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COMPARISON OF THE DATA PROTECTION LANDSCAPE IN EUROPEAN UNION, UNITED STATES AND INDIA

AUTHORED BY - YASH BAJPAI[1] AND GEORGE JANSSEN[2]

1. INTRODUCTION

We live in a digitally rich climate driven by technology. All our data including past, present and future gets stored in some or the other digital medium and whether we want it or, there are innumerable means to access and circulate such data. This puts our very privacy at risk and thus our privacy rights become susceptible to violation.[3] All forms of electronic media as phones, computers and social media platforms such as Facebook or e-commerce platforms collect a lot of personal data which if leaked can cause serious harm to our privacy rights. While all such electronic or e-platforms run by ethical codes of conduct, the absence of statutory means of remedy or compliance measures may encourage the owners or sellers of such organisations or device to misuse the data submitted to them.[4] Some of the means through which privacy rights can be violated using the data submitted are inclusive of but not limited to cyberstalking, digital profiling and data stalking. These activities are the result of sensitive data being disclosed or shared in the absence of the owner's consent. Data privacy has thus gained a significant amount of importance in the last few years, as evidence from multiple data privacy legislations being passed in more than 100 countries over the last decade.[5]

All firms that engage in the use or deal with sensitive applications are bound by law to abide by various privacy legislations that regulates the territory they operate in. This paper seeks to discuss and critique some of the strongest and widest data protection laws across Europe, America and Asia.

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[4] Martin KD and Murphy PE, 'The Role of Data Privacy in Marketing' (2016) 45 Journal of the Academy of Marketing Science 137
[5] Kuner C, Bygrave LA and Docksey C, 'Background and Evolution of the EU General Data Protection Regulation (GDPR)' [2020] The EU General Data Protection Regulation (GDPR) 5

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In the European Union (EU) and the European Economic Area (EEA), it is the General Data Protection Regulation (GDPR) that regulates the law on protection and privacy. The EU-GDPR also governs the mode and characteristics of personal data transfer outside EU and EEA. It came into effect in 2018 and it aims at giving back control to the original owners of the personal data and simplify the process of regulation of international business.[6] In Asia, India is considered to have one of the strongest digital protection regimes and now with the introduction of the Digital Personal Data Protection Act (DPDPA), it seeks to expand this regime. DPDPA has been effective from August 2023. Earlier, the laws governing data protection were spread across multiple statutes, but it has now all come under a single instrument, the DPDPA.[7]

In America, the Federal Trade Commission Act (FTC) and the California Consumer Privacy Act (CCPA) are considered to be the US equivalent of the GDPR. They are comprehensive legislations that hand down great amount of transparency and control to consumers over their submitted data is dealt with by businesses that collect personal data.[8]

For the purposes of this paper, the GDPR, DPDPA and the US Federal and state laws will be analysed, critiqued and compared with each other to identify common data protection loopholes and strengths that can be borrowed by other countries to strengthen their data protection landscape.

2. DATA PROTECTION LANDSCAPE IN THE EUROPEAN UNION

GDPR is the primary law in EU which has mandatory rules for how organisations as well as companies are supposed to use personal data. GDPR is binding on all EU member countries and the organisations registered with them.[9] Under the GDPR, personal data means and includes any information which directly or indirectly identifies a living person. These include information such as the name of the person, their phone number, addresses or other data that identifies them.[10] GDPR

[6] Sundara K and Narendran N, 'The Digital Personal Data Protection Act, 2023: Analysing India's Dynamic Approach to Data Protection' (2023) 24 Computer Law Review International 129
[7] Ibid
[8] Serwin AB, 'The Federal Trade Commission and Privacy: Defining Enforcement and Encouraging the Adoption of Best Practices - Version 2.0' [2011] San Diego Law Review 813
[9] Sundara K and Narendran N, 'The Digital Personal Data Protection Act, 2023: Analysing India's Dynamic Approach to Data Protection' (2023) 24 Computer Law Review International 129-130
[10] Ibid; GDPR 2016, Art.1.

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also defines the processing of data to mean and include collecting, structuring, organizing, using, storing, sharing, disclosing, erasing and destruction of data.[11] Therefore, any organisation that processes personal data is required to ensure that the personal data so obtained the following requirements of the GDPR[12]:

a. The personal data used must comply with integrity friendly principles. For instance, the processing of personal data must have a defined purpose. The collection of data cannot be for non-substantive or vague reasons. Companies must remember that the individuals have all right to know about how their data is being used and therefore be as careful as possible with it.[13] Organisations are only permitted to store personal data for as long as it's necessary while keeping the necessary documentation to support their assertion of being compliant with the GDPR.[14]
b. The personal data use must be legal. GDPR only provides specific exceptions where personal data can be sold, used or transferred by the collecting party. [15]
c. The personal data being used must be used while being respectful of individual rights. All individuals have the right to access their personal data, to know how the organisation is using their data, to object to the processing of the data and to request for data deletion or removal.[16]
d. All organisations are required to report data breaches within a matter of 72 hours. If any personal data is accessed, disclosed, stolen or changed, then the organisation holding that data must act at once and inform the relevant authority of their state as well as the consumer. This obligation also arises where the data is breached by one of the suppliers of the principal company. In situations where there is a loss of sensitive data such as financial or health related data, then each affected individual as well as cyber authorities of that relevant state must be informed within 72 hours.[17]
e. All businesses are also responsible each of their suppliers. GDPR obliges controllers to contractually regulate its suppliers to ensure that they are compliant with the GDPR. If the supplier puts its data at risk, then the controller will also be responsible. [18]

[11] Ibid; GDPR 2016, Art.2.
[12] Albrecht JP, 'How the GDPR Will Change the World' (2016) 2 European Data Protection Law Review 287
[13] Ibid; GDPR 2016, Art.32(1)
[14] Ibid; GDPR 2016, Art.5(1)
[15] Ibid; GDPR 2016, Art. 18 & 66
[16] Ibid; GDPR 2016, Art. 7
[17] Ibid; GDPR 2016, Art. 33(1)-(5)
[18] Ibid; GDPR 2016, Art. 5(2) & 47 (1)-(2)

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f. GDPR places huge sanctions on organisations that violate the provisions. The sanctions may go up to 4% of their annual sales or up to € 20 million. [19]

The practical implications of the GDPR on companies are as follows:

i. Companies become encouraged to inform the citizens and customers of their activities and install privacy notices and policies on their websites or other service agreements to ensure compliance with the GDPR.[20]

ii. Companies would be required to assign a Data Protection Officer (DPO) that would serve as the main operator and expert on the organisation's protocols on privacy and safety. The DPO's primary duty would be to report to the relevant data protection authority of that country where the organisation is registered.[21]

iii. Companies would be encouraged to act expeditiously when approached by data subjects regarding their rights. The data subject may approach with any request such as accessing their data, modifying their data, limiting access or even deleting that data. If the data subject's request matches specific criteria under the GDPR, they must be complied with by the organisation.[22]

iv. Companies are pushed to regulate the responsibility between the buyer, which is the controller of the data and the supplier, which is the processor of the data. If one company has hired another company for data process, then the hiring company is the controller of the data and the hired company is the processor. For such a relationship, the GDPR requires that a Data processing agreement (DPA) be put in place in addition to the main hiring contract. This DPA must set out the rules on how the processor will use or retain the personal data and that such or use or retention must be GDPR compliant.[23]

v. Companies will be required to keep a data inventory. Both controller as well as the processor have to keep records of data usage.[24]

vi. Companies are required to have personal data breach protocols. These protocols must be activated within 72 hours of any suspected data breach. If the businesses become the victim

[19] Ibid; GDPR 2016, Art. 84
[20] Goddard M, 'The EU General Data Protection Regulation (GDPR): European Regulation That Has a Global Impact' (2017) 59 International Journal of Market Research 703-705; GDPR 2016, Art.37-39
[21] Ibid; GDPR 2016, Art.37-39
[22] Ibid; GDPR 2016, Preamble (63)
[23] Ibid; GDPR 2016, Art.30
[24] Ibid; GDPR 2016, Art.30

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of a data breach, the controller is obliged to take reasonable steps to minimize risk, contact supervisory authority and inform all affected individuals.

vii. If companies wish to defend themselves against any data breach, they have to present their risk analysis and must show that they engaged in effective risk analysis of both possible breaches and impact on the rights of the citizens. Businesses are required to also analyse how they intend to use the personal data and whether doing so can cause any breach of data. If their analysis reveals that the use of the personal data may be risky or whether their data retention system may be subject to breach, they must reassess the process and introduce modifications. This process is called Data Protection Impact Assessment (DPIA).[25]

3. DATA PROTECTION LANDSCAPE IN UNITED STATES

United states do not have any single data protection legislation but rather, it has multiple laws on both federal as well as state level that seek to protect personal data of US residents.

At the federal level

A. Federal Trade Commission Act

On the Federal scale, the Federal Trade Commission Act (FTC) provides the powers to the U.S. Federal Trade Commission to take actions against entities for data breach and to protect consumers from being subjected to unfair or deceptive practises.[26] 'Deceptive practises' under the FTC means and includes the failure of a company to comply with the published privacy promises and inability to provide adequate and reasonable security to the obtain personal information. It also includes the usage of deceptive marketing or advertising. As compared to the Federal law on data protection, it is the state data protection laws that provide more intensive protection to the personal data.[27]

B. Other federal laws protecting sensitive and personal data

Even though the FTC provides powers to the U.S. Federal Trade Commission to take actions against potential data breaches, there are also sector-specific data protection laws that operate at the federal level.[28] Some of them are inclusive of but not limited to Driver's Privacy Protection Act, 1994 which protects privacy and disclosure of personal information submitted for motor vehicle departments, the

[25] Ibid; GDPR 2016, Art.35
[26] Adriance S, 'Who Makes the Rules?: U.S. Data Protection Regulation and the FTC' [2015] J.D. Yale Law School 38
[27] Ibid; 15 U.S.C. § 45.
[28] Nebbia P, 'Competition Law and Consumer Protection against Unfair Commercial Practices': [2012] The Global Limits of Competition Law 127

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Children's Online Privacy Protection Act, protects information of children below the age of 13 on all electronics devices and requires privacy notices and parental consent to be obtained for data of children to be published.[29] The Video Privacy Protection Act restricts disclosure of sale or rental records of video or any form of audio-visual data. Additionally, even in the absence of legislation, the presidential administrations keep passing orders and rules that regulate disclosure of private or sensitive data. [30]

Key principles governing personal data processing:

i. **Transparency:** FTC guidelines on principles of transparency requires that businesses have to provide clear privacy notices to enable consumers to better understand their data processing and provide access to consumer data in a proportionate manner[31]

ii. **Legality of processing:** The FTC does not define what a "lawful basis" is with respect to processing of data. However, FTC mandates business to provide notice and obtain consent to the usage of data and the manner in which it will be used. [32]

iii. **Retention of data:** FTC recommends business to use privacy-by-design models and practise for implementing reasonable restrictions on data retention including its disposal. This implies that the data will only be retained until the point that its purpose is fulfilled.[33]

iv. **Key rights given to individuals under federal laws for processing personal data:**

v. **Right to access data and its copies:** Under FTC as well as several legislations that deal with banking or healthcare require that customers are entitled to receive copies of their data as well as access the data submitted.[34]

vi. **Right to rectify errors in data:** This right is permissible under FTC to the extent that the rectification of such data is not permitted by law, such as criminal records.[35]

[29] (*EPIC*) <https://www.supremecourt.gov/opinions/URLs_Cited/OT2012/12-25/12-25.PDF> accessed 8 January 2024
[30] Simi W by, 'Video Privacy Protection Act and Online Video Content - the Blog' (*The Blog* -, 25 April 2019) <https://www.cincopa.com/blog/video-privacy-protection-act-and-online-video-content/#:~:text=The%20sharing%20of%20personal%20information,a%20stranger%20or%20known%20person%E2%80%9D.> accessed 8 January 2024
[31] Bruening PJ, 'Through a Glass Darkly: From Privacy Notices to Effective Transparency' (2016) 17 North carolina journal of law and technology 515
[32] Ibid
[33] Ibid 517
[34] Rustad ML, 'Towards a Global Data Privacy Standard' (2019) 71 Florida Law Review 365
[35] Ibid

