safety and defendant cannot claim emption from liability on the ground that it was Henningsen's wife who had suffered damages. Court held that warranty extends to every foreseeable user of the product. Thus, jurisprudence of product liability developed holding the manufacturer liable for negligence in event of an injury sustained by the ultimate consumer due to any manufacturing defect, irrespective of the fact that no contract existed between such affected consumer and the manufacturer. Cases in India on the issue of product liability were also dealt by Courts on the principles of negligence and strict liability, while Statues remained silent on provisions for liability of seller or manufactures for defective or faulty products and services.[17]

In *A.S. Mittal* v. *State of U.P.*[18] Supreme Court considered an important question of law involving product liability and held that it would depend upon the facts and evidence presented. In *Airbus Industries* v. *Laura Howell Linton*,[19] a flight from Bombay to Bangalore, duringits landing at Bangalore airport touched the ground approximately 2,300 feet before the beginning of runway and hit the boundary wall, its fuselage, wings and other parts disintegrated, with a result that 92 passengers and four crew members died, and 54 survivors sustained injuries of varying degrees of severity. All of the defendants argued that the Texas court was the proper venue for the appellants' case to obtain damages against the Indian airport authority, airlines, and aircraft manufacturer because Indian courts lacked a strict product liability law. The Karnataka High Court dismissed the respondents' claim and examined liability based on common law notions of causation and negligence principles rather than strict product liability. It came to the conclusion that, simply because Indian courts lack strict product liability legislation, it is not prudent to state that parties in such a situation can forego a remedy. It was held in *Charan Lal Sahu* v. *Union of India*[20] (Bhopal Gas Disaster), that antiquated acts should be drastically amended, or fresh legislation should be enacted to save such situation. Consumer Protection Bills of 2011, 2015 and 2018 showed pro-consumer approach and government urged for updating of laws to correct the legal uncertainty and lack of precedents. Enactment of new CPA 2019 removed uncertainty and ambiguity in the Indian legal framework for product liability. It provided provisions in relation to product liability, based upon the strict liability principle of tort law and the jurisprudence laid down by the courts. E-commerce guidelines framed under the CPA 2019 mandated e-commerce entities to endorse product liability construct while requiring them to disclose proper information to consumers, thereby

[15]Raffa, Mohamed. (2018). Strict and Absolute Liability in Common Law Practice. (2018), https://www.researchgate.net/publication/324415453_Strict_and_Absolute_Liability_in_Common_Law_Practice3108accessed on April 15th 2022.

[16]32 N.J. 358.

[17]See *Manubhai Punamchand Upadhya v. Indian Railways* (1995), and *Banyan Tree Holding (P) Limited* v. *A. Murali Krishna Reddy* (2009).

[18]A.I.R 1989 SC 1570.

[19]ILR 1994 KAR 1370.

[20]A.I.R 1990 SC 1480.

enabling transparency and more protection to the consumers. Provisions under the Indian Penal Code, 1860, the Sales of Goods Act, 1930 and specific statutes pertaining to specific goods and standardization (like the Drugs and Cosmetics Act, 1945, Prevention of Food Adulteration Act, 1954, Food Safety and Standards Act, 2006, Bureau of the Indian Standards Act, 1986, Agricultural Produce (Grading and Marking) Act, 1937etc.) continue to be as additional measures for the protection of consumers. As the legal theories regarding product liability continue to mature, interesting judgments were delivered by the courts. With advent of the product liability laws in India it would be necessary to see as to how the industry and judiciary deal with increase in unethical and fraudulent activities.

Consumer Protection Act, 2019& Product Liability

By including additional provisions, the Consumer Protection Act of 2019 gives customers' stronger and better protection. For the first time, this Act established product liability as the obligation of a product's producer, seller, or service provider to make up for any damages a customer may sustain as a result of a defective product that is created or sold, or from a lack of product-related services. This Act ended the buyer-beware theory and established the seller-beware theory by establishing product liability. In order to list the circumstances in which a consumer could seek compensation under a product liability action for any harm caused by a defective product made by a product manufacturer, serviced by a product service provider, or sold by a product seller, the 2019 Act included an entire Chapter VI.[21] (i) damage to any property other than the product itself; (ii) personal injury, illness, or death; (iii) mental agony or emotional distress, etc., are all considered "harm" in relation to product liability, according to the 2019 Act. However, "harm" does not include damage to the goods itself, property damage resulting from a warranty violation, or any business or economic loss, including direct, incidental, or consequential losses associated with it.[22]

The Act further defined a "defect" as any flaw, imperfection, or shortcoming in the quality, quantity, potency, purity, or standard that must be upheld by any law or contract, whether explicit or implied, or that the trader asserts in any way with regard to any goods or product[23]. In order to file a product liability lawsuit, a customer must prove that a "defective" product caused "harm." The 2019 Act also made a distinction between the functions of a product seller, product maker, and service provider, and as a result, it established distinct standards for generating product liability claims against each of these parties:

(1) ***Liability of a Product Manufacturer*:** According to CPA 2019 Section 2(36), a "product manufacturer" is defined as an individual who: (a) manufactures a product or parts of it; (b) assembles parts of it made by others; (c) places or causes to be placed his own mark on any product made by another person; (d) manufactures a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or is otherwise involved in placing such a product for commercial purposes; (e) designs, manufactures, fabricates, constructs, or re-manufactures a product before it is sold; or (f) is a product seller who also manufactures a product. Within the parameters of the definition, it encompasses all parties involved in the sale process.

(2) ***Liability of a Product Service Provider*:** Product service provider under CPA 2019 means a person who provides a service in respect of any product.[24] This definition of a product service provider has been specifically added so as to cover services such as

[21]*Section 82, Consumer Protection Act, 2019.*
[22]*Section 2(22), Consumer Protection Act, 2019.*
[23]*Section 2(10), Consumer Protection Act, 2019.*
[24]*Section 2(38), Consumer Protection Act, 2019.*

maintenance or repair where the service and the product are inherently related, and the service has a direct bearing upon the performance of the product. A product service provider may be held accountable in a product liability lawsuit for damages resulting from a defective product that the provider services, as listed in Section 85 of the Act. Among these are the following situations: (a) If the service it rendered was flawed, imperfect, poor, or insufficient in terms of quality, nature, or performance style. The same must be evaluated in accordance with the requirements of any currently enacted laws or contracts; (b) A product service provider will also be held accountable if an act of negligence, omission, or deliberate withholding of any information resulted in harm.; (c) product service provider shall be liable if it does not issue adequate instructions or warnings to prevent any harm;(d) product service provider shall be liable in a product liability action if the service did not conform to express warranty or the terms and conditions of the contract.

(3) ***Liability of a Product Seller*:** Any individual who imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise participates in placing such a product for commercial purposes is considered a product seller under the CPA 2019; this includes (a) manufacturers who also sell products or (b) service providers. Certain individuals are expressly excluded from the definition of a product seller in this clause. Among these are: (1) a seller of real estate cannot also be a product seller unless they are involved in the construction or sale of a house or apartment building; (2) A person who provides professional services will not be considered a product seller if the skill or service is the main component of the transaction and the sale or use of the product is only incidental to it; (3) a person will not be considered a product seller if they (a) act solely in a financial capacity with regard to the sale of that product, (b) are not a manufacturer, wholesaler, distributor, retailer, direct seller, or electronic service provider, or (c) lease a product without having a reasonable opportunity to inspect and find defects in the product under a lease agreement where the lessor controls the product's selection, possession, maintenance, and operation.[25] According to Section 86 of the CPA 2019, a product seller who is not a product producer may be held accountable in a product liability lawsuit for damages brought on by a defective product that the seller sold. These include: (a) if the product seller had significant control over the product's design, testing, manufacturing, packaging, or labeling and that control resulted in harm; (b) if the product seller makes changes to the product and those changes or modifications constitute a significant contributing factor to the harm; (c) if the product seller made an express warranty on the product, separate from the manufacturer's express guarantee, and the product did not meet the seller's express warranty, resulting in the harm;(d) if the product seller has sold a product and the product manufacturer's identity is unknown, or if known, the product manufacturer cannot be served with a notice, process, or warrant; if the product manufacturer is exempt from Indian law; or if an order, if any, has been passed or is about to be passed, it cannot be enforced against the product manufacturer.;(e) if product seller fails to exercise reasonable care in assembling, inspecting or maintaining such product or if it does not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the

[25]*Section 2(37), Consumer Protection Act, 2019.*

product while selling such product and such failure was the proximate cause of the harm.

Penalties imposed by CPA 2019

Compared to the Consumer Protection Act of 1986, the CPA 2019 stipulates harsher penalties since it seeks to give customers better protection. According to CPA, 2019, a consumer forum may, among other things, impose one or more of the following sanctions if it determines that the product is flawed or if any other complaint made by the complainant regarding service, unfair trade practices, or product liability is validated: defect removal, product replacement, reimbursement of the customer's purchase price plus interest, punitive damages for carelessness, cessation of unfair business practices, and removal of dangerous or dangerous products, direction to cease the manufacturing of hazardous goods or cease to offer the sale of hazardous services, compensation for product liability action, cease and desist from issuing misleading advertisement or direction to issue corrective advertisement.

The CPA 2019defines 'unfair contracts'[26]as contracts between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which causes significant changes in the rights of such consumer. These include (a) requiring excess security deposits from consumers; (b) imposing disproportionate penalty upon the consumer for breach of contract; (c) refusing to accept early repayment of debt; (d) entitling unilateral termination; (e) permitting assignment of contract to the detriment of customer without his/her consent; (f) imposing on consumer any unreasonable charge, obligation or condition, which puts such consumer at a disadvantage. Both State Commission[27] and National Commission also have the powers[28] to declare such contracts null and void.

Establishment of Central Consumer Protection Authority (CCPA)

A Central Consumer Protection Authority (CCPA) is established by CPA 2019.The CCPA is a regulatory body having the ability to conduct inquiries, conduct investigations, and issue injunctions. The CCPA controls issues related to unfair trade practices, consumer rights violations, including deceptive or false advertising that harms the public's and consumers' interests..[29] CCPA has power to direct recall of goods or withdrawal of services that are dangerous, hazardous or unsafe.[30]CCPA can also direct reimbursement of prices of goods or services so recalled to purchasers.[31]CCPA is empowered to direct discontinuation of practices that are unfair and prejudicial to consumers' interest.[32]CPA 2019 also addresses the issue of misleading advertisements. Both Consumer fora and CCPA have powers to issue directions and penalties against false or misleading advertisements.

Any manufacturer or service provider who makes a false or misleading advertisement that harms the interests of customer's faces up to two years in prison and a fine of up to ten lakh rupees. If the offense is committed again, the penalty increases to five years in prison and a fine of up to fifty lakh rupees. Additionally, the CCPA has the authority to order the affected party—whether a publisher, manufacturer, endorser, trader, or advertiser—to stop or alter deceptive advertising[33]. The CCPA has the authority to fine the producer or endorser ten lakh rupees, with the possibility of an additional fifty lakh rupees for future violations.[34]Similarly, a publisher or a person who

[26]*Section 2(46), Consumer Protection Act, 2019.*
[27]*Section 49(2), Consumer Protection Act, 2019.*
[28]*Section 59(2), Consumer Protection Act, 2019.*
[29]*Section 10(1), Consumer Protection Act, 2019.*
[30]*Section 20(a), Consumer Protection Act, 2019.*
[31]*Section 20(b), Consumer Protection Act, 2019.*
[32]*Section 20(c), Consumer Protection Act, 2019.*
[33]*Section 21(1), Consumer Protection Act, 2019.*
[34]*Section 21(2), Consumer Protection Act, 2019.*

is party to such publication may also be penalized for an amount upto rupees ten lakhs.[35]

In addition to the above penalties, CPA also empowers the CCPA to prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year and in case of subsequent contravention to three years.[36]However, Act provides defences for endorsers and publishers in certain cases. An endorser is exempted from penalty under Section 21 of the Act if he/she exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed.[37] Similarly, a person will not be liable if he/she published or arranged for publication of false or misleading advertisement in the ordinary course of business. However, this defence would not be available if the person had previous knowledge of an order passed by CCPA, regarding withdrawal or modification of the advertisement.[38] In order to ensure compliance with the order of the CCPA, Section 88 of the Act criminalizes failure to comply with the directions of CCPA and makes it punishable with imprisonment upto 6 months or with fine which may extend to twenty lakh rupees or both.[39] Further, Act also provides for punishment, including imprisonment or fine or both, for manufacturing, selling, storing, or distributing or importing products containing adulterant or spurious goods.[40]

Defences to an action of Product Liability

According to the definition of "product liability," the complainant must prove that a "defective" product caused the "harm" in order to prove product liability. Therefore, a product's lack of "defectiveness" and the absence of any "harm" that the product's usage may bring to the user are unquestionably defenses against a product liability claim. Furthermore, further defenses to a product liability action are envisioned in Section 87 of the Act. These consist of: (1) It would be a legitimate defense in a claim against a product seller that the product was misused, changed, or modified at the time of the alleged harm; (2) The following would be acceptable defenses in the event that a product manufacturer is sued for failing to provide sufficient warnings or instructions: (i) An employer purchased the product to use at work, and the manufacturer gave the employer instructions or warnings; (ii) the product was sold as a component or material to be used in another product, and the manufacturer of the product gave the buyer the necessary warnings or instructions, but the complainant was harmed by the use of the final product in which the component or material was used; (iii) the product was one that was legally intended to be used or dispensed only by or under the supervision of an expert or class of experts, and the manufacturer of the product used reasonable means to provide the expert or class of experts with the warnings or usage instructions; or (iv) The complainant was under the influence of alcohol or any other drug that was not prescribed by a doctor while using the product; (3) A product manufacturer is not responsible for failing to warn or instruct about a danger that the user or consumer of the product should have known given its characteristics or that is obvious or commonly known to them. A product liability claim necessitates prompt action, beginning with expert analysis and internal investigation, then proper preventive measures, including sufficient disclosures and, if necessary, recalls.