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vii. **Right to delete data or the right to be forgotten:** While the FTC does not provide for this right specifically, the COPPA permits parents the right to review and delete the information of their child even without having to submit a request.[36]

viii. **Right to object to or restrict data processing:** All data principals are given the right to opt out of any commercial usage of their data. This also includes the right to not have your telephonic calls recorded for any other purpose. Similarly, data principals can also decide the extent to which their data can be used.[37]

ix. **Right to withdraw consent:** This right is present to consumers and data principals to withdraw consent for their data being used at any given time. [38]

x. **Right to object to marketing:** Almost all of the federal laws allow for this right, wherein any data principal giving consent to their data being used can object to their data being used for commercial purposes. Written consent must be obtained for their data to be used in advertising or any other marketing strategy. [39]

xi. **Right to complaint to relevant authorities on data protection:** The right to accessible remedy is one of the most important rights in ensuring that your data privacy rights are protected. For instance, data principals have all rights to directly report deceptive emails or data breaches to the FTC.[40]

Personal data of Children:

Children's personal data is protected under COPPA. COPPA governs the activities of operators of commercial websites and online services that are directed at children below 13 years of age, as well as any website which involves collecting data from those below the age of 13. COPPA requires that such businesses (i) Publish privacy notices compliant with COPP, also called as a 'direct notice' to be furnished to the parents prior to such information being collected and (ii) obtain parental consent prior to obtaining and processing that data in any manner.[41]

[36] Ibid 366
[37] Ibid
[38] Ibid
[39] Ibid 371
[40] Ibid; Vezzoso S, 'Competition Policy in Transition: Exploring Data Portability's Roles' (*OUP Academic*, 5 January 2021) <https://academic.oup.com/jeclap/article-abstract/12/5/357/6062654> accessed 8 January 2024.
[41] Bartoli E, 'Children's Data Protection vs Marketing Companies' (2009) 23 International Review of Law, Computers & Technology 35

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State protection laws on data privacy:

Almost every state has adopted some or the other data breach legislation that governs and regulates personal information disclosure and dissemination. Any business that does any type of sale in any of those states must comply with the relevant state law. The type of data protected however, may vary from state to state. For instance, Massachusetts has very broad data protection regulations wherein it requires that any entity which stores, receives, processes, maintains and has access to personal information of Massachusetts residents that deal with their employment are required to (a) to implement and maintain a comprehensive written information security plan (WISP) addressing 10 core standards, and (b) to establish and maintain a formal information security programme that satisfies eight core requirements, which range from encryption to information security training. [42]

Of late, a number of states have been pushing towards bringing in similar legislations that comprehensively protect data privacy laws. In 2020, California also amended the CCPA with the California Privacy Rights Act (CPRA) which then expanded the rights granted to consumers and increased compliance obligations on the businesses. Similarly, Virginia in 2020 passed the Consumer Data Protection Act (Virginia CDPA) and become the second state to bring in comprehensive data privacy laws. Eventually in 2022, Utah enacted the Utah Privacy Act and in 2023, Iowa, Indiana, Montana and Tennessee all passed broad data privacy laws.[43]

4. DATA PROTECTION LANDSCAPE IN INDIA

The Digital Personal Data Protection Act of 2023 received presidential assent and is considered to be one of the most comprehensive data protection laws in Asia. It was designed to be modelled after the EU-GDPR and was intended to be even stricter than the GDPR, but the final version of the statute was scaled back a bit. It will eventually become the governing law on data protection in India.[44]

Legal framework governing data protection prior to the DPDPA

The DPDPA remains to be one of the primary statutes that governs the digital personal rights of individuals. Prior to the Act, India did not have any one statutory law protecting the privacy of general

[42] Pittman FP, Hafiz A and Hamm A, 'Data Protection Laws and Regulations Report 2023 USA' (*International Comparative Legal Guides International Business Reports*, 20 July 2023) <https://iclg.com/practice-areas/data-protection-laws-and-regulations/usa> accessed 8 January 2024

[43] Ibid

[44] Sundara K and Narendran N, 'Protecting Digital Personal Data in India in 2023' (2023) 24 Computer Law Review International 9

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data. Previously, the data protection landscape only comprised of rules on sensitive personal data such as the ones found in the Information Technology Act, 2000, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 along with sectoral regulations under various regimes such as the telecom, insurance, banking and consumer protection.[45] Therefore, the Act will repeal the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, however, the sectoral regulations may continue to remain in force unless it comes into conflict with the Act. Pending implementation, there are cases yet to be filed under this Act.[46] Nevertheless, they will still be subject to the established Supreme Court decisions on right to privacy in cases like *Justice K S Puttaswamy and Anr v. Union of India and Ors*, wherein the fundamental right to privacy was considered an integral aspect of right to life under Article 21 of the Indian Constitution.[47]

Legal disclosure of data under the Act.

Under the Act, "certain legitimate uses" for the processing of data is permitted to comply with any Indian law that requires data to be disclosed to the state or its instrumentalities. Citizens are also obligated to disclose data pursuant to any court order or decree.[48]

Controller and Processor Obligations- Data processors

Under the Act, data processors do not have any direct obligations, but rather data fiduciaries are responsible to ensure that data processors are complying with the provisions by processing the personal data on their behalf.[49]

Data of children

Under the Act, a 'child' is defined as an individual who has not crossed the minority threshold of 18 years.[50] Data fiduciaries are therefore, not permitted to undertake any processing of personal data that might harm a child. Prior to the processing of personal data of a child, or even if the person is disabled and has a guardian, the data fiduciaries are required to obtain the verifiable consent of the parent or

[45] 'India - Data Protection Overview' (*DataGuidance*, 30 October 2023) <https://www.dataguidance.com/notes/india-data-protection-overview> accessed 8 January 2024
[46] Ibid
[47] Ibid; *Justice K S Puttaswamy and Anr v. Union of India and Ors* [Writ Petition (Civil) No. 494 of 2012]
[48] DPDPA 2023, s.2(d)
[49] DPDPA 2023, s.4-5
[50] DPDPA 2023, s.2(f)

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the legal guardian of those who lack the capacity to give consent under law. Data fiduciaries are also not permitted to track or monitor any behavioural patterns of children, unless a certain class of data fiduciaries who require the data for permissible reasons are exempted from such requirements.[51]

The right to be informed.

Even though there is no explicit right to be informed given to the data subject under this Act, the data processed has to be done so with consent and data fiduciaries have to inform the data principal of the following[52]:

i. The purpose of data processing.
ii. The manner in which the data principal can withdraw consent.
iii. Grievance redressal mechanism available to the data fiduciary and.
iv. Procedure for data principal to complain to the board.

A notice containing the aforementioned details must be provided to data principal prior to obtaining consent.[53]

Right to access

If the processing of the data depends on consent to be obtained, then the data principals are allowed to seek the following from a data fiduciary[54]:

i. Details of the personal data being processed as well as the processing activities for which the data will be used;
ii. Identities of every data fiduciary and process to whom the personal data will be shred with and the kind of data that will be shared with them

Right to rectification

When data processing depends on the obtain of consent or voluntary data provisions, then data principals are given the right to request a correction to the existing data, if it is inaccurate or

[51] 'Salient Features of the Digital Personal Data Protection Bill, 2023' (*Press Information Bureau*) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947264> accessed 8 Janauary 2024
[52] Ltd SVP, 'Digital Personal Data Protection Act 2023: Impact on Indian Healthcare Industry' (*LinkedIn*, 25 October 2023) <https://www.linkedin.com/pulse/digital-personal-data-protection-act-2023-impact-indian-6j2df#:~:text=Under%20the%20DPDP%20Act%2C%202023,or%20processes%20your%20personal%20data.> accessed 8 January 2024
[53] DPDPA 2023, s.5(1)
[54] DPDPA 2023, s.11

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misleading, complete any partially presented data and update personal data as per the procedure under the Act. The data fiduciaries must comply with such requests.[55]

Right to erasure

This is a very important right and cannot be undermined. Voluntary supplying of data for processing implies that data principals have the right to erase their personal data unless prohibited by law. A request for data erasure may be made to any fiduciary at anytime and unless otherwise prohibited or where data retention is required to comply with an existing law, the data fiduciary must comply.[56]

Right to object/opt-out.

Data principals have at all given times, the right to withdraw consent to their personal data being processed.[57]

Penalties

The Board permits the imposition of penalties when data fiduciaries do not comply with the Act. Following are some of the penalties awarded for violating the Act[58]:

(i) Up to INR 2.5 billion if it fails to take reasonable safeguards to prevent breach of personal data;

(ii) Up to INR 2 billion for failure to report breach of personal data.

(iii) Up to INR 2 billion for failure to report breach of personal data of children (in addition to failure to report personal breach in general)

(iv) Up to INR 10,000 For breaching duties of data principal.

5. COMPARING THE DATA PROTECTION LAWS OF EUROPEAN UNION, UNITED STATES & INDIA

A Comparison between the EU's GDPR, the federal and state principles on data privacy in UK, and the provisions of the DPDPA in India show that there are several important obligations placed on data processors, which are held in high esteem by all three legal regimes. Some of these are inclusive

[55] DPDPA 2023, s.12 (2)
[56] DPDPA 2023, s.5(3)
[57] Ibid
[58] DPDPA 2023, s.33-34

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of but not limited to the importance awarded to protecting data of children or minors, the right to be forgotten and the requirement to obtain consent prior to processing of data. In all three regimes, there is almost little to no exception where data can be used for commercial purposes without the consent of the data principal.[59] A more objective analysis of the three regimes reveals the following:

	GDPR	**DPDPA**	**FTC as well as state regulations**
Control	The GDPR aims to give back control to the residents and citizens over how their personal data is being used.	The DPDPA presents control to both the consumers as well as the government to a certain extent to the government.	The Federal legislations in US present complete control to the data principals in terms of how data fiduciaries can use or access their data.
Ease of process	The GDPR also aims to simplify the regulatory aspects involved in the international business by making sure that the regulation is properly incorporated by the EU states.	The DPDPA allows for requests to be filed for deletion, modification or removal of sensitive information not subject to any exemption from the law.	The FTC permits data principals to directly request the FTC to have some data removed or modified. Similarly, the COPPA also permits parents to modify the data even without submitting formal requests.
Protection	The GDPR seeks to protect the personal	The DPDPA is very similar to GDPR in	The FTC, COPPA as well as the state

[59] Simi W by, 'Video Privacy Protection Act and Online Video Content - the Blog' (*The Blog* -, 25 April 2019) <https://www.cincopa.com/blog/video-privacy-protection-act-and-online-video-content/#:~:text=The%20sharing%20of%20personal%20information,a%20stranger%20or%20known%20person%E2%80%9D.> accessed 8 January 2024; Bartoli E, 'Children's Data Protection vs Marketing Companies' (2009) 23 International Review of Law, Computers & Technology 35;'Salient Features of the Digital Personal Data Protection Bill, 2023' (*Press Information Bureau*) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947264> accessed 8 January 2024

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	data of all the EU residents from any form of unauthorised, use, dissemination or destruction by any entity residing anywhere in the EU as well as by entities residing outside EU.	terms of providing protection, since it is modelled after the GDPR.	legislations all provide strict compliance obligations to ensure that no data is used or processed in any manner in the absence of formally obtained consent or approval.
Applicability	The GDPR is applicable to all the organisations that process personal data in the EU, irrespective of whether they are located in EU or not.	The DPDPA protects all citizens and applies to all entities functioning in India.	The FTC applies to all US citizens and residents and regulates activities of all entities that engage in the use of data from American citizens or entities.
Data subject rights	A number of rights have been given to data subjects under the GDPR including but not limited to right to access their personal data, the right to have their personal data erased, and the right to object to the processing of their personal data.	The DPDPA also provides for multiple rights which are inclusive of but not limited to right to access their personal data, the right to have their personal data erased, and the right to object to the processing of their personal data.	The FTC along with COPPA provides the following rights: Right to access data and its copies, Right to rectify errors in data, Right to delete data or the right to be forgotten, Right to object to or restrict data processing, Right to withdraw consent, Right to object to marketing, Right to

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			complaint to relevant authorities on data protection
Controller and processor responsibility	Under the GDPR, the data controllers and process are given a wide array of responsibilities including but not limited to implementing the required security to protect data and to report any breach in data.	Under the DPDPA, the data processors have almost the same identical responsibilities as the GDPR, except that they must report all data breaches to the Data Protection Authority of India.	Under the FTC as well as government guidelines, the data fiduciaries are suggested to taken on a privacy-by-design framework of protecting the data and all measures to keep the relevant authorities and the data principals of any breaches.
Penalties	Failure to comply with the GDPR can sanctions the imposition of fine of 4% of global turnover or €20 million, whichever is greater.	Failure to comply with the DPDPA can sanctions the imposition of fine of 5% of their annual turnover or ₹500 crore, whichever is greater.	The FTC is allowed to bring civil actions or monetary damages for $16,000 per violation.[60]

Similarities between the three regimes

The GDPR, DPDPA as well as the FTC along with various state regulations of US are both comprehensive data protection laws as well as wide enough to share multiple similarities, which are

[60] 'Data Protection Enforcement in the United States' (*Global Compliance News*) <https://www.globalcompliancenews.com/data-privacy/data-protection-enforcement-in-the-united-states/#:~:text=FTC%20Act%3A%20The%20FTC%20may,for%20purposes%20of%20the%20law.> accessed 8 January 2024

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inclusive of but not limited to the following:

(i) While the GDPR and the DPDA do indeed grant a number of rights over the personal rights such as the right to erase data, modify, access and processing, the FCA has enhanced these rights by introducing several compliances towards such rights.

(ii) All three regimes impose obligations on the organizations towards processing of personal data such as the obligation to bring in required security measures, report data breaches and to ensure that adequate access to relevant authorities exist for data principals to voice concerns.

(iii) All three regimes contain provisions dealing with penalties for non-compliance and enforcement.[61]

Differences between the three regimes

(i) While the GDPR does apply to all organizations that deal with personal data of individuals who are residents of EU, the DPDPA only deals with those companies who are actually working in India. or doing some business in India and not just collecting data. [62]

(ii) The GDPR only deals with special categories of personal data, while the DPDPA regulates all form of personal data available in a digitized manner.[63]

(iii) GDPR is stricter as compared to DPDPA and FCA towards transfer of personal data outside EU since it prohibits such transfer unless explicitly consented to.

(iv) While the GDPR presents data protection as a fundamental right, this isn't explicitly mentioned either in the regime in the United States or under the DPDPA.

(v) Amongst the three regimes, the US has a more hands-off approach wherein the complete responsibility for judicious collection and use of data rests on the companies. The problem with this is that, in most cases data principals may hesitate to take action for multiple reasons and which is where the government should be involved to regulate and detect misuse of personal data.

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[61] 'Data Protection Enforcement in the United States' (*Global Compliance News*) <https://www.globalcompliancenews.com/data-privacy/data-protection-enforcement-in-the-united-states/#:~:text=FTC%20Act%3A%20The%20FTC%20may,for%20purposes%20of%20the%20law.> accessed 8 January 2024; DPDPA 2023, s.33-34; GDPR 2016, Art. 84

[62] 'India - Data Protection Overview' (*DataGuidance*, 30 October 2023) <https://www.dataguidance.com/notes/india-data-protection-overview> accessed 8 January 2023; Kuner C, Bygrave LA and Docksey C, 'Background and Evolution of the EU General Data Protection Regulation (GDPR)' [2020] The EU General Data Protection Regulation (GDPR) 5

[63] Ibid

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6. CONCLUSION

While indeed there are multiple similarities between the GDPR, the DPDPA and the federal-state regulations of the United States, when it comes to data protection regulations, there are also minor but significant differences. For businesses that operate in all of these three regimes, there is no doubt that they would have to comply with all three of them, but in their respective working spaces. Even if they process data of individuals of other countries, their data when being processed in any of these three regimes would have to be done as per country it is being processed in. This is definitely an issue since it would be troublesome to keep up with so many data regulations in one go.

Therefore, in order to ensure compliance, all businesses must consider the benefits of implementing measures for data protection beyond what is stipulated under the law or establish compliance bodies that ensure that at all relevant times, such regulations are complied with.

REFERENCES

1. The Digital Personal Data Protection Act, 2023
2. General Data Protection Regulation, 2016
3. Federal Trade Commission Act, 1914
4. Children's Online Privacy Protection Act, 2000
5. Journal

(i) Adriance S, ‘Who Makes the Rules?: U.S. Data Protection Regulation and the FTC’ [2015] J.D. Yale Law School 38

(ii) Albrecht JP, ‘How the GDPR Will Change the World’ (2016) 2 European Data Protection Law Review 287

(iii) Bartoli E, ‘Children’s Data Protection vs Marketing Companies’ (2009) 23 International Review of Law, Computers & Technology 35

(iv) Bruening PJ, ‘Through a Glass Darkly: From Privacy Notices to Effective Transparency’ (2016) 17 North carolina journal of law and technology 515

(v) Esposito AR, ‘Towards a Standard Testing Data Set in Privacy’ [2022] Electronic Workshops in Computing 23

(vi) Goddard M, ‘The EU General Data Protection Regulation (GDPR): European Regulation That Has a Global Impact’ (2017) 59 International Journal of Market Research 703

 ISBN: 978-81-948082-7-5

(vii) Martin KD and Murphy PE, 'The Role of Data Privacy in Marketing' (2016) 45 Journal of the Academy of Marketing Science 137

(viii) Nebbia P, 'Competition Law and Consumer Protection against Unfair Commercial Practices': [2012] The Global Limits of Competition Law 127

(ix) Protection Regulation (GDPR)' [2020] The EU General Data Protection Regulation (GDPR) 5

(x) Rustad ML, 'Towards a Global Data Privacy Standard' (2019) 71 Florida Law Review 365

(xi) Serwin AB, 'The Federal Trade Commission and Privacy: Defining Enforcement and Encouraging the Adoption of Best Practices - Version 2.0' [2011] San Diego Law Review 813

(xii) Sundara K and Narendran N, 'Protecting Digital Personal Data in India in 2023' (2023) 24 Computer Law Review International 9

(xiii) Sundara K and Narendran N, 'The Digital Personal Data Protection Act, 2023: Analysing India's Dynamic Approach to Data Protection' (2023) 24 Computer Law Review International 129

1. Article

(i) (EPIC) <https://www.supremecourt.gov/opinions/URLs_Cited/OT2012/12-25/12-25.PDF> accessed 8 January 2024

(ii) 'Data Protection Enforcement in the United States' (Global Compliance News) <https://www.globalcompliancenews.com/data-privacy/data-protection-enforcement-in-the-united-states/#:~:text=FTC%20Act%3A%20The%20FTC%20may,for%20purposes%20of%20the%20law.> accessed 8 January 2024

(iii) 'India - Data Protection Overview' (DataGuidance, 30 October 2023) <https://www.dataguidance.com/notes/india-data-protection-overview> accessed 8 January 2024

(iv) 'Salient Features of the Digital Personal Data Protection Bill, 2023' (Press Information Bureau) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947264> accessed 8 January 2024

(v) Kuner C, Bygrave LA and Docksey C, 'Background and Evolution of the EU General Data Simi W by, 'Video Privacy Protection Act and Online Video Content - the Blog' (The Blog -,

 ISBN: 978-81-948082-7-5

25 April 2019) <https://www.cincopa.com/blog/video-privacy-protection-act-and-online-video-content/#:~:text=The%20sharing%20of%20personal%20information,a%20stranger%20or%20known%20person%E2%80%9D.> accessed 8 January 2024

(vi) Ltd SVP, 'Digital Personal Data Protection Act 2023: Impact on Indian Healthcare Industry' (LinkedIn, 25 October 2023) <https://www.linkedin.com/pulse/digital-personal-data-protection-act-2023-impact-indian-6j2df#:~:text=Under%20the%20DPDP%20Act%2C%202023,or%20processes%20your%20personal%20data.> accessed 8 January 2024

(vii) Pittman FP, Hafiz A and Hamm A, 'Data Protection Laws and Regulations Report 2023 USA' (International Comparative Legal Guides International Business Reports, 20 July 2023) <https://iclg.com/practice-areas/data-protection-laws-and-regulations/usa> accessed 8 January 2024

(viii) Vezzoso S, 'Competition Policy in Transition: Exploring Data Portability's Roles' (OUP Academic, 5 January 2021) <https://academic.oup.com/jeclap/article-abstract/12/5/357/6062654> accessed 8 January 2024

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IMPACT OF SOCIAL MEDIA ON LEGAL DECISION MAKING

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ABSTRACT

The theoretical relationships between social networks and decision-making processes are defined by the writers in this paper. Social networks have ingrained themselves into daily life, and people from all walks of life use some type of social media to communicate with their peers. Social networks have had a significant influence on how people think and form beliefs, just as communication methods and channels have changed. Common views among the populace can significantly influence how decisions are made within the organization. Using the same communication channels, the firm may improve business and make timely decisions based on a thorough analysis of the public's sentiments on social networks.

By leveraging the same communication channels, the organization may respond quickly, improve business, and more effectively approach and explain internal decisions to users, which lowers user resistance to potential changes. Social networks have a multifaceted impact on decision-making, thus it's critical to correctly utilize their potential to boost competitiveness and profitability, particularly during difficult circumstances.

INTRODUCTION

Social media's introduction has brought about an unparalleled level of connectedness and digital contact, radically changing how individuals share information and communicate. Social media has become an essential component of contemporary society, impacting almost every facet of human existence, including the legal system, with billions of users across multiple platforms.

The effect of social media on the law of evidence has been a fascinating and intricate subject of

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discussion in the legal community in recent years. [64]These systems generate enormous volumes of data every day, which provide a wealth of potential evidence for use in court cases ranging from criminal prosecutions to civil disputes. Presently, judges, legal scholars, and attorneys must navigate the opportunities and difficulties brought about by this ever-changing digital landscape.

This paper explores how social media has changed the way that evidence is gathered, presented, and assessed in modern legal practice, shedding light on the significant influence that social media has had on the law of evidence. We'll look at social media's advantages as a reliable source of evidence and the complex legal issues that surround its admissibility in court.

Additionally, we will examine the difficulties with authentication presented by evidence from social media, where it is simple to alter or miscredit content. In the digital era, courts must strike a careful balance between preserving people's right to privacy and gathering pertinent evidence, therefore privacy concerns are also very important to take into account.

Since a large portion of the content on social media sites consists of statements made outside of court, the essay will go into additional detail about the intricate relationship between these rules and hearsay. It's crucial to comprehend how social media evidence fits into the established norms of evidence in order to guarantee fair and just outcomes in court.

Legal practitioners also face practical difficulties with the preservation and spoliation of social media evidence. In the pursuit of justice, it is important to carefully assess both the obligation to preserve pertinent material and the possible repercussions of neglecting to do so.

Lastly, we will talk about how social media investigations have become a crucial part of pre-trial preparation. These days, attorneys employ digital investigations to obtain information about possible jurors, witnesses, and opposing parties.

To protect the integrity of these investigations, however, ethical considerations and adherence to professional behaviour guidelines are essential.

[64] Power, D.J. and Phillips-Wren, G., 2011. Impact of social media and Web 2.0 on decision-making. *Journal of decision systems*, *20*(3), pp.249-261.

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SOCIAL MEDIA AS SOURCE OF EVIDENCE

Social media has become an important and powerful source of evidence in a wide range of judicial cases. Due to the abundance of user-generated content, social media platforms are becoming important informational archives that may be used in a variety of legal procedures. The following main ideas emphasize social media as a reliable source of information:

User-Generated Content: People are encouraged to openly share their ideas, opinions, experiences, and interactions on social networking platforms. Individuals' posts, messages, images, videos, and comments can therefore be used as possible evidence in court.

Instantaneous and Unplanned: Posting content on social media frequently occurs instantaneously, resulting in a reflection of the user's current feelings and ideas.

This can offer insightful information on the goals, behaviours, and mental state of an individual at a certain moment.[65]

Displaying Relationships and Events: Posts on social media can be utilized to prove the existence of connections, exchanges, or events that may be significant in a legal case. It can be used, for instance, to show the individual's activities, timeframes, alibis, and personal relationships.

Information That Is Publicly Accessible: Social media content can frequently be collected and utilized as evidence without a subpoena or court order because it is publicly accessible.

Social media can be used to cast doubt on the reliability of witnesses or other parties in a legal proceeding.

A person's reliability as a witness may be called into question if there are discrepancies between remarks they make on social media and in court.

[65] Cooley, D. and Parks-Yancy, R., 2019. The effect of social media on perceived information credibility and decision making. *Journal of Internet Commerce*, *18*(3), pp.249-269.

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Digital Footprint: Information shared on social networking platforms creates a digital footprint that may be used to follow people's movements, connections, and interests over time. This can be very helpful when conducting investigations into internet threats, harassment, or cyberbullying. Finding Relevant Witnesses: Social media can assist in finding possible witnesses or people who may have pertinent information but were not previously known to the parties to the case. Litigation strategy and discovery: During the discovery phase, attorneys frequently look into social media accounts in an effort to get information that can bolster their position or refute the other side's claims. proceedings pertaining to business and intellectual property: Social media content may be utilized as evidence in court proceedings concerning online activity-related contract disputes, defamation, and intellectual property infringement.

Social Media Metadata: In addition to the material itself, social media metadata—such as location information and timestamps—can be very helpful in determining the veracity and context of the evidence that is offered.

Social Media's Importance for Legal Experts

Social media sites like Facebook, Twitter, and LinkedIn were once largely used for amusement and personal updates. But these days, they are essential resources for companies looking to engage their audiences in meaningful ways. Building a strong online presence on these platforms is crucial for legal practitioners for the following reasons:

Increased Visibility: Legal professionals can effectively demonstrate their expertise and credibility by having a strong social media presence. It's simple to establish a presence as a thought leader and make connections with prospective customers by exchanging content and participating actively in online forums.