As a result, CPA 2019 tackles the problem of product liability and improves compliance for those involved in the selling process, such as endorsers, importers, marketers, and repairers, in addition to product producers, sellers, and service providers. A formal framework for the recall of

[35]*Section 21(4), Consumer Protection Act, 2019.*
[36]*Section 21(3), Consumer Protection Act, 2019.*
[37]*Section 21(5), Consumer Protection Act, 2019.*
[38]*Section 21(6), Consumer Protection Act, 2019.*
[39]*Section 88, Consumer Protection Act, 2019.*
[40]*Section 90 and 91, Consumer Protection Act, 2019.*

defective motor vehicles has been introduced through an amendment to the Motor Vehicles Act of 1988. The Motor Vehicles Act also stipulates that manufacturers, importers, and dealers who violate the standards for the manufacture, upkeep, sale, and modification of motor vehicles will be subject to penalties. A fine, incarceration, or both may be used as forms of punishment. Therefore, it is imperative that product producers, service providers, and others exercise particular caution about regulatory compliance under sector-specific rules and regulations as a result of the ongoing construction of product liability regimes under numerous legislations. Manufacturers of goods, traders, and service providers must also review their contracts to make sure they do not fall under the category of "unfair contract."

Consumer Protection (E-Commerce) Rules, 2020

E-commerce has grown rapidly thanks to digital technology, which has also made a new legal and regulatory framework necessary to control trade-related transactions, product liability, and e-commerce. The Consumer Protection Act of 2019 established a new framework for product liability laws to safeguard the interests of stakeholders, including consumers. The government has created the Consumer Protection (E-Commerce) Rules, 2020 to support the new e-commerce regulations. The caveat emptor (let the buyer beware) principle is replaced with the caveat *venditor* (let the seller beware) principle in the Act and its implementing regulations. Rules' objects are:

(i).Mandatory registration: Every e-commerce entity carrying out or intending to carry out e-commerce will be required to register and comply with all conditions for carrying out e- business.

(ii). Transparency and obligations: Sellers will clearly and openly reveal information about their e-commerce entities on their portals, such as their legal names, addresses, phone numbers, website names, sold goods, and so forth. Additionally, e-commerce companies will publish payment terms, conditions of delivery and shipment, grievance redressal procedures, warranty and guarantee policies, refund and exchange policies, and terms of return. They must also make sure that they don't show deceptive or fraudulent product advertising and that they clearly state other pertinent facts, such as product shelf life, payment method security, health and safety information, and any price breakdown. E-commerce entities will protect, use and store personal identification information of its consumers in compliance with the law. E-commerce companies will unconditionally accept return of goods that are delivered late or are defective; it will include even counterfeit and wrongly advertised products and provide refund within a reasonable time.

(iii). Unfair contracts: Under the act, consumers can register complaints and contest contracts that are arbitrary or unjust thanks to the idea of unfair contracts. Contractual provisions are essential for e-commerce businesses to reduce risk exposure and protect their interests from third-party liability. When customers register on an online platform or buy electronic goods or services, they are bound by the terms and conditions, which are typically in the form of a click-through agreement. To meet the requirements of e-commerce regulations, certain standard terms and conditions must be used.

(iv). Sale of spurious products: The Consumer Protection Act, 2019 prescribes penalties for manufacture, sale, storage, distribution or import of spurious products, including imprisonment and suspension or cancellation of trading licences. Act ensures that e-commerce entities do not allow their platforms to facilitate counterfeiters and alsoensure authenticity of goods sold on their platforms. They must accept return of spurious or counterfeit goods and refund purchase amount within a reasonable time.

(v). Level playing field: To maintain a parity between bricks-and-mortar stores and e-commerce platforms, Act ensure that smaller players are not disadvantaged by predatory pricing and deep discounting. E-commerce entities are to refrain, directly or indirectly from influencing the price of goods or services sold through their portals.

(vi). Redressal Procedures: E-commerce companies must designate grievance officers and make their contact information public. They will outline the steps for customers to file concerns. Within a month after receiving the complaint, grievance officers must handle it. The rules also address additional channels for complaints, including the phone, email, and website. E-commerce platform sellers must adhere to these rules when they enter into written contracts with entities prior to soliciting sales on their platforms. These requirements include providing fair and reasonable delivery terms, taking responsibility for warranties, and providing mandatory information related to sales, such as unit price, taxes, fees, delivery charges, and display requirements under legal metrology rules.

Product Liability Protection in E-Commerce *via* Insurance

Customers who file product liability claims against online retailers are held accountable, but these sellers typically believe that the manufacturer has full responsibility for any harm brought on by a dangerous product. The Consumer Protection Act of 2019 now mandates that shops make sure the goods they sell are safe to use. Retailers may face legal action if they fail to fulfill their obligations and a customer is hurt. Therefore, product liability insurance is also necessary for online businesses. This kind of business insurance was created especially to shield a company from monetary responsibility in the event that a product they produced, sold, imported, exported, or examined results in property damage or personal injury to a customer. Products liability insurance protects online business from liability due to any failure of the product, whether it is failure to deliver promised results or other failures.

(1). What is E-commerce? Buying and selling goods and services, as well as sending money or data, over an electronic network—most commonly the internet—is known as e-commerce. The term "e-commerce" describes a system that facilitates sales of goods and services via the Internet or electronic means. An online e-commerce market is a location or website where numerous buyers and sellers transact on the same platform. One can find different brands of products coming from multiple merchants, shops or persons presented on same site. The marketplace owner is responsible for attracting clients and process transactions, while the third-party suppliers deal with the manufacturing and delivery. Online marketplaces expedite sales with a single, easy-to-use platform, allowing producers to offer their goods directly to customers without keeping inventory. An e-commerce company does not necessarily manufacture, sell, or distribute these products and globally there are more than 160 such e-commerce websites such as Amazon, e -Bay, Walmart, Flipkart etc. engaged in selling various products and services across the world.

(2). What is Product Liability Insurance? Manufacturers, distributors, importers, retailers, and everyone else in the supply chain who might be sued for physical harm or property damage from the sold goods are all covered by product liability insurance. Although a product liability claim may sometimes involve allegations of negligence, strict responsibility is the legal theory most frequently applied in product liability cases. Strict liability places the onus of proof on product suppliers and is applied regardless of carelessness or wrongdoing. The burden of proof for an injured person or plaintiff is to demonstrate that a manufacturing, design, or instruction/warning flaw caused the injury.

(3) E-Commerce & Insurance perspective: A buyer purchased a laptop battery replacement from an independent Amazon seller. The customer was hospitalized after it burst a few months later, severely burning her. The claimant and his bedroom were injured by fire when another customer purchased a toy scooter from a Chinese manufacturer through a third-party vendor on Amazon Marketplace. Such events are common, especially during times of global lockdown when traditional shopping became frightening and challenging. The number of online shoppers increased. Additionally, COVID-19 increased digital transactions and caused a spike in e-commerce. People can now buy and sell any kind of product or service without ever having to go to a real store thanks to e-commerce. However, there were risks and obstacles to e-commerce growth as well.

(4). Risks associated with e- commerce and their insurability: Online and brick-and-mortar retailers both have risks associated with their business methods. Because there are fewer middlemen involved, e-commerce is more economical and time-efficient. It also saves money on gas and travel time when buying goods and services. Customers are now more tech-savvy and aware of their rights thanks to e-commerce.

(5). Are Marketplaces Liable for Product Defects? The reason for this is that, whether they are selling software or toys, any product or service has the potential to malfunction and cause harm, thus even retailers, such as e-commerce companies, are concerned about product liability risks. If a product has a flaw, the maker is responsible. In the case of online sales, online retailers are also liable, even if they only offer a platform and a manufacturer or seller uses it to sell their goods. Online retailers are now the first port of action for any harm or damage brought on by the products sold, regardless of who manufactured them, due to consumer protection regulations in practically every country in the world. Liability suits are frequent in e-commerce businesses due to changing product liability laws, and as the number of manufacturers, exporters, and retailers rises rapidly, so does the risk of lawsuits for online marketers. In India, any electronic merchants registered in India or overseas that provide products and services to Indian consumers are subject to the Consumer Protection Act, 2019 and the Consumer Protection (E-Commerce) Rules, 2020. The Consumer Protection Act, 2019 applies to buying/selling of goods or services over the digital or electronic network, including digital products[41] and to a person who provides technologies enabling a product to engage in advertising/selling goods/services to a consumer. Various stakeholders engaged in e-commerce have been defined in the Act, like 'Consumer' is a person who buys any goods and hires or avails any service online through electronic media.[42]'Seller' is an electronic service provider who is a product seller and has same duties, responsibilities and liabilities as a product seller.[43]Unfair Trade Practice means that electronic service provider discloses to another person any personal information given in confidence by the customer.[44] Therefore, any consumer may bring a Product Liability action against a product manufacturer or a product service provider or a product seller for any harm caused to him on account of a defective product and seeks financial compensation. Product Liability Insurance is therefore of paramount importance for an e-commerce company.

(6) Intellectual Property Rights Insurance: It is another risk cover in e-commerce. Even if acompany is insured against risk of infringement of patent, trademark, copyright, right of publicity etc. an e-commerce website could face liability claim related to a third party's advertisement hosted on its website, if that advertisement is

[41] Section 2(16), Consumer Protection Act, 2019.
[42]Section 2(7), Consumer Protection Act, 2019.
[43]Section 2(37), Consumer Protection Act, 2019.
[44]Section 2(47), Consumer Protection Act, 2019.

infringing on some other party's intellectual property.Lot of money is involved in Intellectual Property infringement lawsuits.

(7). Cyber Risks Insurance: E-commerce websites collect lots of personal information from customers including their bank accounts, credit card details and process business transactions online. Such activity exposes the customers to risks of hackers and cybercriminals wherein sensitive personal information may be leaked, stolen or used elsewhere. All potential lawsuits, fines, penalties, settlements, discovery and investigation expenses arising out of such Cyber-attacks and/or Data breach maybe covered under Cyber Insurance Policy.

(8). Directors &Officers (D&O) liability Insurance: e-commerce company also need to protect its top management against lawsuits arising due to breach of fiduciary duty or mismanagement. D&O insurance allows them to run the company confidently without fear of personal financial loss.

(9) Employees' Compensation Insurance: E-commerce Company has to employ workers and it is necessary to buy Employees' Compensation Insurance to cover any liability arising due to death, medical costs and loss of wages resulting from an employee's work-related injury.

(10) Marine Cargo Insurance: If an e-commerce company owns a warehouse and relies upon third party to store their goods, or ship products directly to customers and other distributors, then it is necessary to go for cargo insurance which will provide protection from physical loss.

Comparative Study

Litigation on product liability for products designed or produced in one country but sold and used in another country is increasing. But legal system on product liability is not the same in all the countries. So, it is important for the e-companies and professionals to understand product liability system of all other countries who sell their product in home country's market. The purpose of comparative study is not to find as to law of which country is better, but for legal understanding.

(1) Product Liability in the United States

The lawof product liability in the United States involves three theories of liability i.e., negligence, breach of contract/warranty and strict liability. In U.S., strict liability originated in *Greenman* v. *Yuba Power Products, Inc.*[45]. US Consumer law holds all those in a supply chain liable for injuries caused due to defective products;[46] But earlier US case law did not address the issue of e-commerce on whether e-commerce platforms that host product by third parties could be liable as sellers or as part of supply chain. U.S consumer protection jurisprudence, till 2019 held that online marketplaces such as Amazon, eBay etc, are similar to shopping malls who rent their space to retailers, so they could not be held liable for injuries caused by defective products sold by third-party sellers on their platforms. In *Carpenter v. Amazon.com*[47]it was held that Amazon was not liable for bringing defective hover boards to consumers because market would have otherwise existed. In *Eberhart v. Amazon.com*[48]it was held that Amazon was not within the coffeemaker's chain of distribution as it did not take title to the defective product. **However,** *since Bolger v. Amazon.com*,[49]US Courts are holding that e-commerce platforms *are* liable under the products liability theories. More recent is fixing liability for defective products sold by third parties on e-commerce platforms which range from exploding

[45] (1963) 59 Cal. 2d 57.

[46] See *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 389-90 (1916).

[47] 17-cv-03221, 2019 WL 1259158, at 5 (N.D. Cal. March 19, 2019.

[48] 325 F. Supp. 3d 393, 398 (S.D.N.Y. 2018.

[49] 267 Cal. Rptr. 3d 601, 604 (Cal. Ct. App. 2020.

batteries to defective thermostats. California Courts examined whether e-commerce platform can be considered as a key part of the supply chain or whether it was integral to sale of defective product while imposing products liability. In August 2020, a California appellate court reversed a lower court decision which held that Amazon was not liable for an exploding battery because Amazon was merely an online marketplace that did not distribute, manufacture, or sell the product in question.[50] Citing Amazon's ownership and storage of products, their registration in its system, and their packing and delivery in Amazon-branded packaging, the appellate court further determined that Amazon had a crucial role in getting the product to the customer. According to the court, Amazon's business strategy encourages customers to deal with the company directly rather than through independent retailers. Amazon handles returns (if any) and sales transactions. Additionally, courts acknowledged that California law does not impose liability solely on sellers for product flaws. Despite these formalities, the California strict responsibility theory compensates plaintiffs for harm brought on by faulty products. The Court also raised concerns that consumers may have trouble getting compensation from foreign or unidentified third parties, while Amazon is easily recognizable and may be able to pay for consumers' injuries, particularly since the name "Amazon" implies safety and allows it to modify prices to reflect liability. Based on these circumstances, the court reversed the trial court's ruling and concluded that Amazon was a link in the product distribution chain. In December 2020, New York Court in *State Farm Fire & Cas. Co. v. Amazon.com Services.*[51]where a thermostat put a house on fire, held that Amazon exercised sufficient control over a thermostat to be considered as a 'seller' even if it did not take title, because it had the power to refuse product registration, process customer returns, and prepare products for shipment, all while taking a cut off from profits and shipping product in Amazon-branded packaging. Court held that Amazon have all the benefits of traditional brick and mortar storewithout any of the responsibilities. Pennsylvania law alsoin *Oberdorf v.Amazon.com*[52]and *Oberdorf v. Amazon.com*[53] held that Amazon was a 'seller' for the purpose of products liability. Court reasoned its rulingon Amazon's role as primary contact for consumers, its ability to exert pressure on third-party vendors, its ability to stem the circulation of defective products, and its better position to allocate costs. The court also ruled that Amazon was in a good position to distribute risk and bears accountability for putting a faulty goods into sale. Because of its connections to independent sellers and the way its online marketplace was set up, the New Jersey district court in Papatarosv. Amazon.com also determined that Amazon was a "seller" and that it had authority over the merchandise. However, e-commerce sites are not being held accountable by state courts for subpar goods sold by third parties. Illinois Court in *Great N. Ins. Co. v. Amazon.com*,[54]held that a products liability claim could not stand where the e-commerce platform never took possession of the product and company 'lodestar' was exercising control over the *product*, and not over the *purchasing process*. Thus, United States laws on products liability differ from state to state and courts have reached different conclusions with respect to whether e-commerce platforms should be held liable for defective products sold by third parties on their sites. E-commerce platforms sell products from their site in every state, yet litigation will be brought in states with least favourable jurisprudence.