Networking Possibilities: Social media sites offer channels of communication with other attorneys, encouraging teamwork and the sharing of concepts. Thus, the professional network grows and opportunities opening up fresh possibilities.[66]

[66] Gilani, E., Salimi, D., Jouyandeh, M., Tavasoli, K. and Wong, W., 2019. A trend study on the impact of social media in decision making. *International Journal of Data and Network Science*, *3*(3), pp.201-222.

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Engagement with Clients: Responding to questions and issues on social media platforms can result in gaining new clients. It exhibits a dedication to client care, which is essential in the legal field.

Trials by Media

Social media has developed into a forum where people share stories rather than facts in an effort to gain attention. There are protracted, purely theoretical discussions and debates that put the rights of the accused and witnesses in jeopardy. There have been numerous instances of abuse of the freedom of speech and expression that Article 19(1)(a) guarantees. The foundation of criminal jurisprudence in India is the idea that an accused person cannot be found guilty unless and until his or her guilt is proven in a court of law. Opinions that may or may not be based in fact are disseminated on social media regarding both the accused and the victims.

The rules that guide Indian courts—"Guilty beyond a reasonable doubt" and "Innocent until proven guilty"—are disregarded by the media. Trial courts bear the brunt of this responsibility as they must lessen the negative effects of biased media coverage. Constant commentary from these social media sites could force judges to decide in Favor of the media instead of what is actually necessary for the case.

During the writ petition hearing in the Nupur Sharma case, Justices Surya Kant and Pardiwala made oral statements that resulted in multiple attacks on the judges' personal safety. Sometimes the general public struggles to understand the questions that courts pose in order to fulfil their legal obligations. The legal precepts of "Innocent until proven guilty" and "Guilty beyond reasonable doubt" that guide Indian courts are disregarded by the media. Trial courts are burdened with the task of reducing the negative effects of biased publicity. Courts may be pressured by persistent remarks on these social media sites to rule in Favor of the media instead of what is actually necessary in the case.

Judges Surya Kant and Pardiwala's oral statements during the writ petition hearing in the Nupur Sharma case resulted in multiple personal attacks on the judges. The questions that are asked in court to fulfil legal requirements are sometimes difficult for the general public to understand. The judges' private lives are impacted by the environments in which they are used, which the media is only able to disseminate without comprehending.

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How Can social media Benefit Your Law Firm?

A. Benefits of Developing a Strong Online Identity

In the current digital era, law firms need to have a strong online presence because it provides numerous advantages. First and foremost, having a strong online presence helps legal practices prove their legitimacy and trustworthiness to prospective clients. It serves as an online showroom where people can learn more about the company, its specialties, and its past accomplishments.

B. Demonstrating Proficiency and Creating Brand Awareness

Law firms can showcase their expertise and highlight their distinctive value proposition by utilizing social media platforms. Law firms can establish themselves as thought leaders in their particular practice areas by regularly publishing useful content such as blog posts, articles, and case studies. By continuously emphasizing their core values, mission, and unique features, this strategy not only builds trust and credibility but also solidifies their brand identity. It will enable you to provide your clients with legal services in an effective manner.

C. Expanding the Audience and Including Potential Customers

The ability of social media to reach a large audience that might not be easily reached through traditional marketing channels is one of the biggest benefits of using it. By strategically utilizing targeted advertising features and incorporating other strategies, law firms can narrow their focus and establish a connection with their ideal clientele.

In addition, social media platforms allow legal firms to converse directly and quickly with prospective clients, answering their questions and concerns right away. A feeling of accessibility and trust is fostered by such high levels of engagement, which eventually raises the possibility of drawing in and converting leads.

Social media gives legal firms a priceless platform to build a strong online presence, highlight their experience, and interact with more people. Law firms can increase their clientele, strengthen their brand recognition, and stay competitive in the digital age by utilizing these benefits.

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What effect does social media have on the making of legal decisions?

1. **As evidence**: Posts on social media may be cited in court in both criminal and civil proceedings. This can be useful in supporting or refuting certain facts, such as an individual's location or mental state at a given moment. It's crucial to remember that social media posts are subject to restrictions and that there are requirements that must be met in order for them to be accepted as evidence.
2. **As a source of information**: Judges and attorneys can find a wealth of information on social media. It can be used to locate witnesses, acquire proof, and discover more about the history of a case. Still, it's critical to understand the limitations of social media as a knowledge source. Social media posts may not always be accurate or genuine and can be changed or removed.
3. **As a means of swaying public opinion:** social media can be utilized to sway public perception of a case, which may have an impact on the verdict of a trial. Because of this, it's critical that judges take action to safeguard the right to a fair trial, such as isolating jurors and preventing them from speaking with others about the case.
4. **As a means of intimidating or harassing witnesses or other parties involved in a legal case**: social media can also be utilized in this manner. This People may find it challenging to come forward with information or give testimony in court as a result of this. In order to safeguard those who are being targeted, judges and attorneys must be aware of this problem and take appropriate action.[67]

   All things considered; social media is an effective instrument that can greatly influence legal judgments. It is critical that judges, attorneys, and other legal professionals understand the advantages and disadvantages of using social media in the legal system.

Social Media's Effect on Court Cases: Weighing the Advantages and Drawbacks

Social media platforms have completely changed how we engage and communicate with one another in the digital age. These platforms provide unmatched chances to communicate with people all over the world and share information. Nonetheless, it is impossible to overlook social media's influence on legal proceedings as it only grows. Social media has an impact on the legal system in both positive

[67] Mergel, I., 2017. Building holistic evidence for social media impact. *Public Administration Review*, *77*(4), pp.489-495.

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and negative ways, from swaying public opinion to presenting potential evidence.

1. **The Influence of General Opinion**

Social media platforms have given the general public a voice by enabling people to freely and quickly express their opinions. This right to free speech has the power to change people's minds and impact legal actions. Prominent cases are frequently followed by intense Online conversations, arguments, and occasionally even campaigns have the power to influence the legal system. While ensuring justice can benefit from public awareness and involvement, the difficulty lies in telling fact from fiction because misinformation spreads quickly.

2. **Finding and Presenting Proof:**

For legal professionals, social media platforms have developed into informational gold mines. They can be useful resources for obtaining proof, particularly in situations involving harassment, defamation, or cyberbullying.[68] Images, videos, posts, and messages shared on social media can reveal important details about a person's connections, activities, and intentions. To avoid fraud or deception, though, the legitimacy and admissibility of such evidence need to be closely examined.

3. **Privacy Issues and Ethical Conundrums:**

Social media use in court cases presents privacy issues and moral conundrums. Investigators and attorneys have to walk a tightrope between obtaining information that is readily available to the public and violating someone's right to privacy. When conclusions about a person's behaviour or character are made based on their social media posts, the lines can become hazy. A constant challenge is striking a balance between the need for proof and the need to protect privacy.

4. **Effect on Trial Procedures and Juror Bias:**

Social media's widespread use makes it difficult to guarantee fair trials. Social media access during a trial may affect jurors' opinions of the case and jeopardize their objectivity. All across the world, legal systems struggle to keep juries from doing their own independent research or letting the case's social media discussions sway them. more stringent policies and awareness Initiatives are being put into place to deal with this problem.

[68] Diga, M. and Kelleher, T., 2009. Social media use, perceptions of decision-making power, and public relations roles. *Public Relations Review*, *35*(4), pp.440-442.

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There is no denying social media's influence on legal proceedings. It has the ability to sway public opinion, offer proof, and raise moral dilemmas. It provides tremendous opportunities for transparency and information gathering, but it also necessitates caution to maintain fairness, safeguard privacy, and stop the spread of false information. Legal systems must adjust and create rules that create a balance between leveraging social media's potential and respecting the values of justice as the digital landscape continues to change.[69]

Conclusion

Social media has grown to be a powerful influence in our lives when it comes to making decisions. We have looked at how social media can influence and Mold our decisions throughout this article. Social media has a significant impact on our decision-making processes, from requesting advice and insights from our online communities to being subjected to persuasive advertising and carefully chosen content. The fact that social media has changed how we obtain information is among the most important lessons learned. We have instant access to a plethora of global viewpoints, reviews, and insights with just a few clicks. Navigating the vast sea of online content can be both empowering and overwhelming due to the abundance of information available to us. But it's crucial to approach this material critically, keeping in mind the reliability and applicability of the sources. Social media also has the ability to affect our perceptions and elicit feelings. Social media sites like Facebook, Instagram, and Twitter have the power to shape our goals and desires through their carefully chosen content and relevant ads. To make sure that our decision-making processes are not primarily influenced by outside factors, it is essential to be aware of these strategies and to retain a certain level of self-awareness. To sum up, social media has surely ingrained itself into every aspect of our lives, including how we make decisions. But it's crucial to approach this knowledge with caution. It is crucial that we approach social media with a critical mindset as we continue to navigate this digital landscape, taking into account the veracity of the information we come across and being aware of the potential emotional influence it may have on our decisions. We can make decisions that are consistent with our goals and values if we use social media with knowledge and consideration. Therefore, the next time you find yourself cruising through your social media feed, stop, think about how it might be influencing your choices, and make sure you're in charge.

[69] Chun, S.A. and Reyes, L.F.L., 2012. Social media in government. *Government Information Quarterly*, *29*(4), pp.441-445.

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"RESOLUTION STRATEGIES AND IMPACT ANALYSIS OF THE JAYPEE INFRATECH INSOLVENCY CASE"

AUTHORED BY - Harshika Hazarika

ABSTRACT

The Jaypee Infratech Limited bankruptcy case stands as a critical episode illustrating the dynamics and intricacies of India's Insolvency and Bankruptcy Code, 2016 within the real estate sector. This research delves into the details of the *IDBI Bank Ltd. v. Jaypee Infratech Ltd.*, evaluating its implications on homebuyers, creditors, and stakeholders. The article addresses the challenges unique to the real estate industry in the IBC framework, focusing on delays, stakeholder conflicts, and resolution complexities. The role of the Supreme Court in safeguarding homebuyers' rights and promoting a just resolution process is explored. The research emphasizes the significance of transparency, communication, and trust-building among stakeholders and highlights the need for continuous refinement of the IBC to address sector-specific complexities effectively. Overall, the Jaypee Infratech case offers valuable insights into the intricate interplay of the IBC in the realm of real estate insolvency, underscoring the importance of balancing diverse interests while upholding fairness and accountability.

Keywords: Homebuyers, CIRP, Real Estate, Corporate Debtor

INTRODUCTION

The Jaypee Infratech Limited (JIL) emerged as crucial case for India's Insolvency and Bankruptcy Code (IBC)[70]. A division of Jaiprakash Associates Limited, Jaypee Infratech Limited [71]was involved in systems and real estate projects, including the construction of the Yamuna Motorway. However, financial issues prevented the project's completion, leaving homebuyers and creditors aggrieved. A group led by IDBI Bank[72] filed an insolvency claim against Jaypee Infratech with the National

[70] Ashok sharma, *Emerging Value of the Insolvency and Bankruptcy Code, 2016*, CNLU LJ (9) , 108 (2020)
[71] Yamuna Expressway Industrial Development Authority v. Jaypee Infratech Ltd., 2017 SCC Online SC 2037
[72] IDBI Bank v. Jaypee Infratech, 2018 SCC Online NCLT 9583

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Company Law Tribunal (NCLT)[73] in August 2017 under Section 7 of the Code to initiate the CIRP process against the default so committed. The Insolvency and Bankruptcy Code (IBC), which aims to provide a swift resolution mechanism for insolvent and defaulting companies, followed up this situation.[74]

2.1 THE LEGAL PROCESS AND THE RESOLUTION OF AN ISSUE DELAYS

Suraksha Group and NBCC were two businesses that were considering acquiring Jaypee Infratech Limited in order to complete its projects[75]. The CoC, which is made up of financial creditors, evaluated the bids and selected the top offeror. Delays were brought on by legal disputes and disagreements between parties. The Supreme Court kept an eye on the situation and upheld the rights of homebuyers. The NBCC's plan, which aimed to finish projects and assist homebuyers, was ultimately acknowledged.[76]

LITERATURE REVIEW

1. Kristin Mugford, William Vrattos (2022)[77]

The authors explain how India passed a new law in 2016 called the IBC to assist with financial issues in businesses and banks. In 2017, the large distressed company Jaypee Infratech began using IBC to address its problems. But two years later, nothing has changed. This now includes the Supreme Court of India, which is the country's highest court. A collection of people who owe money, including Indian banks and homeowners who purchased homes coming from Jaypee, are additionally engaged in the bid by two companies to acquire Jaypee Infratech.