On June 21, 2018, in *South Dakota* v. *Wayfair*[55], the Supreme Court of the United States addressed

[50] See *Bolger v. Amazon.com*, 267 Cal. Rptr. 3d 601, 604 (Cal. Ct. App. 2020).

[51] 137 N.Y.S.3d 884, 887-88 (N.Y. Sup. Ct. 2020).

[52] 930 F.3d 136, 147-48 (3d Cir. 2019).

[53] 818 F. App'x. 138, 139 (3d Cir. 2020).

[54] 19-c-684, 2021 WL 872949, at 4 (N.D. III. March 9, 2021).

[55] 201 L. Ed. 2d 403.

uncertainty relating to whether or not a business must have a physical presence in a state before that state can require the collection of sales taxes. According to a Supreme Court decision, governments have the authority to mandate that companies who do not have a physical presence in their state collect and remit sales tax. In light of this decision, any e-commerce company should aim to guarantee adherence to state sales tax regulations for two reasons. First, laws requiring the collection of sales taxes from online sales are already in place in a number of states. Second, there may be severe consequences for noncompliance. For instance, regardless of any corporate structure designed to protect owners from personal liability, Indiana law includes personal liability of the company's owners or members for payments not paid. After *Wayfair* decision many states have enacted legislation in response to *Wayfair* that exempts smaller e-commerce businesses from tax collection obligations. Some states have special laws that apply to "marketplace seller."

A marketplace seller is a seller that, instead of launching an independent website, opens a seller account on websites such as Amazon, eBay, or Etsy as a third-party seller. Consumer may buy a product from Amazon's website, buthe is actually buying product from "XYZ Third-Party Seller" with Amazon merely facilitating the sale. Different strategies have been used by US states to collect sales taxes from marketplace vendors. Only a small number of states require marketplace operators, like Amazon, to collect sales tax on behalf of marketplace vendors. Certain states handle marketplace vendors in the same manner as they do regular online retailers. In some states, marketplace vendors are required to collect sales tax only for keeping goods in their state. A subset of Amazon merchants known as Fulfillment by Amazon, or FBA, sellers are obviously the target of such rules. These vendors take advantage of a unique service offered by Amazon, which involves delivering their merchandise to several Amazon warehouses where it is kept until it is bought. For FBA sellers, it is important to ensure compliance with these new sales tax laws because such sellers have no control over where their products are sold or a very limited control as to where their products are stored, leading to significant unintended sales tax liabilities. Many states have legislation for sales tax on internet sales and many states are modifying legislation to comply with *Wayfair*. Therefore, it is important for e-commerce companies to not only be aware of existing laws but also have a system in place to monitor the changes in states' laws.

(2) Product Liability in China

Prior to 1990, the quality of Chinese items was quite poor, and there were many counterfeit goods available. Despite several mishaps brought on by faulty or counterfeit goods, litigants were never compensated for their losses. Product liability was not specifically covered by any laws. According to Article 122 of "The Principles of Chinese Tort Law," manufacturers and retailers are accountable for any harm to people or property brought on by faulty goods. Following the 1990s, consumer demands centered on safeguarding consumers' legal rights, enhancing oversight and control over product quality, defining liability, and defending users' and consumers' legitimate rights and interests. After that, China adopted 'The Law of the People's Republic of China on Product Quality' in 1993 and also enacted 'Law of the People's Republic of China on 'Protecting Consumer's Right and Interests'.

Defect Identification: The most challenging issue in a product liability case is identifying a product's defect. Generally speaking, there are three categories of defects: warning, design, manufacturing, and instruction. "The unreasonable danger existing in a product which endangers the safety and human life or another person's property, where there are national or trade standards with a view to safeguarding the health of people and safety of human life and property" is

the definition of a defect under Chinese product quality law. "Defect" also refers to any deviation from these norms.

(3) Comparative Consumer Statutes

Different laws have been passed at various levels in nations with federal systems, especially the United States and Canada. If we exclude state laws, the United States has over seven federal statutes that address consumer laws. The Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Trade Commission Act, the Gramm-Leach-Bliley Act, the Truth in Lending Act, the Consumer Product Safety Act, and others are a few examples. The Competition and Consumer Act of 2010 is the main law in Australia. The Consumer Rights Act of 2015 is the only law in the United Kingdom; however, it is supplemented by the General Product Safety Regulations of 2005, the Consumer Protection from Unfair Trading Regulations of 2008, and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations of 2013.

(4) Definition of "Consumer"

In USA, there are varied definitions of 'consumer', but Dodd-Frank Wall Street Reform and Consumer Protection Act defines 'consumer' as an individual or an agent, or representative acting on behalf of an individual. Under Fair Credit Reporting Act, 'consumer' simply means an individual.

The U.K. Consumer Protection Act, 2019 defines a consumer as a natural person acting for purposes that are entirely or mostly outside of that person's trade, business, craft, or profession (section 2(7)). The concept deviates from the custom of encompassing all individuals, whether they are natural or artificial. The practice of removing business transactions outside the purview of consumer protection law is incorporated into the definition's latter section

In Australia, according to Australian Consumer Law, a person is a 'consumer' if he acquires goods or services that are priced at less than $40,000. A person is also a 'consumer' if he acquires goods or services that are priced at more than $40,000 but they are 'of a kind ordinarily acquired for personal, domestic or household use or consumption'

European Commission's Consumer Rights Directive states that definition of 'consumer' should cover natural persons who are acting outside their trade, business, craft, or profession.

(5) Enforcement Agencies for consumer protection

In the UK, Chapter 1 of Part 3 of the Consumer Rights Act, 2015 contains the enforcement provisions,
while Chapter 2 of Part 1 deals with the remedies available to consumers in the event that their statutory rights under a goods contract are not fulfilled. The UK has two main enforcement agencies: the Competition and Markets Authority, which is the highest authority in the country for regulating competition law, and Trading Standard Services, which enforces at the local level and occasionally expands to the regional or national level. Additionally, consumers can use the legal system to actively assert their rights.

In USA, various federal agencies enforce consumer protection law. These include Federal Trading Commission, Consumer Financial Protection Bureau, Food and Drug Administration, etc. Different state attorneys also bear the responsibility for investigation and enforcement of these laws. The advantage of this system is that they get specialised and adept at enforcing a particular sector given smaller area of focus.

Territory consumer protection agencies and the Australian Competition and Consumer Commission at the federal and state levels, respectively, are responsible for enforcing

Australia's consumer law. At the central level, the Commission bears the weight of all duties while guaranteeing a single authority for all subjects.

The majority of consumer protection laws in Japan are enforced by the Consumer Affairs Agency (CAA), a federal authority. Other specialist entities under other ministries are also in charge of executing particular legislation. For example, the Instalment Sales Act (for credit transactions, etc.) is governed by the Ministry of Economy, Trade, and Industry.

(6) Check on Quality of Goods and Services

Ensuring that the products or services offered in the market meet specific standards is the primary goal of consumer protection laws. Different laws address this in different ways to guarantee that a certain standard of quality is upheld and expected of the merchants; if this is not the case, the harmed customer may take specific action.

Under Chapter VI of the Consumer Protection Act of 2019, provisions for product responsibility were established in India, enabling claims for damages resulting from defective products. State and federal administrations differ in the United States. While the majority of products are typically governed by a Uniform Commercial Code, others, such as groceries and medications, are subject to central regulation. The administration at the central level is very strong in USA.

In Japan, there is Households Goods Quality Labelling Act, Food Labelling Act, etc. which set certain specific standards and respective redressal in case of breach.

Every transaction in Australia and the UK includes clearly defined standard universal terms. For instance, the concept of "consumer guarantees"—that is, specific conditions pertaining to the calibre of products and services that are automatically applicable to every supply made to a consumer—is found in Australian Consumer Law. In addition to setting a reasonable standard and providing restitution in the event of a breach, such a clear "guarantee" guarantees a particular degree of quality with every commodity and service that a consumer receives. As a result, suppliers are required to guarantee that the products are defect-free and suitable for their intended use.

In UK, the Consumer Rights Act (CRA) provides statutory protections which are deemed included in contracts, such asgoods must be of satisfactory quality[56] and they must be fit for their purpose[57]etc. Similarly, traders are required to provide certain information with regard to goods when introducing them for sale. The nature of provisions in UK seems to be clearly focussed on putting duties on traders rather than enforcing them as rights of consumers. This approach doesn't allow the traders to use irregular defences in court to avoid liability. The strict approach of Australia and UK with a singular central Act is admirable as it leaves little or no room for traders to escape liability.

Liability of E-Commerce Entities under The Consumer Protection Act, 2019

The Consumer Protection Act, 2019 has introduced specific provisions to regulate functioning of electronic service providers and to ensure protection of consumer rights on the e-commerce platform. The term 'e-commerce' has been defined under Section 2(16) of the Act which means '*buying or selling of goods or services including digital products over digital or electronic network'.* This broad definition includes different types of online retail services. E-commerce transactions are usually conducted through an online intermediary, such as Amazon, Flipkart etc. So, term 'electronic service providers' has been defined to include such intermediaries.[58]

[56] Section 9, UK Consumer Rights Act.

[57] Section 10, UK Consumer Rights Act.

[58] Section 2(17) – *electronic service provider means a person who provides technologies or processes to enable a*

The obligations that electronic service providers have to customers who use their platforms are outlined in the Consumer Protection Act and related regulations. According to Section 38 of the Act, the District Commission has the authority to request any electronic service provider to produce any records, documents, or information that would be needed as proof in order to resolve a pending consumer complaint. Under Sections 49 and 59 of the Act, respectively, the State Commission and National Commission are granted the same authority to carry out their original functions. Therefore, the Commissions created under the Act have the authority to order an electronic service provider to provide the necessary information in cases involving e-commerce or otherwise where the provider may have important documents, records, or information that could be relevant to a dispute. Non-compliance with such directions can invite penal sanctions, as the Commissions are granted the powers of a Civil Court under the Code of Civil procedure, 1908, *inter alia,* for the purposes of collection of evidence. The Central Government has also been empowered under Section 94 of the Act to take measures prescribed for the purposes of preventing unfair trade practices in e-commerce. Section 101 provides a list of subjects pertaining to which rules may be framed by Central Government, and the said list includes measures for prevention of unfair trade practices in e-commerce. In furtherance of the same, the Central Government has framed the Consumer Protection (E-Commerce) Rules, 2020.

E-Commerce Rules

Among other things, the Rules were created to combat unfair trading practices in the e-commerce industry by advancing Section 94 read with Section 101 of the Consumer Protection Act. If products and services are being offered in India, the Rules' applicability encompasses all e-commerce models and platforms that fall under its purview, both domestically and internationally. The following types of entities are defined under the Rules, along with their responsibilities:

1. ***E-Commerce entity*:** Includes any person operating or managing an online platform for e-commerce but does not include the sellers operating on a Marketplace E-Commerce entity.

2. *Marketplace E-commerce entity:* A company that offers an online marketplace to help buyers and sellers transact. Businesses such as Amazon, Flipkart, and others would be included in this definition. The definition of an e-commerce entity does not include sellers that operate on such platforms.

3. Inventory E-Commerce Entity: An organization that possesses a stock of products that it sells to clients directly via an internet platform. This also applies to companies that advertise and sell their own goods on their own website. Inventory E-Commerce firms are the ones who sell the goods that are sold on their online platform, whereas Marketplace E-Commerce entities offer a venue for interaction between buyers and sellers.

Conclusion

E-commerce players must comply with the rules to ensure transparency in e-commerce process and to ensure expeditious disposal of customers' grievances.However, following rules may require reconsideration:

1. Duties prescribed for ‘Marketplace E-Commerce Entity’ provides that such entities must comply with Section 79 of the IT Act and the Information Technology (Intermediaries Guidelines) Rules, 2011, to claim exemption from liability for any third-party content published on their platform. But the fact is that all E-Commerce Entities because of their mode and manner of operation fall into definition of ‘intermediary', as defined under the IT Act, and would have to

product seller to engage in advertising or selling of goods or services to a consumer and includes any online marketplace or online auction sites.

satisfy conditions of Section 79, in order to claim exemption. Hence, no need to make specific reference only qua Marketplace E-Commerce entities.

2. A specific time period for effecting refunds or returns for defective/spurious products ought to be specified in the Rules in order to prevent unnecessary delays on part of the e-commerce entities or sellers.

3. Schedule of grievance redressal system may be added to Rules to provide direction to e-commerce entities on the general structure which may be appointed for their internal grievance redressal mechanisms. The same would assist in streamlining such internal mechanisms and improving their effectiveness.

4. Appointment of a nodal officer to ensure compliance with the provisions of the CP Act and Rules has been mandated for all e-commerce entities. However, no provisions have been made for personal liability of nodal officer, in event of any breach of compliance. The appointment of a nodal officer may not provide its due benefit unless some personal liability is attached to such appointment.

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PRAGMATIC APPROACH TO LAW: A STUDY OF INDIAN EXPERIENCE

Dr. Manmeet Singh
Assistant Professor
Maharaja Agrasen School of Law, Maharaja Agrasen University, Baddi, Himachal Pradesh

Abstract:
The pragmatic approach to law emphasizes the practical application of legal principles to real-world situations rather than rigid adherence to abstract doctrines. This research explores the evolution and significance of pragmatism in the Indian legal system, focusing on how Indian courts, particularly the Supreme Court, have adopted a functional and result-oriented perspective in constitutional interpretation, public interest litigation, and social justice adjudication. The paper critically examines landmark judgments to trace how pragmatism has influenced judicial reasoning in balancing conflicting interests, accommodating social change, and fostering democratic values. It also evaluates the challenges posed by judicial overreach and inconsistency. Through a contextual analysis, the study highlights how pragmatism in Indian law has both enriched legal discourse and raised questions about predictability and judicial accountability.

Keywords: Pragmatic approach, Indian judiciary, judicial interpretation, social justice, legal realism, constitutional law, public interest litigation.