Limitation: Pending IBC restructuring of Jaypee Infratech due to Supreme Court, multiple bidders, complex creditors hinder determining suitable price for York Capital's debt purchase.

[73] Shatakshi Singh, *Effect of the Insolvency and Bankruptcy Code, 2016 on Corporate Governance in India,*2.3 JCLG 54 (2018)
[74] Mangesh Krishna, *Evolution of Law on Withdrawal of Application Under the Insolvency and Bankruptcy Code 2016*, 11 RMLNLUJ, 52 (2019)
[75] Supra note 3
[76] Jeevan Prakash Sharma, Five Years Of Jaypee Infratech Insolvency Case: Why Do Homebuyers End Up As The BiggestLosers?OUTLOOKINDIA,(AUG.22,11:59AM)https://www.outlookindia.com/business/five-years-of- jaypee-infratech-insolvency-case-why-do-homebuyers-end-up-as-the-biggest-losers--news-218988.
[77] Mugford, Kristin, William Vrattos, and Radhika Kak, Jaypee Infratech and the Indian Bankruptcy Code, Harvard Business School Case , 222-071, February (2022).

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2. Damini Mathur (2019)[78]

An outline of Jaypee Infratech insolvency case, and its effects is given in Damini Mathur's study. The study covers that the impact of IBC is best illustrated by the case of Jaypee Infratech Ltd., a significant Indian construction firm. An insolvency demand was filed at NCLT Allahabad with an outstanding debt of 9,800 crore, which includes 4,334 crore owed to IDBI Bank. IBC 2016 resulted in the appointment of an Interim Resolution Professional (IRP) to manage the company's affairs, which was done in August 2017.

Limitation: Jaypee Infratech's ₹9,800 crore debt, including ₹4,334 crore to IDBI Bank, prompted IBC 2016-triggered insolvency, showcasing the law's application.

3. Namratra Maheswari (2017)[79]

This article is an analysis of the ambiguities under the Insolvency and Bankruptcy Code, 2016, as highlighted by a case filed by a group of home buyers against Jaypee Infratech Ltd. It discusses the challenges faced during the implementation of the code and the need for legislative changes. The author explores the treatment of homebuyers in unfinished construction projects under the IBC and the role of the Supreme Court in protecting their interests. The author suggests that amendments to the IBC may be necessary to address the concerns of homebuyers and other similarly placed buyers in different industries.

Limitation: The study examines contradictions in the Insolvency and Bankruptcy Code brought to light by a case against Jaypee Infratech Ltd.

RESEARCH QUESTION

- How did the Jaypee Infratech bankruptcy case highlight the difficulties and complexities unique to the Indian Insolvency and Bankruptcy Code (IBC)-governed real estate sector?
- What were the most important suggestions and directives made by the Supreme Court

[78] Damini Mathur, Status of Statutory Dues under Insolvency and Bankruptcy Code, 2019,13, SUPREMO AMIC,70 (2019).
[79] Namratra Maheswari, The Jaypee Case And The Consumer-Creditor Conundrum Under The Insolvency And Bankruptcy Code, 140 CLA (Mag.) 33 (2017).

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in the Jaypee Infratech case that helped to safeguard homebuyers' rights and promote a fair resolution of conflicts process?

- How did the Jaypee Infratech case demonstrate the value of openness, clear communication, and fostering trust among all parties involved in the insolvency resolution process, along with how did these elements affect the resolution of the case as a whole?

ANALYSIS

The Jaypee Infratech bankruptcy case unveiled crucial insights into the intricacies of the Indian bankruptcy and insolvency framework[80]. A pivotal concern revolved around safeguarding the rights of homebuyers. Robust safeguards that encompass the entire span of the insolvency resolution procedure are imperative, and the intervention of the Supreme Court played a vital role in protecting their real estate investments and resolving their apprehensions.

Delays and conflicts of law in the resolution process led to uncertainty and distress among stakeholders. These delays were caused by the complicated relationships and competing interests of the parties affected. As a result, it became critical to hasten the resolution process and create a framework that is effective at managing numerous stakeholders.

Particularly, the case involved numerous applicants for resolution, including the NBCC and the Suraksha Group. Future plans for the company and its stakeholders were determined by the crucial steps of evaluating and choosing the preferred bidder. This brought to light how challenging it is to balance competing interests among various parties, such as financial creditors, operational creditors, and homebuyers.

The Supreme Court's active participation demonstrated its dedication to defending homebuyers' entitlements and fostering a fair dispute resolution procedure. Its instructions and interventions were crucial for tackling the worries of homebuyers, directing the dispute resolution procedure, and maintaining accountability. In addition, the case highlighted the particular difficulties faced by the

[80] Chapter 62: "Jaypee Infratech Case": Discerning the Reach of Avoidance Proceedings

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real estate industry in bankruptcy proceedings due to its complexity and involvement of numerous parties, including homebuyers, financiers, and independent contractors

ROLE OF THE INSOLVENCY AND BANKRUPTCY CODE(IBC)

The Jaypee Infratech case made clear the actual constraints and flaws in the Insolvency and Bankruptcy Code (IBC) framework, especially as it relates to the complex real estate industry. This case demonstrated how urgent it is to address industry-specific problems via crucial IBC amendments. The case stated the changing character of insolvency proceedings and the need for ongoing modification to the bankruptcy code for optimising its effectiveness.

BUILDING TRUST AMONG STAKEHOLDERS

Transparency and effective communication have become crucial components in insolvency cases, particularly when working with numerous stakeholders. The Jaypee Infratech case serves as an illustration of how important it is to maintain broad avenues of interaction and a culture of trust among all parties, including homebuyers, creditors, and resolution seekers. This case highlighted the significance of maintaining trust among stakeholders, which is essential for the effective execution of the insolvency process by serving as an example of the benefits of effective communication and transparency.

CONCLUSION

The Jaypee Infratech bankruptcy case has shed light on critical aspects of the Indian Insolvency and Bankruptcy Code (IBC), particularly within the challenging landscape of the real estate sector. This case has highlighted the pressing need to secure the rights of homebuyers amidst insolvency proceedings, ultimately reinforcing the significance of a balanced approach to safeguarding stakeholders' interests. The proactive intervention of the Supreme Court has played a pivotal role in ensuring transparency, accountability, and fair play in the resolution process. Moreover, the case underscores the complexities inherent to real estate-related insolvency, showcasing the demand for continuous amendments to the IBC framework to effectively address sector-specific intricacies.

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REFERENCES

ONLINE SOURCES

1. HAVARDBUSINESSLAW,https://www.hbs.edu/faculty/Pages/item.aspx?num=620
2. 88 (Last visited Aug 30,2023)
3. INDIACORPORATE LAW, https://corporate.cyrilamarchandblogs.com/2020/03/the-jaypee-judgement-assessing-its-impact-on-the-indian-financing-landscape/,(last visited Aug. 29, 2023).
4. IBC LAWS, https://ibclaw.in/jaypee-infratech-bankruptcy-case-the-final-bid-by-ms- g-vidya-kamath/ (last visited 29, 2023).
5. LAWYERED,https://www.lawyered.in/legal-disrupt/articles/jaypee-infratech-
6. limited-and-petition-insolvency/, (last visited Aug. 29, 2023).
7. BUSINESS.OUTLOOKINDIA,https://www.outlookindia.com/business/five-years- of-jaypee-infratech-insolvency-case-why-do-homebuyers-end-up-as-the-biggest- losers--news-218988, (last visited Aug. 30, 2023).
8. BNWJOURNAL,https://bnwjournal.com/2021/11/25/analysis-of-jaypee-infratech-
9. case/, (last visited Aug. 30, 2023).
10. SCCONLINE, www.scconline.com (last visited Aug. 30, 2023)

BOOKS

1. Mugford, Kristin, William Vrattos, and Radhika Kak. "Jaypee Infratech and the Indian Bankruptcy Code." Harvard Business School Case, 222-071, February (2022).
2. Damini Mathur, Status of Statutory Dues under Insolvency and Bankruptcy Code, 2019,13, SUPREMO AMIC,70 (2019).
3. Namratra Maheswari, The Jaypee Case And The Consumer-Creditor Conundrum Under The Insolvency And Bankruptcy Code, 140 CLA (Mag.) 33(2017)

CASE LAWS

1. Yamuna Expressway Industrial Development Authority v. Jaypee Infratech Ltd., 2017 SCC Online SC 2037
2. IDBI Bank v. Jaypee Infratech, 2018 SCC Online NCLT 9583

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UNIFORM CIVIL CODE IMPACT ON GENDER JUSTICE

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The Preamble of the Indian Constitution ensures a Sovereign Socialist Secular Democratic Republic and provides justice, Equality, Liberty, and fraternity to all its citizens. This makes India a secular State where there is no particular religion followed by the State. It also ensures equality among all individuals. The provision for the Right to equality is provided under Article 14 to Article 18 of the Fundamental Rights of Part III of the Constitution Of India. In Article 14 it deals with Equality Before the Law and Equal Protection of the Law, Article 15 is about the Prohibition of discrimination on the grounds of religion caste race sex place of birth or any of them, Article 16 is about Equality of opportunity and of stays, Article 17 about the abolition of untouchability and Article 18 on the abolition of titles. These provisions ensure equality for all individuals. Gender equality is one of the objectives of the Indian Constitution which is considered as one of the basic rights in a dignified society. These can be seen through Fundamental Rights[81] and Directive Principles of State Policy[82]. One of the provisions with gender equality objectives can be seen in Article 44 of the Constitution of India.

India is a vast country with various cultures, languages, festivals, religions, customs, and so on. India has various religions each governed by separate personal laws which include The Hindu Marriage Act, 1955, The Christian Marriage Act, 1872, the Hindu Adoption and Maintenance Act,1956, Hindu Guardianship and Minorities Act,1956, the Hindu Succession Act,1956, the Muslim Marriage Act,1957, the Divorce Act, 1869 and so on, in the matters of marriage, divorce, adoption, maintenance, inheritance, etc. These legislations are followed by different religions, where there is no uniformity among them. Thus, the Uniform Civil Code is a set of laws that provide uniformity among the said personal laws confirming equality. The Constitution of India under Article 44 requires

[81] Part III of the Constitution Of India
[82] Part IV of the Constitution of India

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the state to endeavour to provide Indian citizens with a uniform code of civil law throughout India. However, the Constitution does not mention whether a single law should be enacted to apply to different communities. The meaning of the term "uniform" is not specified in the Constitution of India and it is also difficult to apply a single codified law to the very diverse population of India. The word “uniform” in Article 44 means that all communities will be governed by the unified principles of gender equality and human justice. A unified law does not necessarily mean a common law but another individual right based on the unified principles of individual liberty and equality. Such uniformity can support legal diversity.

The Indian Constitution aims to achieve gender equality by ensuring equal rights for both women and men. The attainment of gender equality is a fundamental human right that requires women to be given equal status in the society, as long as they do not feel oppressed or inferior. The concept of gender justice is fundamentally concerned with achieving equality and fairness for both men and women. This encompasses a wide range of life-related factors, including social, economic, and legal rights. The issue of gender justice is a common topic of discussion regarding the development of implementing and maintaining standardized Uniform Civil Codes. Uniform Civil Code objectives are to bring the same laws which might govern all matters, equality between anyone earlier than the law, whether it be a male or a female each might be treated equally and should abide by an equal set of laws that supports gender equality. Equality among every faith before the law and equal laws for each male and woman can be established through an equal set of laws.

As mentioned before, the Uniform Civil Code seeks to replace personal laws based on religion and culture with a uniform set of civil laws that apply to all Indians regardless of their nationality. Its objective is to promote gender equality, social justice, and national integration by establishing a common legal framework for personal matters like marriage, divorce, inheritance, adoption, etc. In India, certain personal laws are recognized for Hindus, Muslims, Christians and other religious peoples. The personal aspects of marriage, divorce, adoption or inheritance are covered by these laws. However, these regulations vary in so many ways, for example, marriage age; divorce and maintenance. By creating a uniform set of regulations that applies to all citizens regardless of their cultural or religious background, the Uniform Civil Code seeks to address these differences. Although there are various opinions and oppositions from different religious groups and communities, the

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Hon'ble Supreme Court of India suggested that the introduction of the Uniform Civil Code is essential in maintaining gender justice and equality all over the country.

The main aim of the Uniform Civil Code is to bring out non-discriminatory laws for men and women rather than to alter practices associated with different religions in the country. The characterization of gender equality is intended to nullify the unlawful actions under personal regulations that result in someone's distress. According to the Preamble of the Constitution of India, India is a secular state having no particular religion to be followed, however, there exist different personal laws for different religions in the country. Individuals from diverse religious communities often have their own personal laws, which are frequently influenced by religious practices and traditions. Discrimination and gender inequality can occur due to laws that treat men differently than women in areas such as marriage, divorce, and inheritance. Thus, a full aspect of secularism is not fulfilled in the country, whereas the introduction of the Uniform Civil Code can protect this aspect. For instance, Muslim women in India face several challenges due to the triple talaaq system, which allows a man to divorce his wife by simply uttering the word talaaq three times. This practice denies women their right to equality and dignity and often leaves them financially and emotionally vulnerable. By establishing a UCC, these discriminatory practices can be abolished, ensuring equal rights for all individuals regardless of their religious background. Moreover, a Uniform Civil Code will also help address issues related especially to child marriage and polygamy, which are prevalent in some communities. Child marriage is a violation of children's rights and has adverse consequences on their physical, mental, and emotional well - being of a child. Similarly, polygamy, which allows men to have multiple wives, can lead to unequal power dynamics within families and result in the marginalization of women. Through the implementation of a Uniform Civil Code that prohibits child marriage and restricts polygamy, gender justice can be promoted, and the rights of women and children can be protected.

Another important aspect of implementing a Uniform Civil Code is to address the issue of marital rape and provide justice to victims. Marital rape refers to non - consensual sexual intercourse between spouses. This act not only violates the rights of women but also perpetuates the notion that a woman's consent is not necessary within the institution of marriage. Gender Justice can be upheld through the implementation of a uniform Civil Code that criminalizes the act and the rights and dignity of a woman will be protected. The code can also protect against discrimination under the laws of adoption and inheritance. Some religious personal laws refuse women's rightful share of inheritance and have

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varying requirements and restrictions when it comes to adoption, leading to disparities and discrimination. This can be altered through the implementation of the Code. The restrictions on the right to inherit not only hinder their economic independence but also reinforce patriarchal norms and power dynamics within families. Through uniform civil code, equal property rights for all individuals will be ensured, regardless of their gender and women would be able to exercise their right to own, inherit, and manage property, thereby enhancing their economic status and autonomy.

Background of Establishing Uniform Civil Code

The Report submitted by the British Government in 1835, which emphasized the need for uniformity in the codification of Indian law relating to crimes, evidence, and contracts and specifically recommended that personal laws of Hindus and Muslims be kept outside of such codification, is where the Uniform Civil Code first emerged. The government created the B N Rau Committee to codify Hindu law in 1941 as a result of an increase in laws addressing personal matters after the end of British rule. Following the adoption of a bill in 1956 known as the Hindu Succession Act, the legislation governing intestate or unwilled succession among Hindus, Buddhists, Jains, and Sikhs was changed and codified. However, Muslims, Christians, and Hindus had different personal laws. The courts have frequently ruled in their decisions that the government must switch to a Uniform Civil Code in order to create consistency. The Uniform Civil Code which is applicable to the entire nation has been a reality for over two decades, as stated by the Drafting Committee Chairman Dr. B.R. Ambedkar. He had stated many examples, such as the Uniform Criminal Law, Transfer of Property and Negotiable Instruments Act, are relevant to all individuals. In the Constituent Assembly debate in support of UCC, Dr B.R. Ambedkar said ‘*’I don’t personally understand why religion should be given this vast, expansive jurisdiction so as to cover the whole life and to prevent the legislature from encroaching upon that field. After all, what we are having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequalities, discriminations and other things, which conflict with our fundamental rights.* ’’[83] The Constitution makers included a Uniform civil code to safeguard against discrimination based on religion and to promote equality among the people, ultimately leading to India becoming governed by universal law and forming sway as if no other

[83] Dr. Jayshri Das, *UNIFORM CIVIL CODE FOR GENDER JUSTICE,* 1 MSSV JOURNAL OF HUMANITIES AND SOCIAL SCIENCES (MSSVHSS) 78, 81.

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country existed. The debate on gender justice in the constituent assembly did not heavily focus on the issue.

In the 21st Law Commission Report, the Law Commission of India has concluded that the implementation of a Uniform Civil Code is not essential or desirable for resolving conflicts in personal or family laws. As per its declaration, several countries are moving towards the recognition of differences, and the presence of variations is not a sign or endorsement that discriminates but rather characterizes receptive democracy. Thus, the Commission has recommended revisions to current family laws to address discrimination and inequality in personal law, rather than eradicating differences between individual personal laws.

Judicial Opinions

One of the well-known judgments was made in the case of *Mohammad Ahmed Khan v. Shah Bano Begum*[84]. In 1932, Shah Bano married Mohammad Ahmad Khan was a well-known lawyer in Indore. They were parents of 3 sons and 2 daughters After 14 years. From their marriage, Shah Bano's husband married another woman who was younger than him. In 1975, when Shah Bano was 62 years old, her husband rejected her and she and her children were thrown out of the matrimonial home. In April 1978 she appealed under Section 125 of the Code of Criminal Procedure, 1973 in the presence of the Indoor Magistrate after her husband threw her out of the marriage. Shah Bano filed this suit in 1978 after her husband repudiated her for Rs. 200 per month which he will definitely give. According to Section 125 of the Code of Criminal Procedure, 1973, a woman who does not have any income or is neglected by her husband shall be entitled to maintenance, including divorced women without a remarriage. He granted his wife Shah Bano divorce in November 1978, when he pronounced or said "Triple Talaq." It was irrevocable. The arguments or conflicts between Shah Bano's children and her husband's other wife were essential reasons or grounds for the surrender and payment of the Divorce. After declaring Triple Talaaq irrevocable, he has assured that because of this divorce, she is no longer his legal wife and therefore he is under no obligation to provide her alimony or maintenance. The local court (magistrate) ordered Mohd. Ahmad offers Shah Bano Rs 25 per month in the form of maintenance. Shah Bano, in July 1908, continued to plead with the Hon'ble Supreme Court of India to change the alimony amount to Rs 179 per month. Shah Bano's conviction was taken to the Hon'ble

[84] AIR 1985 SC 945

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Supreme Court and there is a petition against the Madhya Pradesh decision of Hon'ble High Court. The core argument of a husband after a divorce is that he cannot maintain any form of covenant or bond with his divorced wife because that is not allowed by Islamic/Islamic law and is "Haram" and therefore he is not legally responsible for supporting his wife.

In this case, the question was pertaining to the liability of a Muslim husband to maintain his divorced wife beyond the period of if day, if the wife was not able to maintain herself. The Hon'ble Supreme Court of India in this case held that Section 125 Criminal Procedure Code, 1973 which imposes such an obligation on all husbands, is secular in character and is applicable to all religions. It applies to all Indians generally and overrides the personal law if there is a conflict between the two. The court held that it is also a matter of regret that Article 44 of the Indian Constitution has remained a dead letter. There is no evidence of any official activity in framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take the lead in the matter of reforms of their personal law. A common civil code will help the cause of national integration by removing disparate loyalties to law that have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue.[85] It is the State which is charged with the duty of securing a Uniform Civil Code for the citizens of the country and unquestionably, it has legislative competence to do so.

Another important judgement was the case of *Sarla Mudal v. Union of India*[86] where four petitions were filed. The first petition was filed by a registered society working for the welfare of women as public interest litigation. The second was filed by Meena Mathur. She contended that she was married to Jitendra in 1978 and they had three children out of wedlock. In 1988 her husband solemnized a second marriage with Sunita Narula alias Fatima after they converted to Islam. In the third case, Sunita contended that after marrying her Jitendra had again converted back to Hinduism and lived with his first wife. Her grievance was that she still continued to be a Muslim but was not being maintained by her husband and had no protection under either of the personal laws. In the fourth case, the petitioner Gita Rani contended that she was married to Pradeep Kumar according to Hindu rites in 1988. In 1991 she came to know that her husband ran away with one Deepa and after conversion to Islam married her. The fifth petitioner Sushmita Ghosh contended in the Court that she was married

[85] Mamata Rao, CONSTITUTIONAL LAW 444(2nd ed., 2021)
[86] (1995) 3 SCC 635

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to G.C.Ghosh according to Hindu rites in 1984 but in 1922 her husband said that he did not like her and he would embrace Islam and marry Vinita Gupta. She prayed that her husband be restrained from entering into a second marriage with Vinita Gupta. As regards the question of the Uniform Civil Code the Division Bench in their separate but concurrent judgements held Since 1950 a number of Governments have come and gone but they failed to make any efforts towards implementing the constitutional mandate under Article 44 of the Constitution. The introduction of a Uniform Civil Code can be a solution for the issue of conversion from Hindu to Muslim as there is no necessary connection between religion and personal law in a civilized society. The Court requested the Government of India through the Hon'ble Prime Minister to take a fresh look at Article 44 of the Constitution of India which enjoins the State to secure a uniform civil code, an imperative provision for both protection of the oppressed and promotion of national unity and integrity. The Court directed the Union Government through the Secretary to Minister of Law and Justice to file an affidavit by August 1995 indicating the steps taken and efforts made by the Government towards securing a uniform civil code for the citizens of India.[87]

In the recent case law of *Lily Thomas v. Union of India*[88], the Hon'ble Supreme Court of India acknowledged that there were no instructions for codifying the Civil Code and that judges drafting those orders did not reflect reality as the second marriage had been instigated by a Hindu husband who had converted to Islam. This clarification suggests that the Apex Court in India, which was initially a forceful advocate for a uniform civil code, has made erroneous moves.

In *John Vallamattom v. Union of India*[89] AIR 2003 SC 2902 a three Bench of the Hon'ble Supreme Court of India consisting of C.J. V.N. Khare, S.B. Sinha and Dr. A.R. Lakshmanan JJ., once again expressed regret for non-enactment of Uniform Civil Code. In the instant case, one of the petitioners was a Roman Catholic Priest who holds Indian citizenship, and the other was also based in Christianity. According to the Indian Succession Act of 1925, the petitioners asserted that they were not permitted to pass on inheritance for religious and charitable purposes. The petitioners contended that Section 118[90] was creating an unjustified and autocratic imposition of restrictions on their

[87] Dr. J. N. Pandey, CONSTITUTIONAL LAW OF INDIA 496(59th ed. 2022)
[88] AIR 2000 SC 1650
[89] AIR 2003 SC 2902
[90] Bequest to religious or charitable uses.—No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his

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personal property, including the right to donate it for religious or charitable causes. The validity of Section 118 of the Act was challenged on the ground that it was discriminatory under Article 14[91] as well as violative of Article 25[92] and Article 26[93] of the Constitution of India. Section 118 of the Act imposed restrictions on a Christian having a nephew or niece or any other relative as regards his power to bequeath his property for religious or charitable purposes. The definition in the Act did not include the wife of a testator as a near relative while an adopted son was included as a relative. So a Christian testator having a nephew or niece must execute the will at least 12 months before his death and deposit it within six months otherwise the bequest for religious or charitable use would be void. This restriction did not apply to a person having a wife. The court held that Section 118 of the Succession Act is unconstitutional being violative of Article 14 of the Constitution of India. Article 25 and Article 26 have no application in this case as disposition of property for religious and charitable uses is not an integral part of Christian religion.[94] The Hon'ble Chief Justice of India forcefully reiterated the view that the Uniform Civil Code be enacted as it would solve such problems. "Article 44 is based on the premise that there is no necessary connection between religion and personal law in a civilized society." Article 25 of the Constitution of India confers freedom of conscience and free precession, practice and propagation of religion. Article 25 and Article 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. There is no matter of doubt that marriage, succession and the like matters of a secular character

death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons: [Provided that nothing in this section shall apply to a Parsi.]

[91] Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

[92] Freedom of conscience and free profession, practice and propagation of religion
(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus
Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

[93] Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right
(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with law

[94] Article 25 and Article 26 only protect those rituals and ceremonies that are an integral part of religion

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cannot be brought within the guarantee enshrined under Article 25 and Article 26 of the Constitution of India. It is a matter of regret that Article 44 of the Constitution has not been given effect to. A Uniform Civil Code will enhance the cause of national integration by removing the contradictions based on ideologies[95].

In *Seema v. Ashwani Kumar*[96] where the Hon'ble Supreme Court of India held that all marriages irrespective of their religion be compulsorily registered which was a first step towards a Uniform Civil Code. A two-judge Bench of the Apex Court consisting of Arijit Pasayat, J. and S.H. Kapadia, J. directed the Centre and State Governments to amend the law or frame rules regarding compulsory registration of marriages.