Introduction

Pragmatism is a philosophical tradition that began in the United States around 1870. Pragmatism rejects the idea that the function of thought is to describe, represent, or mirror reality.[1] Instead, pragmatists consider thought an instrument or tool for prediction, problem solving and action. Pragmatists contend that most philosophical topics—such as the nature of knowledge, language, concepts, meaning, belief, and science—are best viewed in terms of their practical uses and successes.[2]

Pragmatism is considered a process rather than a result, and the pragmatic approach attempts to validate all participatory variables in a solution to a moral problem. While those in line with Kant's categorical imperative see these problems in terms of their dualism, or "is/ought" problems, the pragmatists in line with the philosopher Kierkegaard discard this view altogether for one that reveals how issues and problems and components thereof are related to each other. In effect, there are no hierarchies involved in the pragmatic approach, nor categories in the development of the problem.[3]

[1]*William James (1909).* The Meaning of Truth. Retrieved *5 March* 2015.
[2]http://www.Pragmatism%20-%20Wikipedia,%20the%20free%20encyclopedia.html
[3]http://www.A%20Pragmatic%20Approach%20to%20Conflict%20Resolution_%20Benefits%20and%20Problems%20by%20Terri%20L.%20Kelly.html

Charles Sanders Peirce (and his pragmatic maxim) deserves much of the credit for pragmatism,[4] along with later twentieth-century contributors, William James and John Dewey.[5] Pragmatism enjoyed renewed attention after W. V. O. Quine and Wilfrid Sellars used a revised pragmatism to criticize logical positivism in the 1960s. Inspired by the work of Quine and Sellars, a brand of pragmatism known sometimes as neopragmatism gained influence through Richard Rorty, the most influential of the late twentieth-century pragmatists, along with Hilary Putnam and Robert Brandom. Contemporary pragmatism may be broadly divided into a strict analytic tradition and a "neo-classical" pragmatism (such as Susan Haack) that adheres to the work of Peirce, James, and Dewey.

The word *pragmatism* derives from Greek πρᾶγμα (*pragma*), "a thing, a fact", which comes from πράσσω (*prassō*), "to pass over, to practise, to achieve".[6] The word "Pragmatism" as a piece of technical terminology in philosophy refers to a specific set of associated philosophical views originating in the late twentieth century. However, the phrase is often confused with "pragmatism" in the context of politics (which refers to politics or diplomacy based primarily on practical considerations, rather than ideological notions) and with a non- technical use of "pragmatism" in ordinary contexts referring to dealing with matters in one's life realistically and in a way that is based on practical rather than abstract considerations.

Pragmatist or Pragmatism

The pragmatists are interested in the transformation of ethical character based on moral action on a holistic level. Pragmatism is considered a process rather than a result, and the pragmatic approach attempts to validate all participatory variables in a solution to a moral problem. While those in line with Kant's categorical imperative see these problems in terms of their dualism, or "is/ought" problems, the pragmatists in line with the philosopher Kierkegaard discard this view altogether for one that reveals how issues and problems and components thereof are related to each other. In effect, there are no hierarchies involved in the pragmatic approach, nor categories in the development of the problem. There is only the approach itself, holistically aimed. The task, then, is to find solutions that make the most sense in the simplest way possible. It is assumed that a solution can be found because everyone can reason and most do reason to get to the actions that they do, thus absolving all sides of the blame for a problem for the sake of reaching the solution. It is assumed that you can aim for the truth in a solution, but it is also assumed that an ultimate truth will never be reached, so that the ethic is centered in the aiming itself. In this view, each node of the relationship between components of this approach is regarded on equal basis with any other, and so in the process of reconciling these components a series of benefits and problems in the pragmatic approach can be speculated.[7]

Origin

Pragmatism as a philosophical movement began in the United States in the 1870s. Its direction was determined by The Metaphysical Club members Charles Sanders Peirce, William James, and Chauncey Wright, as well as John Dewey and George Herbert Mead.

The first use in print of the name *pragmatism* was in 1898 by James, who credited Peirce with coining the term during the early 1870s.[8] James

[4]Susan Haack*; Robert Edwin Lane (11 April 2006). Pragmatism, old & new: selected writings. Prometheus Books. pp. 18–67.* ISBN 978-1-59102-359-3.

[5]Biesta, G.J.J. &Burbules, N. (2003). Pragmatism and educational research. Lanham, MD: Rowman and Littlefield.

[6]Henry George Liddell, Robert Scott, A Greek-English Lexicon, on Perseus

[7]http://www.A%20Pragmatic%20Approach%20to%20Conflict%20Resolution_%20Benefits%20and%20Problems%20by%20Terri%20L.%20Kelly.html

[8]James, William (1898), "Philosophical Conceptions and Practical Results", delivered before the Philosophical Union of the University of California at Berkeley, August 26, 1898, and first printed in the University Chronicle 1, September 1898, pp. 287–310. Internet Archive Eprint on $_{p}$ 290;

regarded Peirce's 1877–8 "Illustrations of the Logic of Science" series (including "The Fixation of Belief", 1877 and especially "How to Make Our Ideas Clear", 1878) as the foundation of pragmatism.[9] Peirce in turn wrote in 1906[10] that Nicholas St. John Green had been instrumental by emphasizing the importance of applying Alexander Bain's definition of belief, which was "that upon which a man is prepared to act." Peirce wrote that "from this definition, pragmatism is scarce more than a corollary; so that I am disposed to think of him as the grandfather of pragmatism." John Shook has said, "*Chauncey Wright also deserves considerable credit, for as both Peirce and James recall, it was Wright who demanded a* phenomenalist *and* fallibilistempiricism *as an alternative to rationalistic speculation."*[11]

A Pragmatic Approach to Global Law

1. A Provocative Question

How should one think about global law? This is a provocative question because it presupposes an answer to another question, no less important than the first one: does global law even exist? Nothing is less certain. One may certainly speak about a globalization movement, which is not always all that global; one can deal with global finance and global economy, and bring up global issues, such as the struggle against global warming. But may one truly speak of a "global law", when law remains, at least on the surface and in official addresses, the prerogative of the State or, in the case of international law, of the States? Wouldn't it be wiser to talk about "the effects of globalization on the law" rather than to invoke a "global law"?

A provocative question also in the sense that it catalyses thought, reflection, inasmuch as by presupposing its object it allows one not only to consider – which is a prerequisite – the destructive effects of globalization on existing legal structures, both national and international, but also to discern and to conceptualise the new legal objects, often still unidentified or not properly identified, which emerge from transnational relations and the global society under construction.

These multiple and heterogeneous devices, that proliferate, often in anarchical ways, in the most globalized fields, challenge the understanding of lawyers by the extraordinary diversity of their origins, their shape or their effects and by the apparent randomness of their arrangement and their combinations. However, they account for the necessary horizon of the legal philosopher and of the legal theorist of the 21st century. We are compelled, and this is not the first time in our history, to rethink law at the scale of the whole world.

Methodological Issues

2. Field Studies and UNOs

The "Global Law" program is the central research program of the Perelman Centre for Legal Philosophy. The Centre was named after one of its founders, Chaïm Perelman, leader of the Brussels School of Jurisprudence[12], and has developed and applied his pragmatic approach to the current

I refer to Mr. Charles S. Peirce, with whose very existence as a philosopher I dare say many of you are unacquainted. He is one of the most original of contemporary thinkers; and the principle of practicalism or pragmatism, as he called it, when I first heard him enunciate it at Cambridge in the early [1870s] is the clue or compass by following which I find myself more and more confirmed in believing we may keep our feet upon the proper trail.

James credited Peirce again in 1906 lectures published in 1907 as Pragmatism: A New Name for Some Old Ways of Thinking, see Lecture 2, fourth paragraph.

[9]See James (1897), Will to Believe (which James dedicated to Peirce), see p. 124 and footnote via Google Books

[10]Peirce, C. S., "The Founding of Pragmatism", manuscript written 1906, published in The Hound & Horn: A Harvard Miscellany v. II, n. 3, April–June 1929, pp. 282–5, see 283–4, reprinted 1934 as "Historical Affinities and Genesis" in Collected Papers v. 5, paragraphs 11–13, see 12.

[11]Shook, John (undated), "The Metaphysical Club", the Pragmatism Cybrary.

[12] B. Frydman and M. Meyer (ed.), *Chaïm Perelman 1912-2012 : De la nouvelle rhétorique à la logiquejuridique*, Presses Universitaires de France, 2012, esp. B. Frydman, « Perelman et les juristes de l'Ecole de Bruxelles », pp. 229-246.

transformations of law induced by globalization. The Global Law Program started some fifteen years ago with the study of the consequences of globalization on law and governance, and progressively focused on the emergence of new forms of regulation in different sectors. Our pragmatic approach of legal phenomena has led us to study the consequences of globalization on law, not grounded in an existing theory, but rather by starting empirically from case studies and field observations. We conducted several field studies in areas particularly affected by globalization, such as the regulation of the Internet and of virtual worlds[13], the fight against climate change[14], but also corporate social responsibility[15], human rights transnational litigation[16], financial and accounting regulation, technical standards and indicators[17], as well as the European Union as a laboratory of global law.[18] In order to do that, we often started from specific cases (such as the Yahoo! case about the Internet, the Nike case about CSR, the Unocal-Total case about HR transnational litigation), which we studied in great depth, without limiting ourselves to a strict approach of positive law, but on the contrary by providing a 360-degree view on the case, and by taking into account data that are still too often considered irrelevant from a legal perspective: media reactions, strategies of actors, technical constraints, economical consequences, etc.

3. Conceptualizing Law without Legal system – The Micro – Legal approach

This pragmatic approach to global law implies some methodological choices. These choices must be explained for they have important consequences. Firstly, our study of global law is not a global study of law, at least not *a priori*. Economists usefully distinguish between two branches of their discipline, which also determine two points of view: macroeconomics and microeconomics. Such a distinction of level and of method also exists in other social sciences such as history and sociology. By analogy, we could also distinguish between a macro-legal and a micro-legal approach. The macro-legal approach gives priority to the study of the legal system of norms. The micro-legal approach determines how to decide cases and allocate rights. The concept of legal system, on the one hand, and the case method, on the other, are the two frames that history has given us to think about law. The case method was handed down to us by the Ancients, through Antiquity and the Middle Ages, while the concept of legal system was imposed by the Moderns, especially on the continent.[19] In continental Europe, the "legal system" was imposed in such a way that when we study law, we almost always give priority to the macro-legal approach, as if there were no other, at least no other scientifically valid approach. It is of course through this form that we consider national legal systems. Moreover, we have extrapolated this concept by applying it to supra-State levels. As

[13] B. Frydman and I. Rorive, « Regulating Internet Content Through Intermediaries in Europe and in the U.S.A. », *Zeitschrift für Rechtssoziologie*23 (2002), Heft 1, pp. 41-59. – B. Frydman, L. Hennebel and G. Lewkowicz, "Coregulation and the Rule of Law", in E. Brousseau, M. Marzouki., C. Meadel, (ed.), *Governance, Regulation and Powers on the Internet*, Cambridge University Press, 2012

[14] B. Frydman, « Coregulation : a Possible Model for Global Governance », *in* B. De Schutter and J. Pas eds., *About Globalisation, Views on the Trajectory of Mondialisation*, Brussels, VUB Brussels University Press, 2004, pp. 227-242.

[15] Th. Berns, P.F. Docquir, B. Frydman, L. Hennebel and G. Lewkowicz, *Responsabilités des entreprises et corégulation*, Bruylant, col. 'Penser le droit', 2007.

[16] B. Frydman and L. Hennebel, "Le contentieux transnational des droits de l'homme", *Revue Trimestrielle des droits de l'homme*, 2009, pp. 73-136.

[17] B. Frydman and A. Van Waeyenberge (ed.), *Gouverner par les normes : de Hume aux rankings et aux indicateurs*, Bruylant, col. 'Penser le droit', 2013 (forthcoming).

[18] D. Dogot and A. Van Waeyenberge, "L'Unioneuropéenne, laboratoire du droit global" in J.-Y. Cherot et B Frydman, *La science du droit dans la globalisation*, Bruylant, 2011, pp. 251-273. – A. Van Waeyenberge, *Les nouveaux instruments juridiques de la gouvernancecommunautaire*, 2013 (forthcoming).

[19] Concerning this question, I refer the reader to B. Frydman, *Le sens des lois. Histoire de l'interprétation et de la raison juridique*, Paris-Bruxelles, LGDJ-Bruylant, 3rd edition, 2011.

soon as 1963, the Court of Justice of the European Union asserted that "the Community constitutes a new legal order of international law."[20]

4. Methodological Nationalism

All the more so that the concept of legal system (or legal order) does not only have a logical aspect (an ordered and complete set of consistent rules), but also an important political aspect, whose relevance must be reassessed in a global perspective. The legal order is indeed very often understood and used as an instituted order established by an authority, better yet by a sovereign authority, typically a State. In this respect, the notion of "order" refers not only to a system, but also to a command imposed by the authority to its subjects under the treat of sanctions. Historically, the construction of a legal system and the assertion of a sovereign political order have been the two sides (knowledge and power) of the same royal coin.

The logical and political aspects of the legal order merge to form a simple and rather rigid equation: law = legal order = State. Thus for many philosophers, conceptualising global law (or "cosmopolitical law" to use another term) does not only imply thinking about a new world order, but also implies almost necessarily, even if aporetically, asking the question of the existence of a world State. Some, such as Hans Kelsen, regard the law and the State as synonyms and consider that there is no other law than the law created by the States, i.e. national legal orders and an international legal order, made up of the law that States create together.[21] We believe, for our part, that we must break off from this expression of what the German sociologist Ulrich Beck calls (well beyond law and legal thinking) the "methodological nationalism"[22], while other speak of "statocentrism."[23]

5. Ubi societasibi ius. –*The Law of the Global Civil Society*

We have thus got rid, quite expeditiously I am afraid, of the legal system and of legal sources in order to understand global law. But what should we replace them with? How should we characterise the global environment if not as a super-State nor as a legal system? If we refer to the prevailing tradition of modern political philosophy, we would be left to think of the global environment as a "state of nature". Here we are, back to Hobbes, who once described the international society of his times as a state of nature inhabited by Leviathans actually or potentially at war with one another.[24] No social contract links those Leviathans with one another. Hobbes thinks of the state of nature –to say it very briefly –as a lawless state where the right of each person knows no other limit than his power or the limit imposed by another's power. In Hobbes' state of nature, individuals are completely on their own and there is almost no society at all. However, some of his successors, especially in the jusnaturalist or liberal tradition, believed, as Locke did, that some kind of society might actually exist in the state of nature, in which individuals may claim and even enjoy natural rights, particularly the recognition of their property.[25] As the Romans said long ago :*ubi societasibi ius*. There is no human society without law (but there are human societies without a State). Moreover the great Hegel, who was neither liberal nor jusnaturalist and who thought of the State as the ultimate form of government, taught that a private law grounded in persons, ownership and contracts, necessarily precedes State's Law, logically if not

[20] CJEC 5 feb. 1963, van Gend & Loos (case 26/62). See also the classical and already critical paper of J. Combacau, « Le droit international :bric-à-bracousystème ? », in Le systèmejuridique, *Archives de Philosophie du Droit*, t. 31 (1986), pp. 85-105.

[21] H Kelsen, *Pure Theory of Law*, Berkeley, 1967.

[22] U. Beck, *Power in the Global Age,* Cambridge: Polity Press, 2005.

[23] G. Timsit, *Thèmes et systèmes de droit*, Paris, P.U.F., 1986, p. 34. - W.J. ACEVES, "Liberalism and International Legal Scholarship: The Pinochet Case and the Move Toward a Universal System of Transnational Law Litigation", 41 *Harv. Int'L.J.*, 129 (2000).

[24] Th. Hobbes, Leviathan or The Matter, Form and Power of a Common Wealth Ecclesiastical and Civil (1651).

[25] J. Locke, *Second Treatise of Government* (1690).

chronologically.[26] And one may observe the emergence of pre-political institutions, such as corporations and guilds, within this sphere of private law (civil and commercial law), before the emergence of public law.

6. Transnational human rights litigation[27]

Cases such as Yahoo! and Nike show that forum shopping is not only used by private actors – especially firms –to escape duties, taking advantage of the favorable conditions created by globalisation. Indeed, the same technique is used by other players, notably NGOs, to subject those same firms to rules from which, it seemed, it was possible to escape, under the traditional rules of international private and in particular the territoriality of police laws.

This opportunistic use of forum shopping for the purpose of implementing international standards of justice or to penalize the violation of fundamental rights is a very distinct hallmark of transnational human rights litigation. This type of litigation was highlighted in Europe with the Pinochet case. Pinochet was blocked in England at the request of Spanish and Belgian investigating judges, who were acting on the appeal of Chilean victims of the dictator, even though an amnesty law protected him in that country. That type of legal action is more and more frequently used to take proceedings against firms that are allegedly guilty of violations of human rights or of humanitarian law. For example, two large petrol companies –the French "Total" and the American "Unocal" –were successively confronted with proceedings in the US, in France and in Belgium. Those firms were charged for aiding and abetting crimes allegedly committed by the Burmese army (which was, on the other hand, immunised from proceedings on account of the absolute immunity of jurisdiction of States), as part of the exploitation of a gigantic gas field in Burma.[28] In that case, the NGOs representing the victims used every procedural means available, notably active and passive personal jurisdiction, but also awaking an old law of 1789 in the US (the Alien Tort Claim Act), or even the universal jurisdiction statute enacted in Belgium (who for a while thought it good to offer in this global context "judicial hospitality"[29] to the whole world, before having to back down, under the pressure of the US). The case was in part political. It aimed to denounce to the tribunal of public opinion the crimes of the Burmese regime and to blame the western gas companies for their shameful complicity. At the same time, the case aimed to get a court declaring Unocal or Total legally responsible for their behaviour to the victims. Although the case collapsed in Belgium after an epic battle that pitted the two highest courts of the country against each other, it resulted, in the US and in France, in a compromise allocating significant compensation to the victims.

A Pragmatic Approach to Legal Regulation

The *Legal Profession Act (2004)* (the Act) regulates the legal profession in Victoria, Australia. Regulation of the legal profession is integral to the promotion of appropriate standards of conduct and the protection of the interests of consumers of legal services.[30] In the current climate of rights-oriented consumerism, regulation must also continue to evolve to reflect the changing expectations of consumers and

[26] G.W.F. Hegel, *Elements of the Philosophy of Right* (1820).

[27] For a more complete discussion of the questions summarized in this paragraph and the precise references it contains, reference may be made to our article : B. Frydman et L. Hennebel, « Le contentieux transnational des droits de l'homme : une perspective stratégique », *Revue trimestrielle des droits de l'homme*, 2009, pp. 73-136.

[28] B. Frydman, « L'affaire Total et sesenjeux », *in Liber amicorum Paul Martens. L'humanisme dans la résolution des conflits. Utopieouréalité ?*, Larcier, 2007, pp. 301-321.

[29] B. Frydman, « L'hospitalitéjudiciaire » *in Justice et cosmopolitisme*, proceedings of the international conference of the Institut des Hautes Etudes sur la Justice, published on the website of the Institut des Hautes Etudes sur la Justice (www.ihej.org/ressources).

[30] *Legal Profession Act (2004)* (Vic).

culture in the legal profession.[31] It also needs the application of the kind of *practical wisdom* Aristotle and Barry Schwartz refer to that involves improvising to achieve the right aims.

There are many competing demands in the task of legal regulation. Lawyers expect regulation to be reasonable and sensible in light of what is required to maintain the high standards they expect of their own profession. Consumers of legal services expect from the profession a high level of trustworthiness and competent, valuable service, and they want their grievances redressed where they believe these standards have not been met. Society as a whole recognises the importance of the integrity of the legal profession, and expects the regulator to maintain the standards. Regulation of the profession is therefore a complex task; a living and dynamic activity.

2009: A Regulatory In Crisis

Towards the end of 2009, the Legal Services Commissioner (LSC) was a regulator in crisis. Since the commencement of the Act in December 2005, the LSC had been the body primarily responsible for handling complaints about the legal profession. The crisis at hand was focussed on this important task.

After receiving a number of complaints from lawyers and complainants and conducting follow up investigations, the Victorian Ombudsman conducted a review of the complaint handling processes and procedures of the LSC.[32] The review identified a number of systemic problems arising from the management of complaints, which included

- delay in investigating and finalising complaints,
- poor practice in dealing with minor service-related complaints,
- poor investigatory techniques, including failure to use investigation plans, poor evidence gathering, and failure to substantiate and verify lawyers' explanations,
- denial of procedural fairness to parties, through an opaque and poorly explained process; and
- inadequate documentation and explanation of decisions.

The Ombudsman expressed concern at the low number of substantive prosecutions of lawyers for serious misconduct, commenting that "The lack of results suggests that the current practices of the LSC are inadequate in order for it to fulfil its statutory obligations. The LSC is at risk (if the view is not already held) of being seen as a 'toothless tiger' by both the legal profession and complainants alike. The end result is that the legal profession is under regulated and consumer confidence in the legal profession undermined."[33]

The Ombudsman made several recommendations to the LSC for improving complaint handling processes and procedures to ensure that complaints and disputes were dealt with in a timely and effective manner.[34] Recommendations, which were subsequently implemented, included the thoughtful use of investigation plans; ensuring staff undertake relevant training; and considering more appropriate response to what were essentially not disciplinary matters but customer service complaints.

Pragmatism and Indian Experience

Ground Water Management

India is the largest groundwater user in the world, with an estimated usage of around 230 cubic kilometres per year, more than a quarter of the global total. With more than 60 percent of irrigated

[31]David Edmonds, Chair of the Legal Services Board UK, *Training the lawyers of the future – a regulator's view* (speech delivered at The Lord Upjohn Lecture 2010, Inner Temple, 19 November 2010).

[32] Ombudsman Victoria Annual Report 2009.

[33] Ombudsman Victoria Investigation Report into Legal Services Commissioner's Complaint Handling Processes (2008), p54

[34] Ombudsman Victoria Annual Report 2009, p, 23.

agriculture and 85 percent of drinking water supplies dependent on it, groundwater is a vital resource for rural areas in India. Reliance of urban and industrial waste supplies on groundwater is also becoming increasingly significant in India. Through the construction of millions of private wells, there has been a phenomenal growth in the exploitation of groundwater in the last five decades.[35]

A number of factors have encouraged the remarkable expansion of groundwater use:

- Poor service delivery from public water supply systems has prompted many farmers, and rural and urban households, to turn to their own private supply for irrigation and for drinking water.
- New pump technologies meant that even farmers and households with very modest incomes could afford to sink and operate their own tubewell.
- The flexibility and timeliness of groundwater supply presented an attractive alternative to the technically and institutionally less responsive provision of surface water through public systems.
- Government electricity subsidies have shielded farmers from the full cost of pumping, creating a modality of groundwater use that has proved very difficult to change.

This era of seemingly endless reliance on groundwater for both drinking water and irrigation purposes is now approaching its limit as an increasing number of aquifers reach unsustainable levels of exploitation, and a 2004 nationwide assessment found 29 percent of groundwater blocks to be in the semi-critical, critical, or overexploited categories, with the situation deteriorating rapidly.[36]

Overexploitation of groundwater and management approaches

"Overexploitation" of an aquifer is a term applied to a physically unsustainable situation in which the extraction of groundwater exceeds replenishment (recharge) within a given area over a given period of time. Such a situation is now occurring in many aquifers throughout India. While the definition of overexploitation may appear simple, the sheer complexity of physical, environmental, socioeconomic, and other factors related to groundwater abstraction makes it notoriously difficult to understand the nature of the problem and devise effective solutions. Given that proviso, some broad categories of interventions can be identified:

- **Demand-side measures,** which aim to reduce consumptive groundwater use, for example through an increase in water tariffs in urban settings, or reducing crop water requirements and non beneficial evapotranspiration from fields in agricultural settings
- **Conjunctive use,** where savings are made through better alignment of surface water and groundwater resources in a specific area
- **Groundwater recharge enhancement,** whereby physical structures are built toretain runoff and encourage infiltration togroundwater

The hard-rock and alluvial aquifers differ considerably in their physical and socioeconomic profiles, and require very different sets of management solutions, at both macro and micro levels.

Hard-rock terrains of rural peninsular India: Characteristics and management options

In a sustainable scenario, dry season depletion of these low-storage aquifers, mainly for irrigation, is

[35] Deep Wells and Prudence: Towards Pragmatic Action for Addressing Ground water Overexploitation in India, The World Bank, p ix

[36] ibid

adequate compensated by recharge during the monsoonal rains. However, a rapid growth in the number of borewells since 1980 has led to a steady decline in water tables, resulting in a large increase in the cost of pumping a given volume of water, from which farmers have largely been shielded by flat rate, subsidized electricity tariffs.

Groundwater recharge enhancement has been promoted as a means of aiding recovery of water tables. The largest potential for recharge exists in alluvial settings, where there is abundant excess runoff as well groundwater storage capacity required for recharge. Most of the country's overexploited groundwater blocks lie in hard-rock settings, where recharge can provide only limited relief, and may be best employed as a valuable adjunct to other measures, such as rainwater harvesting.

Indian Foreign Policy: A Pragmatic Makeover?

PRESIDENT OBAMA'S visit to New Delhi as guest of honour for the Republic Day celebrations on 26 January 2015 has been notable beyond its significant symbolism. It was marked by the issuing of a joint statement entitled the "India-US Joint Strategic Vision for the Asia-Pacific and Indian Ocean Region". That document was the focus of the Chinese media's coverage of the visit.

Among other things it spoke about the need to ensure "freedom of navigation and over flight … especially in the South China Sea". The inclusion of this issue in the document was a bold departure from India's past reticence to name names and take a stand on critical international issues.

Conclusion

The norms and surveillance apparatus that arise resemble legal instruments by the regulatory function they are assigned to and which they perform more or less effectively, but radically differ from those instruments by the forms and means used. Those norms and devices are still very little known and very poorly understood. There is no doubt that the work and research that I have attempted to summarize here are still in their early stages. For a long time, we will stay confined to feeling our way along the various field studies of global law before being able to understand its meaning and to control its mechanisms.

Nevertheless, these prolegomena are encouraging. Indeed, in this paper we have only managed to give a slight idea of the apparatus emerging in areas of all sorts. Yet their similarity allows some hope to find the common pattern to which those various instruments belong. One may start to discern the still vague prospect of an elementary theory of global law. That theory will not rest upon an exhaustive inventory of its sources, nor on the construction of a coherent and complete system of rules. Rather, it will rest on the description of a finite number of simple elements, the combination of which would enable us to account for the large number of seemingly anarchic, incoherent and arbitrary arrangements that reality confronts us with.

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THE BEST WARNING SYSTEM: WHISTLEBLOWING AS A CONTINGENCY PLAN FOR CENSORSHIP DURING COVID-19

Mohd Aqib Aslam
Ph.D Research Scholar, Department of Law, University of Jammu

ABSTRACT
In the COVID-19 pandemic, whistleblowers have emerged as vital watchdogs, halting the control and suppression of information. Many governments have deliberately misled the people, promoted false beliefs, or neglected to provide timely or accurate answers to questions. Devoted public interest activists are resisting this oppression. The first whistleblowers in China to reveal that a new pandemic was probably starting were Drs. Fen and Wenliang. Since then, innumerable other whistleblowers worldwide have reported on the virus's growth, a shortage of medical supplies, and other facts of public concern. This study looks at relevant cases of whistle blowing in China, the US, Europe, and India and finds that many of them are initially silenced, face disciplinary measures, and eventually lose their jobs. On the other side, during the COVID-19 pandemic, whistle blowing has raised public awareness of institutional reporting systems' shortcomings and that whistleblowers are in a good position to spot risk early. Finally, during COVID-19, whistle blowing has become the "remedy" against censorship and is also becoming less troublesome as an openness approach.

Keywords: Whistleblowers, Watchdogs, Covid-19, Censorship.

I. Introduction

A person who exposes any form of unlawful, unethical, or ethically incorrect action within an enterprise, whether private or public is known as a "Whistleblower".[1]In 1985, *Maria P. Miceli* and *Janet P. Near* described whistle blowing, "the disclosure by organisation members, former members, or current members, of unlawful, immoral, or legitimate actions under the control of their employers to persons or organisations that may be able to affect action."[2] Whistle-blowing according to *David Banisar*, is a method of promoting accountability by allowing anyone to disclose information about wrongdoing but also safeguarding that person from all types of punishment.[3] Whistleblowing is described by the International Labour Organization as workers or previous workers revealing unlawful, unequal, harmful, or unprincipled conduct by employer.[4]

[1] Nimisha Bhargava and Dr. Mani K. Madala, "An Overview of Whistleblowing: Indian Perspective" 4 *International Journal of Innovative Research in Science, Engineering and Technology* 337 (2015).