Conclusion

A social welfare system is present in India. The Preamble of the Constitution of India affirms that Indian citizens have entrusted themselves with the promise of freedom, equality and friendship. In order to create values in a society, the government must make certain that it follows these principles. The objective is to reduce social and economic inequality and strive for a just society where individuals have access to the necessary resources such as education, clothing, housing, health, nutrition, education materials, and other essential services. The need for a Uniform Civil Code is essential in order to promote gender justice and eliminate gender-based discrimination under various personal laws. Equality in all sectors of society will be ensured through its implementation. It is going to encourage equality, dignity and justice. Additionally, it contributes to the empowerment of individuals in economic terms and fosters overall development and progress. It is going to help the economy and people get better. The Article 44 of the Constitution of India was designed to encourage the pursuit of unity and integrity, which is deeply rooted in the Preamble of the Constitution. The purpose of the Uniform Civil Code is to guarantee equal rights for all individuals, rather than modifying cultural and religious practices that would contradict fundamental structure of our Constitution, which is the concept of Secularism. Thus, the implementation of a Uniform Civil Code by society can be viewed as paving the way for genuine gender equality and justice for all.

[95] Dr. J.N. Pandey, CONSTITUTIONAL LAW OF INDIA 498 (59th ed. 2022)
[96] AIR 2006 SC 1158

 ISBN: 978-81-948082-7-5

REFERENCE:

1. Dr. J.N. Pandey, CONSTITUTIONAL LAW OF INDIA (59th ed. 2022)
2. Mamata Rao, CONSTITUTIONAL LAW (2nd ed., 2021)
3. D.D Basu, Introduction to the CONSTITUTION OF INDIA, (24th ed., 2019)
4. M.P. Jain, INDIAN COONSTITUTIONAL LAW (8th ed., 2018)
5. Constitution of India Bare Act, 2023

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CATALYST ROLE OF IBC IN CORPORATE GOVERNANCE

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SYNOPSIS

ABSTRACT

India lagged well behind other countries in terms of bankruptcy and insolvency rules. The introduction of IBC 2016 was prompted by the state of the economy, the overwhelming amount of debt banks had to recover, the existence of nonperforming assets, and the pressing need for new legislation. The implementation of the credit-in-control regime is one of the key improvements highlighted in the article that were brought about by the code. The focus of the article is on how this change affects corporate governance standards, as does the function of resolution specialists, creditors' committees, etc. In order to instill a culture of corporate governance in running a firm, the code has favorably implemented a number of practices and statutory requirements. To ascertain the tribunal's stance on the matter, a review of numerous case laws is made. Numerous proposals for increasing efficiency under the IBC on this topic are included in the paper's conclusion.

KEYWORDS: IBC, Corporate Governance, Regime Shift, Resolution Professional, Removal of Board of Directors, COC.

RESEARCH OBJECTIVE

1. To establish a link between corporate governance and the functions of the IBC, 2016.
2. To examine the rationale behind and implications of the IBC's change in strategy from old regime to new regime.
3. To comprehend the function of the COC, suspended directors, employees, etc.
4. Using a variety of case laws, to distinguish between removal of the BOD and suspension of the directors' duties under section 17 of IBC.
5. To draw attention to the code's provisions, such as the moratorium and the prohibition of improper trade, which guarantee the legal status of corporate governance.

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RESEARCH PROBLEM

Since the debtor-in-possession regime hasn't made significant contributions to corporate governance, the implementation of a creditor-in-control model has become necessary. Resolution specialists do not play a significant enough role to support good corporate governance. Therefore, depending on court rulings will expose to the important elements that influence corporate governance.

RESEARCH QUESTIONS

1) How does corporate governance benefit from the switch from the old regime to the current regime?
2) What could be the functions of the COC, Resolution Professional, and Interim Resolution Professionals in relation to the IBC framework as corporate governance norms?
3) What are the possible judicial pronouncements that one can bank upon to contribute corporate governance?

HYPOTHESIS

Examining the IBC 2016 in the context of corporate governance forces one to consider the change in strategy that benefits the creditors as well as the functions performed by the committee of creditors, the board of directors following suspension, and the IRP/RP in safeguarding the company's survival by reconciling interests and optimizing value. Establishing procedures to deter fraudulent trading by severely punishing them are important institutional checks on corporate governance. With a few fixable failures, the code corresponds to the success. In order to comprehend the IBC 2016's current function in corporate governance, the researcher looks at it in the context of statutory provisions and court rulings.

RESEARCH METHODOLOGY

The methodology used is doctrinal. It is mainly descriptive and analytical. The research conducted for this study is applied, that while there has been prior academic research on the topic of bankruptcy and insolvency laws and its relationship to the catalytic approach of IBC in corporate governance, proper analysis is being justified.

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LITERATURE REVIEW

It is evident from a careful study of numerous papers addressing bankruptcy and insolvency that the subject is important and has many unanswered concerns. An analysis of the change in perspective from debtor-in-possession to creditor-in-control is necessary in order to comprehend the function and significance of the IBC, 2016. This change was crucial for maintaining the balance of interests and providing creditors some authority, which they had before none. The practices and other rules of the IBC must be understood in order to comprehend how the standards operate as corporate governance guidelines. For analyzing corporate governance, one can participate in meetings etc. but have no right to vote. Then the role of committee of creditors is highly significant as it ensures to check the power of the RP and maintain fair and just process.[97] All these studies show how IBC has been quite successful, particularly when it comes to promoting corporate governance. Since the code is continually being updated, changes are frequently made, providing room for improvement. This literature study aims to provide a critical analysis and commentary on these.

JOURNALS, DATABASE, ARTICLES

- **International Journal of Research Publication and Reviews Journal homepage: www.ijrpr.com ISSN 2582-7421**- Functions of IBC in Corporate Governance, explains about the different kinds of functions played by IBC to contribute towards corporate governance.
- **Role of Corporate Governance in IBC, by Sanyam Gupta, Volume 5 Issue 1** deals with the need for the code to explicitly contribute towards corporate governance and the guidelines for the same.
- **IBC: A Code for Corporate Governance, published by the IBBI**, elucidates the need to revamp various sick companies and bring them back to form for better serving the country's economy.
- **Insolvency & Restructuring in relation to Corporate Governance, by Dhruv Balla, published on Taxguru-** Findings on the remedial measures to govern the intricacies which the corporate sector

[97] Wajahat Monaf Jilani, Peter Walton & Joseph Curl, Introduction to corporate governance and insolvency, Corporate Governance and Insolvency (2022).

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- **Evaluating the impact of the IBC (2016) on Corporate Governance & the Economy, published on December 1,2020 on Nickeled & Dimed**, elucidating on the impact caused on the economy, and the recommendations which could be feasibly implemented.
- **IBC and its Impact on the Indian Economy - An Overview, published on December 10,2021**, **by TaxstreetIndia, Taxsutra**- elucidating on the impact created by IBC on the Indian economy.

BOOKS

- Corporate Governance, Virtual Book by Indian Institute of Corporate Governance, Taxmann publications- explains about the reasons for banking upon a good corporate governance for the corporate sector.

STATUTE

- IBC, 2016.

CHAPTER 1. INTRODUCTION

A prominent instance of Indian laws and regulations that are put into place to enhance the practice of good corporate governance is the IBC, 2016. The Ministry of Finance indicated that the law would have a significant influence on the country's corporate governance system even before it was put into effect.[98] The primary goals of the law are to establish pro-business governance standards in the nation and assist a company in times of hardship by optimizing asset value, balancing interest, etc. Resolution inside a firm is the goal of IBC, as established by NCLAT in the ***Binani Industries Limited v. Bank of Baroda and Anr.***[99] case, that a company's resolution is the aim of IBC. The code expedites the insolvency procedure and establishes the Bankruptcy Board in conjunction with it. The goal of the process is to salvage a firm from dissolution and bring it back to life. The OECD Principles of Corporate Governance, on the other hand, provide the best explanation of corporate governance. These are guidelines that disregard a business entity's requirements for administration and governance.

[98] K R Srivats, Bankruptcy code will have big impact on corporate governance: Jayant Sinha, The Hindu Business Line (2016), https://www.thehindubusinessline.com/economy/bankruptcy-code-will-have-big-impact-on-corporate-governance-jayant-sinha/article8211994.ece.
[99] Company Appeal (AT) (Insolvency) No. 82 of 2018.

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The three primary tenets of corporate governance are accountability, openness, and responsibility. It is an entity's policy structure, overseeing a variety of partnerships between the board, management, and shareholders [100] Enhancing the performance of the organization is the aim of the same and boosting productivity by lowering infractions.

A. DISTINCT ASSOCIATION BETWEEN IBC AND CORPORATE GOVERNANCE

Since the BOD is typically responsible for overseeing the business and has fiduciary duties, corporate governance essentially becomes the design of a financially stable organization. However, when a firm enters an insolvency process and is unable to pay its debts, the creditors gain control and the Corporate Insolvency Resolution Process (CIRP) is triggered. CIRP may be triggered by the financial or operational creditor. The Sick Industrial Companies Act of 1985's debtor-in-possession system and other bankruptcy procedures have been replaced by the 2016 code.

laws to the controlling creditor. The change in emphasis is due to the need to strengthen good governance by safeguarding creditors' interests through more proactive function to the creditors both throughout the insolvency and the period of time the business is heading toward insolvency, that is, prior to CIRP being activated. Cases lasted an average of up to 4.3 years, which was very long when compared to comparable countries like the UK.[101] ***The Government of India case v. Vijay Mallya***[102] serves as a best example of how loans were continued to be given to Kingfisher, despite its debt, with the little investors suffering as a result.

These are the problems that the Code seeks to address by offering answers for effective governance through section 12, which establishes a 180-day period for CIRP with a 90-day extension, as demonstrated in the ***Suraksha Asset Reconstruction Limited v. Siddharth Milk Food (India) Private Limited*** case. [103] sections 16 & 14, allowing for the appointment of an interim resolution professional; establishing a moratorium period who is in charge of creating the committee of creditors, which has the same authority as a corporate debtor under Section 17.

[100] G20/OECD principles of Corporate Governance - OECD, https://www.oecd.org/corporate/principles-corporate-governance/ (last visited Dec 1, 2023).
[101] Insolvency law reduces resolution time for stressed assets to 340 days: Economic survey, The Economic Times, https://economictimes.indiatimes.com/news/economy/policy/insolvency-law-reduces-resolution-time-for-stressed-assets-to-340-days-economic-survey/articleshow/73809835.cms (last visited Dec 1, 2023).
[102] [2020] EWHC 924 (Admin).
[103] I.A. 2048/2020 in CP 3505 / 2018. The standard time period for resolution was extended in the matter as per the orders

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CHAPTER 2. JUSTIFICATION FOR THE REGIME SWITCH

Before the introduction of the IBC, the debtor-in-possession was in charge of running the business both during and before the CIPR. Carrying out a company's activities and fiduciary obligations during a reorganization, liquidation, or potential liquidation owing to a change in interests is a different matter entirely from controlling and managing it under regular conditions.

When a firm is in difficulty, it is obligated by the Sick Industrial Companies Act to submit it to the Board for Industrial and Financial Reconstruction. The BIFR will then direct the company to either implement a rehabilitation plan or face winding up by the High Court. Together with the debtor-in-possession system, a major contributing element to the SICA law's demise was the lengthy, automatically occurring moratorium. As the procedures continued before the BIFR, the statute backed the debtor against creditor activities. As a result, the provisions were abused by the debtors to shield themselves from creditor legal action by postponing the CIPR and obtaining immunity. Consequently, this corporate governance approach wasn't appropriate.

The Banking Law Reforms Committee (BLRC) study that led to the creation of the IBC was the first to point out this regime's inappropriateness. 2016.[104]

When the entities experience financial difficulties, the entire management process reaches the owners. [105] The code ensures the company's resurrection, assisting the corporate debtor in continuing the business instead of solely disposing of it to pay off creditors. In ***Ultratech Cement Ltd. v. Silveroak Commercial Ltd***.,[106] the NCLT only issues orders for liquidation where there isn't a resolution plan like that. When a moratorium is imposed under section 14 of the act to preserve asset value, the debtor's interests are safeguarded. The timeline guarantees that the procedure is expedited so that better management can take over and revitalize the business, while also preserving the debtor's assets and increasing the process' efficiency for the benefit of the creditors.

According to the code, this plan guarantees that the goals of the corporate debtors, shareholders, and

[104] The report of the Bankruptcy Law Reforms Committee Volume I: Rationale ..., https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (last visited Dec 1, 2023).
[105] George Triantis, Debtor-in-possession financing in bankruptcy, Research Handbook on Corporate Bankruptcy Law (2020).
[106] MA 510/2020 in CP 2823/2018

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other stakeholders align with the requirements of the business, preventing underperformance, excessive delays, and minimizing defaults. It forces the debtor to resolve accumulating debt out of a lack of control.

According to the rules established in the cases of ***Satish Kumar Gupta v. Arcelor Mittal India Private Limited and Ors***[107], this type of application is chosen as a corporate governance practice when the petitioner is present and can be held accountable for managing the business as it is and preventing it from going bankrupt.