[2] Maria P. Miceli and Janet P. Near, "Effective Whistleblowing" 20 *The Academy of Management Review* 680 (1995).

[3] David Banisar, "Whistleblowing: International Standards and Developments Corruption and Transparency: Debating the Frontiers between State, Market, and Society" *World-Bank, Institute for Social Research, UNAM* (February 2011) *available at*https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753180(last visited on January 2, 2022).

[4] International Labour Organization Thesaurus (2005) *available at*https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-

Whistleblowing is described in Article 33 of the United Nations Convention against Corruption as "any individual who communicates any facts concerning offences established by this Convention to the competent authorities in good faith and on reasonable grounds."[5]

II. In A Post-Factual World: Pandemic

What measures might governments take to combat such a pandemic in a "post-factual" world? Many have deceived the public, propagated false beliefs, or failed to disclose information or have done so late. Transparency has been poorly promoted by leaders who are typically disdainful of the truth and facts. As other governments and institutions attempt to control the narrative around the pandemic's birth and spread, information censorship is more often the root cause than error or miscalculation. Whistleblowers like Drs. Li Wenliang and Ai Fen in China, along with a number of other (medical) workers worldwide, were instrumental in revealing information during COVID-19. Whistleblowers often commented on public-interest topics like the virus's spread, the lack of adequate medical equipment, and other difficulties in their workplaces, through civil organizations, and in traditional and social media.

This study examines the major cases of whistleblowing in China, the United States, and Europe. The author includes data through newspapers, news reports and reports from organizations that engage with whistleblowers, and, when possible, official government papers to map these cases. Several whistleblowers are initially blocked and subjected to disciplinary sanctions or even dismissal, according to the research, despite significant distinctions in censorship and information management between China and the United States and Europe. While retaliation against whistleblowers is nothing new, the COVID-19 pandemic has influenced public sentiment upon that desirability of whistleblowers and it has mobilised civil society to act like a serious watchdog on government suppression of whistleblowers around the world. The study concludes how censorship is being addressed by a few of tenacious public interest advocates who are confronting information control and exposing key facts concerning the COVID-19 pandemic.

III. Real News and False Information: Censorship and Chinese Anti-Whistleblower Law

"I regret not yelling at the top of my lungs more often back then."

Dr. Ai Fen is a neurologist, Wuhan Central Hospital.[6]

Dr. Li Wenliang, a medical doctor, made a message to a social media chat group in December 2019 regarding certain patients showing signs of a new ailment comparable to Severe Acute Respiratory Syndrome (SARS). His correspondence with his coworkers was quickly picked up by the local authorities. Dr. Wenliang was arrested on 3 January 2020 for "spreading false rumours" and was compelled to signing a policeman document admitting to seriously disrupting social order.[7]Article 41 of the Chinese Constitution guarantees citizens the "right to criticise but instead suggest things to any state organ or functionary," as well as the "right to file complaints and charges against, or exposes of,

safety-and-health/lang--en/index.htm (Last visited on January 3, 2022).

[5] United Nations Convention Against Corruption 2005, Article 33, *available at*https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf (last visited onJanuary 4, 2022).

[6]As quoted in Steven Lee Myers, '*China Created a Fail-Safe System to Track Contagions. It Failed*', The New York Times, 29 March 2020 *Available at*https://www.nytimes.com/2020/03/29/world/asia/coronavirus-china.html(last visited on January 5, 2022).

[7]Helen Davidson, '*Chinese inquiry exonerates coronavirus whistleblower doctor*', The Guardian, 20 March 2020 *Available at*https://www.theguardian.com/world/2020/mar/20/chinese-inquiry-exonerates-coronavirus-whistleblower-doctor-li-wenliang(last visited on January 6, 2022).

each and every state organ or functionary for breaking the law or failing to perform their duties." However, it is illegal to fabricate or falsify information for such purposes of libel or frame-up. As a result, it is critical to determine whether a report can be classified as a rumour during the reporting (process). Although several statutes forbid spreading rumours, Chinese law does not specify what constitutes a rumour.[8]Rather than upsetting social order, Dr. Wenliang's efforts to notify his colleagues and then the general public were critical in undermining information repression and control.This type of disruption is necessary for public knowledge to emerge, and such insider disclosure is required for accountability purposes.Dr. Wenliang was not the only one who raised the alarm about the possibility of a new pandemic, because he was not alone.[9] On the same day as Dr. Wenliang's chat group post, another medical practitioner, Dr. Ai Fen, informed to the hospital's health protection and infection departments that she had seen a test sheet citing SARS symptoms.[10] Hospitals, on the other hand, sometimes default to local health authorities when it comes to reporting infections, ostensibly to avoid shocking and embarrassing local officials. The mayor of Wuhan publicly agreed that the virus discovery should have been made public sooner, but that in his capacity as mayor, he could only disseminate it after gaining permission from the appropriate authorities.[11]

COVID-19 has re-ignited the issue in China about whistleblower protection, resulting in a broader public debate about just the significance of whistleblowers. The restrictions of information concerning the pandemic and government countermeasures are reminiscent of Shuping Wang's whistleblowing in the 1990s, which exposed China's mismanagement of HIV and hepatitis epidemics.[12]However, unlike in the past, public opinion on the significance of the whistleblower is altering. In China, a whistleblower is regarded as an enforcer of government regulations.[13]

Whistleblower protection is currently available in China in bits and pieces, including provisions in criminal law, labour law, workplace safety, foods and pharmaceuticals, product quality, securities, and financial industries. The purpose of the strategy is really to inspire and protect insiders who have actual inner information to come forward and aid the government in exercising its regulatory tasks, says a Chinese law expert. Whistleblowing is seen as a social control

[8] E.g. Article 25 of the Law on Public Security Administration Punishments; Article 105 and Article 221 Criminal Law; Article 229 can be up to 7 years in prison. See Wang Junqi, *Truth, Rumors, and the 'whistleblower' System*, 19 February 2020 (Original source in Chinese, *Available at*https://legrandcontinent-eu.translate.goog/fr/2020/06/28/red-la-verite-tenue-a-distance-lalerte-comme-remede-a-la-censure-lors-de-la-pandemie/?_x_tr_sl=fr&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc(last visited on January 7, 2022).

[9]For a view that Dr Wenliang cannot be categorized as a whistleblower as he did not follow internal reporting procedures see "Why is Li Wenliang not a "whistleblower"?', 9 February 2020 (Original source Chinese, *Available at*https://www-jintiankansha-me.translate.goog/t/Neisunzuil?_x_tr_sch=http&_x_tr_sl=fr&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc (last visited on January 7, 2022).

[10] Gong Jingqi, Whistleblower, 10 March 2020, original in Chinese, *Available at* in archived form only: http://archive.is/OLdHs(last visited on January 8, 2022).

[11] Al Jazeera, '*China: Truth in a Pandemic*', 10 April 2020, *Available At*https://bit.ly/3d0XSSv (last visited on January 8, 2022). Chinese law requires the disclosure of information with authorisation as provided in Article 19 of the "Regulations on the Disclosure of Government Information".

[12] BBC News, *Shuping Wang: Whistleblower who exposed HIV scandal in China dies*, 26 September 2020, *Available at*https://www.bbc.com/news/world-asia-49834904 (last visited on January 10, 2022).

[13] Li Huihui, 'Reflections on the 'Whistleblower' System', China Law Insight, King & Woods Mallesons, 18 October 2019; original source in Chinese, *Available at*https://bit.ly/2USVQML(last visited on January 11, 2022).

technique by the Chinese government, particularly for regulating official corruption.[14]

The COVID-19 whistleblowers in China, on the other hand, do not match this limited definition of a whistleblower as a government agent enforcing regulations. Rather, they are emphasising the role of a whistleblower that raises an alarm in the public interest, even when the government strives to suppress or control the circulation of such information. This is demonstrated by Dr. Wenliang's instance. When he died of Covid-19 in February 2020, it sparked widespread public outrage, with many citizens openly calling for freedom of speech on social media, resulting in nearly two million views that were later censored, and the phrase "Wuhan government owes Dr Li Wenliang an apology" receiving tens of thousands of views before being removed.[15] As a result, Dr. Wenliang is viewed as a whistleblower who attempted to set off an alarm in the public interest but was silenced rather than encouraged by the government in China.

This implies that the public's desire to know may conflict with the government's efforts to keep such knowledge hidden. The COVID-19 pandemic has brought the significance of whistleblowers as public interest voices and a kind of freedom of expression to the fore in China. It remains to be seen whether such a viewpoint can be held, let alone translated into law.

IV. In The United States And Europe, Censorship And Silencing Of Whistleblowers

While the implications of suppressing and controlling information in China are severe, employees all around the world, particularly medical workers on the front lines of the COVID-19 struggle, have been pressured to remain silent by governments and authorities. According to The New York Times:

"In New York City, the epicentre of the crisis in the United States, every major private hospital system, as well as several public institutions, has sent letters in recent weeks warning employees not to speak with the media."[16]

Workers have faced disciplinary penalties and even dismissals after raising concerns about their working conditions, in addition to being restricted in their ability to speak out about the COVID-19 pandemic. The Government Accountability Project, Washington, D.C. based whistleblower protection and advocacy organisation, has documented multiple incidents of whistleblowers being dismissed for speaking out. For example, a Seattle emergency department physician was sacked after giving a newspaper interview about insufficient protective equipment and testing, while a Chicago nurse was fired after requesting better equipment in emails with her coworkers.[17]

The scenario has been identical on the other side of the Atlantic. In the United Kingdom, medical professionals working for the National Health Service have been pressured not to speak out, with the media reporting that tactics used to silence staff include "threatening emails, the prospect of disciplinary punishment, and some people being sent home from work."[18]

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[14] Ting Gong 'Whistleblowing: What does it mean in China?'23(11) International Journal of Public Administration, 1899-1923 (2000).

[15] Verna Yu, 'Hero who told the truth: Chinese rage over coronavirus death of whistleblower doctor', The Guardian, 7 February 2020, *Available at*https://bit.ly/2KP3O4V (last visited on January 12, 2022).

[16] Noam Scheiber and Brian M. Rosenthal, 'Nurses and Doctors Speaking Out on Safety Now Risk Their Job', *The New York Times*, 9 April 2020, *Available at*https://nyti.ms/3aQwJjN (last visited on January 14, 2022).

[17] Samantha Feinstein, 'COVID-19: The Largest Attack on Whistleblowers in the World', *Government Accountability Project*, 8 April 2020, *Available at*https://bit.ly/3bTgX98 (last visited on January 15, 2022).

[18] Sarah Johnson, 'NHS staff forbidden from speaking out publically about coronavirus', *The Guardian*, 9 April 2020,

Even more severe pressures have been recorded in European Union countries where the rule of law had weakened before COVID-19. A healthcare worker in Poland, for example, was sacked by the hospital director after utilising social media to inform about missing masks and equipment.[19]The Polish Ombudsman responded to the incident by writing to the Ministry of Health, requesting that the decision to terminate the health worker be overturned and reminding the Ministry of the constitutional freedoms and rights to freedom of expression in Poland.[20]The problem is really not unique to one doctor, but it appears to be spreading, with medical personnel being asked to meet with management and doctors being forbidden from discussing their work or COVID-19-related issues with journalists directly.[21]

Hungary is an even more extreme instance, as blowing the whistle is impossible due to regulations restricting freedom of expression that are specifically targeted at journalists, including a five-year prison sentence for false reporting.[22]

Serbia, an EU candidate state, has also been accused of putting pressure on whistleblowers and restricting freedom of speech. A whistleblower, for example, tried to expose the fact that perhaps the Union of Workers is compensating for masks that medical personnel should wear.[23]In another example, a local TV crew member was detained following examining a report from a whistleblower that perhaps the reporter did not follow COVID-19 preventative health precautions when he visited City Hall.[24]

In the face of pressure and dismissals of whistleblowers, as well as the potential imprisonment of journalists who help bring the facts to the public's attention, more than 95 civil society organisations from across Europe and the world have issued a statement calling for whistleblower protection and stating that they will continue to monitor and expose whistleblower censorship.[25]

V. COVID-19 And Whistleblowers Act As Watchdogs

During the COVID-19 epidemic, whistleblowers served as watchdogs, demonstrating the flaws in institutional reporting systems as well as the specific significance of whistleblowing in disclosing risk at an early stage. During the COVID-19 epidemic, there was a systemic lack of transparency and information-sharing failures. Government and authority censorship of information suggests a preference for putting reputational interests ahead of tackling critical problems like medical equipment shortages and worker safety, particularly for medical experts. Governments can only control the narrative and public opinion in the near run through censorship. Maintaining transparency is not merely a checklist item for good governance when dealing with a

*Available at*https://bit.ly/3bUjXCc (last visited on January 15, 2022).

[19] Angelika Piton, 'The Hospital director fired the midwife because she alerted on Facebook that masks and equipment were missing', *Wyborcza.pl*, 24 March 2020, Original source in Polish, *Available at*https://bit.ly/3d27Fru (last visited on January 16, 2022).

[20] Letter by the Ombudsman to the Minister of Health, *Available at*https://bit.ly/2z3n4cc (last visited on January 16, 2022).

[21] Karolina Nowakowska, 'Doctors are silent about coronavirus. Doctors silence medics', *Gazeta Prawna*, 26 March 2020, Original source in Polish, *Available at*https://bit.ly/3f88aCo (last visited on January 16, 2022).

[22] European Federation of Journalists, COVID-19: Journalists threatened with imprisonment in Hungary, 23 March 2020, *Available at*https://bit.ly/2z1iBqw (last visited on January 16, 2022).

[23] A.S. and M.J., 'Union charges employees with protective masks, including an administrative ban', *Južne Vesti*, 30 March 2020, Original source in Serbian, *Available at*https://bit.ly/2VQpKDe (last visited on January 17, 2022).

[24] KTV Zrenjanin: Our team arrested on a false accusation that they did not disinfect', *N1*, 26 March 2020, Original source in Serbian, *Available at*https://bit.ly/2VWBLap (last visited on January 18, 2022).

[25] The Good Lobby, Coalition to Make Whistleblowing Safe During COVID-19 and Beyond, 6 April 2020, *Available at*https://bit.ly/2KOccSl (last visited on January 18, 2022).

catastrophe like COVID-19; it may actually save lives.

VI. Conclusion

Whistleblowers are filling the transparency vacuum and have become an important watchdog in ensuring that governments manage the pandemic properly. The cases reviewed in this study reveal that the goal of these whistleblowers was to uncover major flaws or a lack of resources in the health-care system so that they might be corrected as soon as feasible. Simultaneously, whistleblowers have been pressured to remain silent, and in cases when they have spoken up, they have been reprimanded or terminated. Journalists who attempted to disclose their tales have been threatened with incarceration in severe circumstances.Such efforts to limit freedom of speech have energised civilized society to mobilise globally in support of long-term legislative solutions and whistleblower protections. Finally, whistleblowing as a means of accessibility is not only becoming less problematic, but it has also emerged as theremedy against censorship during COVID-19.

VII. Suggestions

1. Make a policy for whistleblowers, publicise it, and encourage people to blow the whistle.
2. Communication about retaliation bans for whistleblowing activities is emphasised.
3. The message of whistleblower incorporation must travel from top to bottom, from top management to entry-level employees even in public domain.
4. There should be a commitment to putting in place a whistleblower programs, statutes and strict laws for the protection of whistleblowers.
5. If an inappropriate act occurs, it must be thoroughly investigated using whistleblowers required necessities.

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JUDICIAL ACTIVISM AND REFUGEE RIGHTS IN INDIA: A CONSTITUTIONAL PERSPECTIVE

Dr. Tanu Bhardwaj
Assistant Professor, Parul Institute of Law Parul University

Abstract
The refugee crisis in India, though addressed through ad hoc executive decisions, lacks a comprehensive statutory framework. In the absence of formal accession to the 1951 Refugee Convention and its 1967 Protocol, the Indian judiciary has emerged as a critical actor in safeguarding refugee rights. This paper explores the dynamic role played by Indian courts in interpreting constitutional protections for refugees, especiallythroughArticles141 and 21 of the Indian Constitution. Drawing on key Supreme Court judgments—including the Chakma, Chakraborty, and Sarbananda Sonowal cases—this study illustrates how judicial reasoning incorporates international human rights norms and the principle of non refoulement into domestic jurisprudence. Using doctrinal and comparative methodologies, the paper assesses judicial activism, the tensions between national security and humanitarian protection, and the emerging legal architecture in refugee jurisprudence. Visuals are included to depict refugee demographics, court decision impacts, and legal timelines. This paper argues for a national refugee law, grounded in constitutional morality and judicial precedent, to ensure consistency, transparency, and justice for all displaced persons.

Keywords: Refugee Protection, Indian Judiciary, Constitutional Rights, Non-refoulement, Human Rights, Refugee Jurisprudence

1. INTRODUCTION

Although refugees have existed since time immemorial, refugee law is a relatively new branch of international law. The earliest manifestations of international concern for refugees can be traced back to the immediate aftermath of the First World War, when the League of Nations created the office of the High Commissioner for Refugees which was responsible for defining the status of refugees and providing them with assistance. However, it was not until after the devastation of the Second World War that the international community came together to create a permanent and comprehensive legal regime for the protection of refugees. In 1950, the present-day office of the High Commissioner for Refugees (UNHCR) was created by the United Nations General Assembly by Resolution 428 (V) and began its operation on 1 January 1951. Its mandate was to 'provide international protection' to refugees and to seek 'permanent solutions' to the problems of refugees. The year 1951 also saw the drafting of the convention relating to the status of refugees. A protocol to amend certain provisions of the 1951 Convention entered into force on 4 October 1967'.

Development of the refugee law has its foundation on the events taking place in the Western countries. It evolved as are action to the erection of immigrational walls in Europe, commencing in

the later part of the 19th century. Refugee law is not about facilitating migration. The global refugee crisis has evolved into one of the most pressing humanitarian challenges of the 21st century. According to the United Nations High Commissioner for Refugees (UNHCR), over 120 million people worldwide are forcibly displaced, with nearly 43 million classified as refugees, asylum-seekers, or stateless individuals. International law, particularly the 1951 Refugee Convention and its 1967 Protocol, forms the cornerstone of the legal framework for refugee protection. Despite this framework, implementation varies drastically across regions due to differing domestic legal systems, geopolitical interests, and levels of judicial independence. In this fragmented landscape, the **Judiciary has emerged as a pivotal force in protecting refugees**, especially where legislative or executive responses fall short. Internationally, courts have played a vital role in upholding refugee rights by interpreting constitutional guarantees, enforcing international obligations, and restraining arbitrary executive action.

In **the United States**, the judiciary has intervened in cases challenging executive orders that sought to ban refugees and asylum seekers, emphasizing the role of **due process and equal protection** under the U.S. Constitution. Similarly, in **Canada**, the Supreme Court has held that refugee claimants are entitled to procedural fairness and protection under the Canadian Charter of Rights and Freedoms. In **Europe**, the **European Court of Human Rights** and national constitutional courts have reinforced the inviolability of refugee rights, often interpreting Articles 3 and 8 of the European Convention on Human Rights to protect against inhumane treatment and family separation.

Its goal is to deliver safety for the duration of a serious risk, to ensure a life in dignity for refugee until and unless they can safely return to their homes."[1] So, the international refugee law should be understood as a system of human rights protection, by which the international community agrees to act as surrogate guarantor of the dignity of persons compelled to leave their own country.[1] So the concept of refugee protection is itself inseparable from the notion of human rights. Thus, the thrust of refugee law is to define and protect the rights of refugees.

2. RESEARCH METHODOLOGY

This research is primarily doctrinal and analytical in nature. A qualitative approach has been adopted to examine judicial pronouncements, constitutional provisions, and international legal instruments relevant to refugee protection in India. The study relies on primary sources such as judgments of the Supreme Court of India, constitutional texts, and statutory frame works including the Foreigners Act, 1946, and secondary sources such as journal articles, reports by UNHCR and the NHRC, academic commentaries, and legal treatises.

The research employs the comparative legal method to juxtapose India's approach with international standards, particularly focusing on the 1951 Refugee Convention, the 1967 Protocol, and customary international law principles such as *non-refoulement*. Doctrinal analysis enables a close reading of landmark decisions such as *National Human Rights Commission v. State of Arunachal Pradesh*, *Sarbananda Sonowal v. Union of India*, and others.

A case law-centric methodology has been utilized to assess how judicial interpretation has evolved over time and contributed to the construction of an implicit refugee jurisprudence with in the Indian legal system. In addition, descriptive and critical techniques have been applied to discuss the legal

[1]Prof. James Hathaway, "Crisis in International Refugee Law", in "New Delhi Workshop on International Refugee Law, 20-21 February, 1998, Indian Journal of International Law, Vol. 39, No. 1 1999, p. 5.

vacuum in India's refugee policy and the judiciary's proactive role in filling that void.

3. DEFINITION

There have been various attempts to produce a legal definition of refugee. Between two World Wars international instruments on refugee contained ad-hoc and generalized definitions of the term. During that period the refugees were identified by reference to a certain nationality, so it is clear that, the definition of refugee under the international refugee law is an outcome of the historical developments and political constraints, etc.

Article 1 of the Convention as amended by the 1967 Protocoled fines a refugee as:

"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as are sult of such events, isunable or, owing to such fear, is unwilling to return to it.[22]

4. THE REFUGEE PROTECTION REGIME IN INDIA

India, along with all the other South Asian states, is not a party to the United Nations Convention Relating to the Status of Refugees 1951 (1951 Convention) and the Protocol Relating to the Status of Refugees 1967 (1967 Protocol). India maintains that the 1951 Convention is Euro-centric and cannot be effectively implemented in the South Asian region. India also believes that it has always been generous towards refugees, even without being party to the 1951 Convention. However, critics argue that India is hesitant to accept the financial responsibility that ensues from undertaking the obligations of the 1951 Convention. The World Refugee Survey 2007[3], which rates refugee protection in countries on four categories of rights -- physical protection, freedom from illegal detention, freedom of movement and the right to earn a livelihood -- has rated India 'D' in three categories, signifying' a level of treatment marginally above the rest' and 'C' with regard to freedom from illegal detention, signifying that refugees have reasonable access to the Indian judiciary (SAHRDC, July 11, 2007).

Given the legal vacuum with regard to refugees, the process of addressing large-scale refugee in flows over the years has been *ad hoc*, mainly through executive action. This process is far from appropriate and is often governed by 'political instinct' based on India's diplomatic relations with the country of origin at the time (Acharya: 2004).

The Foreigners Act 1946 is an outdated and draconian piece of legislation that defines a foreigner as any person who is not a citizen of India, and includes refugees. A similar provision was also introduced through an amendment to the Indian Citizenship Act in 2003 which fails to make any distinction between refugees and their special circumstances and other foreigners and illegal immigrants.

Under Section 3 (2) of the Act, the Indian government has wide discretionary powers to regulate the entry and movement of foreigners within India. The Foreigners Order 1948 also restricts the entry of foreigners into Indian territory at given entry points without proper authorization. Every foreigner should be in possession of a valid passport and visa at the time of entry into India, unless exempted. Most often, refugees are not in possession of these documents and thus are refused entry into India.

[2] *"Convention relating to the Status of Refugees". United Nations HighCommissionforRefugees.28July1951. Retrieved 26 April 2018.*

[3] USCRI, World Refugee Survey 2007:Country Report: India, at http://www.refugees.org/countryreports.aspx?id=2000

Although India is not a party to the 1951 Convention, it is bound by the international customary law principle of *non-refoulement* (this principle prevents a country from expelling refugees to countries where their life and liberty are under serious threat). The Foreigners Act allows the Indian government to *refoule* foreigners, including asylum-seekers, through deportation, and is therefore in violation of international customary law.

Article51 (c) of the Indian Constitution provides that India "shall endeavor to foster respect forinternationallawandtreatyobligationsinthedealingsoforganizedpeopleswithoneanother". Article 253 of the Constitution gives the Indian Parliament the "power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body".[4] The Indian judiciary has also ruled in favour of harmonious construction of international and domestic law when it is consistent with fundamental rights (Visakha v State of Rajasthan,1997 [6] [SCC] 241).

The scope and ambit of Articles 14 and 21 of the Indian Constitution, through progressive judicial interpretation, extends to non-citizens including refugees. In the landmark Chakma refugees case, the Supreme Court clearly held that the State was under a constitutional obligation to protect refugees (National Human Rights Commission v State of Arunachal Pradesh, AIR 1996 SC 1234). In Malvika Karlekar v Union of India (Criminal Writ Petition No 243 of 1988), the Supreme Court stayed the deportation of Burmese refugees in the Andaman and Nicobar Islands, as their applications for refugee status were pending with the UNHCR.[5]

A national model refugee law for granting statutory protection to refugees has long been considered in India but is yet to be implemented. The model law aims to harmonize norms and standards on refugee law, establish a procedure for granting refugee status and guarantee them their rights and fair treatment.

In India, refugees are placed under three broad categories. Category I refugees receive full protection from the Indian government (for example, Tamil refugees from SriLanka); Category II refugees are those who are granted refugee status by the UNHCR and are protected under the principle of *non-refoulement* (for example, Burmese and Afghan refugees); and Category III refugees who are neither recognised by the Indian government nor the UNHCR but have entered India and as similated into the local community (for example, Chin refugees from Burma living in the state of Mizoram) (SAHRDC: 1997).[6]

5. THE ROLE OF JUDICIARY PROTECTION OF REFUGEE IN INIDA

The initial trend of the judiciary in India has been to uphold the notion that the power to remove foreigners from the territory vests with the executive and is generally free from judicial review.

Muller vs. Superintendent, Presidency Jail, Calcutta: In the case of **Hans Muller vs. Superintendent, Presidency Jail, Calcutta**, a Constitution Bench of the Supreme Court was dealing with an order of detention passed by the State Government under section 3 (1) of the Preventive Detention Act, 1950, The court for this situation held that the privilege to expel is presented by section 3 (2) (c) of the Foreigners Act, 1946 on the Central Government and the privilege to uphold a request of ejection

[4] Bhairav Acharya, 'The Law, Policy and Practice of Refugee Protection in India' (2004), at http://news.indlaw.com/publicdata/articles/pilsarc04.pdf

[5] http://www.himalmag.com/2006/december/report_2.htm

[6] ArjunNair,"NationalRefugeeLawforIndia:Benefitsand RoadBlocks",2007p.1

furthermore to keep any break of it and the privilege to utilize such compel as might be sensibly essential for the compelling activity of such power is given by sec. 11(1), likewise on the Central Government. There is, accordingly, understood in the right of expulsion various subordinate rights among them the privilege to prevent any breach of the order and the right to utilize constrain and to take powerful allots to convey those reasons. Presently the best strategy for preventing a breach of the order and guaranteeing that it is appropriately obeyed is by capturing and confining the individual requested to be removed until legitimate courses of action for the expulsions can be made. How far it is important to step in a given case is a matter that must be left to the watchfulness of the legislature.

Louis De Raed tvs. Union of India[7]: In Louis De Raed tvs. Union of India, it was contended that the petitioner has been staying in India continuously since 1937 excepting on two occasions when he went to Belgium for short period in 1966and 1973.Ithasbeen contended that by virtue of the provisions of Article 5 (c) of the Constitution of India the petitioner became a citizen of this country on November 26, 1949, and he cannot, therefore, be expelled on the assumption that he is a foreigner. Referring to the Foreigners Act it was urged that power under Section 3 (2)(c) could not be exercised because the Rules under the Act have to been framed so far. Alternatively, it has been argued that the power to expel an alien also has to be exercised only in accordance with the principles of natural justice and a foreigner is also entitled to be heard before he is expelled. For all these reasons it is claimed that the impugned or derdated July 8, 1987 being arbitrary should be quashed and the authorities should be directed to permit the petitioners to stay on.[8] The Supreme Court in this case held that: "The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19 (1) (e) which is applicable only to the citizens of this country. Relying on the decision given in Hans Muller case, the Supreme Court held that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering the discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far as the law which operates in India is concerned the executive government has un restricted right to expela foreigner. So far the right to be hear disconcerned there can not beany hard and fast rule about the manner in which apers on concerned has to be given an opportunity to place his case."

Khudiram Chakma vs. State of Arunachal Pradesh: In Khudiram Chakma vs. State of Arunachal Pradesh[9] the Supreme Court reiterated the view taken in Louis De Raedt case that "Article 21 is available to aliens in India. The Supreme Court has also referred to Universal Declaration of Human Rights in the context of refugee in the present case and stated that the most urgent need of fugitive is a place of refuge. His or her most fundamental right is to be granted asylum. Article 14 of the Universal Declaration of Human Rights which speaks of the right to enjoy asylum has to be interpreted in the light of the instrument as a whole and must be taken to mean something. It implies that although as asylum seeker has no right to be granted admission to a foreign state equally a state which has granted him asylum must not later return him to the country from where he came."

In addition, the article conveys extensive good power and exemplifies the legitimate essential of regional declarations and instruments. It was additionally set out that individuals who are not national sofa nation and dwell there have an uncommon status under local and additionally

[7] AIR1981SC1886

[8] http://www.refworld.org

[9] 1994Sup(1)SCC615

under international law. Subsequently in light of a legitimate concern for national security or public order, states have the privilege to remove them from their domain, can reject them to allow them certain rights which are appreciated by their own nationals e.g. the privilege to vote, hold public office or to take part in political exercises from joining the civil administration or certain callings or from owing a some categories of property.

Further states may like wise put them under such different limitations as it supposes fit in light of a legitimate concern for public. But despite of these specific rights that are ensured to natives of India will likewise be reached out to non-national as essential human rights to which each individual is qualified for."[10]

National Human Rights Commission vs. State of Arunachal Pradesh[11]: In National Human Rights Commission vs. State of Arunachal Pradesh, a public interest litigation under Article 32 of the Constitution has been filed by National Human Rights Commission which seeks to enforce the rights under Article 21 of the Constitution of about 65,000 Chakma/Hajongtribals. It is being alleged that these chakmas, settled mainly in the state of Arunachal Pradesh are being persecuted by sections of the citizens of the above state. The first respondent in this case is the state of Arunachal Pradesh and the second respondent is the Union of India.

On 15 October, 1994 the Committee for Citizenship Rights of the Chakmas filed are presentation with the NHRC complaining of the persecution of the chakmas. The petitioned contained a press report stating that the All–Arunachal Pradesh Students Union has issued quit notices to all alleged foreigners including the chakmas to leave the state by 30 September, 1975. The AAPSU has threatened to use force if its demand was not acceded to. The matter was treated as a formal complaint by the NHRC.[12] It has been called attention to that in 1964 according to broad discussions between Government of India and the North East Frontier Agency (NEFA), it was decided to send the Chakmas for there a sons for their resettlement to the do main of the present day Arunachal Pradesh. The Chakmas have been dwelling in Arunachal Pradesh for over three decades, having grown close social, religious and financialties. To remove the matt his state would be both impracticable and cruel.

On November 2, 1995 the court issued an interim order guiding the primary respondent to guarantee that the Chakmas residing in its region are not expelled by any coercive activity which is not as per law. The court further held that it can't acknowledge the dispute of the main respondent that no risk exists to the life and freedom of the Chakmas as ensured by Article 21 of the Constitution and that it has found a way to guarantee the assurance of the Chakmas. In the wake of taking care of the present matter for over a year the NHRC recorded aprimafacie finding that the administration of quit notification and their conceded requirement showed up to be bolstered by the officers of the main respondent. The NHRC further held that the primary respondent had on one hand deferred the transfer of the matter by not outfitting the required reaction and had then again tried to implement the expulsion of the Chakmas through its offices. It is to be noticed that no time has the main respondent looked to censure the exercises of the AAPSU.

The second respondent further notes that after the expiry of the due date of 30 October, 1994 the AAPSU and other tribal student organizations kept on fomenting and press for the ejection of all outsiders including the Chakmas. It was accounted for that the AAPSU had begun implementing financial barricade on the refugee camps which

[10] http://www.indiankanoon.org
[11] (1996)SCC 295
[12] www.indiankanoon.org

antagonistically influenced the supply of ratios, medical and key offices and soon to the Chakmas. Obviously, the state government has denied the claim however the autonomous inquiry of the NHRC indicates something else. The fact that the Chakmas were dying on account to of the block a de for want of medicines is an established fact. The court further rexpressed that it is in this way clear there exists areas on able and present threat to the lives and individual freedom of the Chakmas.

The Supreme Court reaffirmed that India is governed by the Rule of Law and that constitutional protections-particularly the right to life and personal liberty under Article 21-extend to all individuals, including non-citizens. The Court held that no person or group, including the AAPSU, could threaten or forcibly evict the Chakma refugees from Arunachal Pradesh. It emphasized the State's constitutional duty to safeguard every individual's rights and condemned any inaction or politically motivated discrimination.

By issuing a **writ of mandamus**, the Court directed the State of Arunachal Pradesh to ensure the safety and liberty of all Chakmas, and, if necessary, to seek assistance from the Union Government and paramilitary forces to repelun lawful attempt so feviction. Furthermore, the Court ordered that Chakma applications for Indian citizenship under Section 5 of the Citizenship Act must be duly processed and forwarded to the Central Government. It held that any returned applications must be recalled or replaced and fairly reconsidered, thereby ensuring both procedural fairness and constitutional compliance.

While the application of any individual chakmais pending, the first respondent shall not evictor remove the person concerned from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf.[13]

Sarbananda Sonowal vs. Union of India and Another: In Sarbananda Sonowal vs. Union of India and Another,20 a public interest litigation underArticle32 of the Constitution of India has been filed for declaring certain provisions of the Illegal Migrants (Determination), 1983 as ultra vires the Constitution of India and also for declaring that the Foreigners Act, 1946 and the rules made the reunder shall apply to the State of Assam. It is also prayed to declare the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires the Constitution of India and also under Section 28 of the aforesaid Act and, therefore, null and void.

The petitioner in this case is a citizen of India and is ordinarily resident in the State of Assam. He is a former President of the All-Assam Students Union, which is the largest non-political student's organization in the State which was responsible for leading the student's movement in Assam in the late 1970s and early 1980s. The issues raised in the writ petition concern all residents in the State of Assam whose rights as citizens of India have been materially and gravely prejudiced by the operation of the Illegal Migrants (Determination by Tribunals) Act, 1983 hereinafter referred to as the IMDT Act.

The primary grievance of the applicant is that the IMDT Act is entirely arbitrary, unreasonable and discriminates against a class of citizens of India, making it incomprehensible for nationals who are occupants in Assam to secure the discovery and expelling of nonnatives from Indian soil. The Foreigners Act, 1946, applies to every one of the outsiders all through India, yet the IMDT Act which was authorized in this manner with the proclaimed point of making identification and expelling of the illicit migrants dwelling in Assam less demanding has totally neglected to meet even

[13] Ibid.20W.P.(CIVIL)131OF2000(DecidedonJuly12, 2005).

the measures recommended in the Foreigners Act. That apart, even those procurements of the IMDT Act which manage the cost of some measure of security to some genuine Indian nationals against illicit vagrants are not being legitimately up held because of unessential political contemplations in discrediting of the privileges of Indian natives living in Assam. The after effect of the IMDT Act has been that various non-Indians, who surreptitiously went into Assam after March 25, 1971 without ownership of valid passports, travel reports or other legal power to do as such, keep on residing in Assam. Their nearness has changed the entire character, social and ethnic arrangement of the zone and the IMDT Act makes a circumstance where under it has turned out to be for all intents and purposes difficult to challenge the nearness of anon native and to secure his identification, deportation or even deletion of his name from the appointive rundown as they get insurance by virtue of the procurements of the Act. It is further affirmed that in perspective of the issue of illicit relocation of non natives into Assam and their proceeded with nearness in that, a State-wise dissent movement of students was sorted out which proceeded for a long stretch.

As an after effect of the student's movements and following arrangements, a memorandum of settlement dated 15th August, 1985 was entered into between All Assam Students' Union and the Union of India and the State of Assam, which is commonly known as "Assam Accord". The terms of the Accord particularly gave that strides would be taken to identify and oust illicit transients from Assam and it additionally contained a provision that "the Government will give due thought to specific troubles communicated by 157 AASU/AAGSP with respect to the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983."[14] The Accord further provided that foreigners who have entered into India after 25th March, 1971 will continue to be detected, their names deleted from the electoral rolls and they will be deported from India. In compatibility of this procurement, the Citizenship Act, 1955 was amended by Act No.65 of 1985 and Section 6A was embedded with the heading "Special Provisions as to Citizenship of Persons covered by the Assam Accord. "It provides that the term" detected to be a foreigner" shall mean so detected under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 framed there under. This amendment of the Citizenship Act makes it clear that the topic of determination or detection of a foreigner is to be administered by the procurements of the current Central enactment, viz. the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.

It is further argued that in the wake of marking of the Assam Accord, a few confirmations were given and explanations have been made by the Central Government that it is analyzing the failure of the IMDT Act with respect to recognition and deportation of foreigners and it is thinking about steps to repeal the Act. A document was signed by Union Home Secretary and Chief Secretary of Assamon 27th January, 1990 in regards to preparation of a time allotment for class-wise execution[14] www.indiankanoon.org of the Assam Accord and it was said in that that a choice on the nullification of the IMDT Act would be taken by 28th February, 1991.

In a meeting hung on 20th September, 1990 between Union Home Minister, Chief Minister of Assam and delegates of All Assam Students' Union, the student union emphasized their interest for cancelation of the IMDT Act, which interest was noted and a confirmation was given that the Central Government would start discourses with other political parties. The Union of India documented a counter affirmation on 18th July, 2000, which has been sworn by Shri Jatinder Bir Singh, Director, Ministry of Home Affairs. It was expressed that a proposal to repeal the IMDT Act is under thought of Government of India. The

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State of Assam filed a counter affidavit on 28th August, 2000, wherein itis expressed that the State Government has been persistently keeping in touch with the Central Government that the IMDT Act is working against national interest since in perspective of the stringent procurements in the IMDT Act in regards to identification and expulsion of foreigners, the illegal migrants whose nearness are in lakhs in the State of Assam couldn't be deported. The State Government has thus these been demanding the Central Government for nullification of the IMDT Act.

The implementation of the Illegal Migrants (Determination by Tribunals) Act (IMDT Act) faced significant criticism for being discriminatory, as it applied solely to the State of Assam, despite similar challenges with illegal migration in other states like West Bengal, Tripura, and Meghalaya. A subsequent affidavit filed by the Union of India on 24 November 2004 indicated a shift in position: although the Act's constitutional validity had earlier been questioned, the government decided to retain its application in Assam. The affidavit further claimed that the Act was introduced to safeguard genuine Indian citizens from wrongful deportation under the Foreigners Act, 1946, by incorporating a layer of judicial scrutiny in determining citizenship status. The Supreme Court, after detailed examination, concluded that the provisions of the IMDT Act and its Rules were excessively stringent compared to the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964. The procedures under the IMDT Act made it extremely difficult to identify and deport illegal migrants, even more so than securing a conviction in a criminal trial. The Act lacked provisions for effective screening mechanisms and empowered officials to dismiss complaints without appeal, resulting in over 85% of inquiries being rejected without being referred to a tribunal.

The Court noted that the structure of the IMDT Act appeared deliberately designed to protect illegal immigrants, particularly those who entered Assam from Bangladesh after 25 March1971, rather than to facilitate their detection and deportation. Additionally, the Act created procedural imbalances by allowing administrative orders in favor of alleged migrants while requiring judicial orders to declare someone an illegal entrant.

Ultimately, the Court held that the IMDT Act undermined the constitutional duty under Article 355, which obliges the Union Government to protect states from external aggression and internal disturbances. Consequently, the Act was declared unconstitutional and struck down.

Table 1: Refugee Protection Framework in SAARC Countries

Country	**Refugee Law**	**UNHCR Involvement**	**Constitutional Protection**	**Non-Refoulement Observed**
India	+No	Yes	Articles14&21	Customary Law
Pakistan	+No	Yes	⚠Limited	
Nepal	+No	Yes		
Bangladesh	+No	Yes	⚠Minimal	⚠Partial
SriLanka	Partial	Yes		

6. Findings and Discussion

The analysis of landmark judgments reveals that the Indian judiciary has not only recognized the constitutional rights of refugees but also imported international legal norms through judicial interpretation. Courts have interpreted Articles 14 and 21 of the Constitution to apply to all persons, including non-citizens, which serves as the

backbone of refugee protection in the absence of statutory law.

Judgments such as *NHRC v. State of Arunachal Pradesh* and *Malvika Karlekarv. Union of India* emphasized *non-refoulement* and due process for refugees. This reflects a trend of judicial activism that fills legislative gaps and aligns India's domestic practice with international human rights obligations.

The inclusion of *non-refoulement* within Indian jurisprudence—even without accession to the 1951 Convention—illustrates India's implicit compliance with international norms. However, inconsistenciesre main due to a dhoc executive policies and the lack of a national legal framework.

7. Conclusion

The Indian judiciary has played a transformative role in safeguarding the rights of refugees, evolving from literal interpretations in the 1980s to a more liberal and humanitarian approach. Courts have consistently relied on constitutional provisions-particularlyArticles14, 21, and 22- to extend basic protections to refugees, despite the absence of a formal refugee law in India.

Judicial decisions have emphasized that international treaties and human rights conventions can be read into domestic law when no direct legislation exists and where such norms do not conflict with Indian statutes. Article 51(c) of the Constitution supports this approach by encoutraging respect for international law. The judiciary has invoked principles from international instruments like the Universal Declaration of Human Rights to uphold the rights of refugees, including non- refoulement, due process, and dignity.

Land mark rulings-such as those involving the Chakmar refugees and Burmese asylum seekers-demonstrate the courts' willingness to prevent forced deportations and protect the right to life. These interventions affirm that even non-citizens are entitled to constitutional protections. The courts have further ensured procedural safeguards like the right to be heard (audialteram partem) and protections against unlawful detention under Article 22.

Notably, while defending refugee rights, the judiciary has maintained a balance with national security. Refugees involved in criminal or illegal activities have not been shielded from legal consequences.

The National Human Rights Commission (NHRC) has also played a vital role by filing public interest litigations to protect displaced communities like the Chakmas. The NHRC's actions have helped affirm that Article 21 protections extend to all individuals on Indian soil, including refugees.

Finally, the courts have developed a methodology of incorporating international human rights obligations into domestic constitutional frameworks. However, they have acknowledged the limitation that, in the absence of specific legislation, certain international rights may not always been forceable. The Protection of Human Rights Act, 1993 was a step forward but remains limited in scope. Despite these constraints, the Indian judiciary has emerged as a powerful guardian of refugee rights in a legally underdeveloped area.

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