CHAPTER 3. CORPORATE GOVERNANCE STANDARDS- IBC FRAMEWORK

The specific functions and obligations of the BOD, IRP/RP, COC, etc., are outlined in the IBC's regulations; they must be fulfilled within the designated time limit. It is therefore necessary to look at this limited framework in order to understand the main purposes of the code and how it works to ingrain a corporate governance regime.

A. BUSINESS GOVERNMENT AND THE INDEPENDENT ROLE OF THE INTERIM PROFESSIONAL

In any case, the adjudicating authority may choose to designate an IRP in compliance with Section 16 in order to maximize value before proceeding with liquidation. One noteworthy aspect of section 17 is its capacity to halt the operations of the corporate debtor, board of directors, and other entities while they are being transferred to the IRP. This is done to protect creditors' interests and promote long-term investment in mergers and acquisitions as well as the spirit of entrepreneurship by enabling a professional to initiate CIRP without assistance.

The IRP is also bound by a rule of conduct that stipulates that he must provide all disclosures at the time of appointment. The code's Sections 53 and 178 forbid IPR from maintaining any financial or personal interest. In fact, the code extends up to the family of the IRP, prohibiting them along with the IRP from purchasing assets belonging to the debtor or accepting gifts, or in an otherwise situation,

[107] (2019) 2 SCC 1.

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prove that the independency and objectivity remains intact[108]

Furthermore, in accordance with section 19 of the code, the debtor and other business personnel are required to assist and completely cooperate with the IRP's management.[109] In the event that aid and cooperation are not provided, the adjudicating authority may issue orders, as was the case in ***M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr***. The creation of a committee of creditors (COC) is the most important requirement placed on IRP by the statute. This committee selects an alternate RP or, in accordance with section 22, permanently appoints the IRP as the RP. This RP is then responsible to entirely take over the CIRP and operations of debtor,[110] along with coming up with a resolution plan[111] which is drafted by the IRP by way of conducting meetings of the COC in order to collect information for the drafting.[112] As discussed earlier, IBC protects and preserves the assets of the debtor which is through RP only via execution of section 25 so the balance of interests is maintained. According to the ruling in ***Innovative Industries Ltd. v. ICICI Bank and Anr***., directors are no longer in a position of authority. Therefore, upon close examination, all of the responsibilities assigned to the IRP/RP under the IBC framework are consistent with corporate governance standards.

A. FUNCTIONS OF SUSPENDED BOARD OF DIRECTORS (BOD)

The law makes it quite clear that, in compliance with section 17, the corporate body's management is suspended indefinitely and the board of directors' responsibilities are handed to the IRP/RP. Nonetheless, this section becomes a fascinating subject to research when viewed in light of section 24(3), which mandates that the RP notify the suspended board of directors of the COC sessions. Sec 19 states that the BOD and other "*personnel*" are required to support and collaborate with the professional process. Despite not having voting rights, they are also asked to attend meeting proceedings. Therefore, it is inferred that section 17 simply suspends the board of directors' functions, not the board itself, and that each director continues to serve in their individual position as listed with the registrar.[113]

[108] IPA of Institute of Cost Accounts of India, http://ipaicmai.in/IPANEW/Default.aspx (last visited Dec 13, 2023).
[109] The section specifies the duty on 'personnel' which is defined under section 5(23) of the Code, 2016 and includes promoters, directors, employees, and other management of the company.
[110] Section 23, The Insolvency & Bankruptcy Code, 2016
[111] Section 29(1), The Insolvency & Bankruptcy Code, 2016
[112] Section 24, The Insolvency & Bankruptcy Code, 2016
[113] Vinod Kothari Consultants, Vinod Kothari Consultants (2022), https://vinodkothari.com/2018/03/resolution-

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The Madras High Court had to review section 208A of the Companies Act, 1913, and the text of the clause said that the directors retained their individual ability but lost their rights. The board filed an appeal in ***Steel Konnect (India) (P) Ltd. v. Hero Fincorp Ltd***.[114] of directors, which the creditor satisfied with the argument that since an IRP has already been assigned for the CIRP, directors are not eligible to appeal under section 17. Additionally, in ***Vijay Kumar Jain v. Standard Chartered Bank &Ors***, the Supreme Court put that down as the directors should receive copies of the resolution plan and other documents, as they are legally entitled to attend COC meetings. They are unable to cast ballots or make judgments, but they also have the right to be present and to copy of the relevant documents. Consequently, making sure that COC meetings with the supply.

B. FUNCTIONS OF COC (Committee of Creditors)

Section 21, which assigns the IRP the task of forming a COC, is the most important part of the 2016 code. Voting members of the financial creditors make up this body. Operating creditors are also welcome to attend meetings, with a few exclusions; but, if their total debt exceeds 10%, they will not be able to cast a vote. If a director is a financial creditor and a relative of the debtor, they are legally entitled to hold no voting power, decision-making authority, or right to attend meetings.[115]

The role of COC in approving RP's or any other applicant's resolution plan[116] on the basis of its viability highlights the significance of COC in corporate governance. The RP's authority is restrained since a 60% majority of COC is necessary for the same, meaning that decision of finance or managerial decision can't be made unless voting is done.[117] In turn, by keeping the RP in charge, COC safeguards the interests of creditors and corporate borrowers. Because COC has the last say about the amount and recipient of payments, it financially balances fair and equal outcomes. The Committee of Creditors is the ultimate authority, and its decisions must take into account the balance of interests and value maximization, as established in the case of Committee of Creditors of ***Essar Steel India Limited v. Satish Kumar Gupta & Ors***.[118] In addition to the functions played by these three key IBC organizations, there are other clauses that guarantee improved corporate governance. The moratorium clause in Section 14, which sets a rigid timetable for CIRP, is one of these

professional-vis-a-vis-board-of-directors/ (last visited Dec 1, 2023).
[114] Company Appeal (AT) (Insolvency) No. 51 of 2017.
[115] Proviso to section 21(2).
[116] Section 30(2), The Insolvency & Bankruptcy Code, 2016
[117] Section 28(1), The Insolvency & Bankruptcy Code, 2016.
[118] Civil Appeal Nos. 8766-67/2019.

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legislations. Certain acts are forbidden, such as initiating or pursuing legal action against the debtor or preventing the debtor from selling, transferring, or alienating any of his assets. It also establishes a deadline for finishing the entire procedure.[119] This guarantees that there will be no unjust benefits or negative effects, and that the process may move forward quickly. In order to stop any misuse of these transactions, "related parties" are further specified in great detail in the code.[120] For instance, a financial creditor is not allowed to vote or attend meetings if he is a related party. Lastly, the code establishes severe sanctions for improper and fraudulent trading that occurs during the CIRP or even earlier. These sanctions include fines and/or imprisonment for the offending parties, as well as payment through the contribution of assets to the debtor.

CHAPTER 4. CONCLUSION

An examination of the needs of the Indian economy was necessary for the implementation of IBC, 2016. It has improved the business climate in the country with regard to flexibility, entrepreneurship, and business structure. The banks were heavily burdened to bad loans due to the previous administration system's extreme inadequacy; nevertheless, IBC ensures that corporate governance always comes first, without exception, and that asset depreciation never occurs. Instead of suffering from unpaid commitments, the shift from a debtor-in-possession strategy to Creditors in charge has given them unparalleled authority. Duties that are imposed on IRP/RP, although it will take some time for COC and other initiatives to completely take impact, its institutional checks and corporate governance elements make them a desirable move.

However, declining numbers continue to indicate that the code may not be accomplishing as much as once thought. Certain shortcomings are also becoming apparent in terms of its effectiveness. Due to a strict deadline and the large number of cases, the framework is under excessive strain, and the majority of the enterprises are currently under liquidation orders. But keep in mind that the code is still being updated, so we should anticipate some changes. It has had a good effect on India's economy in order to address existing issues, such as the requirement that creditors' interests take precedence over shareholders' during CIRP and generally.

[119] Section 12, The Insolvency & Bankruptcy Code, 2016.
[120] Section 5(24), The Insolvency & Bankruptcy Code, 2016.

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SUGGESTIONS

- Because the code is silent on the insolvency of group enterprises, legislation or clarification on the matter would be beneficial in preserving corporate governance standards for each of these entities and preventing the group as a whole from being jeopardized in the case of a crisis. In the historic case of ***State Bank of India v. Videocon Industries Ltd***.,[121] the merger of 13 companies was mandated even though no clause was there.
- It needs to be done to clarify and harmonize the legislation concerning the suspension of the board of directors or the authority of such a board with the interpretation provided by the tribunals.

REFERENCES

Articles – Secondary sources

- An empirical analysis of the early days of the insolvency and ... - JSTOR, https://www.jstor.org/stable/26743938 (last visited Dec 2, 2023).
- Bankruptcy code to have big impact on corporate governance in India: Jayant Sinha, Business Line (2016), https://www.thehindubusinessline.com/economy/bankruptcy-code-will-have-big-impact-on-corporate-governance-jayant-sinha/article64229718.ece (last visited Dec 13, 2023).
- The insolvency and Bankruptcy Code: Implications for Corporate Governance, https://nsearchives.nseindia.com/research/content/res_QBApr17.pdf (last visited Dec 13, 2023).
- Shri Ram, an agency approach to address emerging issues in Indian corporate insolvency and its Governance SSRN (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3702265 (last visited Dec 2, 2023).
- Insolvency law reduces resolution time for stressed assets to 340 days: Economic survey, The Economic Times, https://economictimes.indiatimes.com/news/economy/policy/insolvency-law-reduces-resolution-time-for-stressed-assets-to-340-days-economic-survey/articleshow/73809835.cms (last visited Dec 2, 2023).
- MS Sahoo, the insolvency and Bankruptcy Code allows the market to make the most efficient choice The Indian Express (2021),

[121] CS NO.392 OF 2013

 ISBN: 978-81-948082-7-5

https://indianexpress.com/article/opinion/columns/insolvency-and-bankruptcy-code-corporate-debt-resolution-process-7178980/ (last visited Dec 2, 2023).

- Shikha Bansal, Resolution Professional vis-à-vis Board of Directors: Governance of Insolvent Companies (2018), http://vinodkothari.com/2018/03/resolution-professional-vis-a-vis-board-of-directors/.
- George Triantis, Debtor-in-possession financing in bankruptcy, Research Handbook on Corporate Bankruptcy Law (2020).
- G20/OECD principles of Corporate Governance - OECD, https://www.oecd.org/corporate/principles-corporate-governance/ (last visited Dec 1, 2023).
- The report of the Bankruptcy Law Reforms Committee Volume I: Rationale ..., https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (last visited Dec 1, 2023).
- Insolvency law reduces resolution time for stressed assets to 340 days: Economic survey, The Economic Times, https://economictimes.indiatimes.com/news/economy/policy/insolvency-law-reduces-resolution-time-for-stressed-assets-to-340-days-economic-survey/articleshow/73809835.cms (last visited Dec 1, 2023).

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AN ANALYSIS OF THE LAWS RELATING TO ADULTERY AND WAY FORWARD

AUTHORED BY - MANISH SAHU & RAHUL DANDOTIYA

ABSTRACT

Adultery law in India is one of the most controversial laws in India after the enactment of Bhartiya Nyaya Samhita, 2023. This Samhita does not contain any provision about the criminalisation of Adultery. In essence, it does not regard Adultery as an offence. This article deals with the concept of Adultery & the laws relating to the same in olden times. It also contains a comparative study of the historical evolution in India and other countries. Then the paper deals with whether Adultery should be a part of the civilised society. The paper further explores the terrific outcomes of Adultery and the danger it possess to the institution of marriage. The paper subsequently delves into an analysis with the of the Apex Court's judgement in the landmark case of Joseph Shine verses Union Of India in 2018 declaring section 497 of Indian Penal Code & section 198B of Code of Criminal Procedure unconstitutional. Furthermore, Paper aims to traverse the grounds for deeming the provisions relating to Adultery inconsistent with the constitutional scheme. In the process the Paper aims to highlight the additional considerations the honourable Apex Court may take due note of. The paper at last tries to discover the way forward in this regard.

Key Words: Adultery, Unconstitutional, Enactment, Institution of Marriage, Criminalisation,

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"BEYOND THE BOARDROOM: UNVEILING THE POWER OF GENDER DIVERSITY IN CORPORATE DECISION-MAKING PROCESSES"

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ABSTRACT

Beyond the Boardroom: Unveiling the Power of Gender Diversity in Corporate Decision-Making Processes.

Women's economic empowerment supported by sound corporate governance is a critical policy area that enhances economic growth and competitiveness which has emerged as a significant topicof discussion and research within the realm of business and management. The G20/OECD Principles of Corporate Governance acknowledge that diversity in the boardroom is integral to sound corporate governance, and a key component of this is gender diversity. Increased diversityof boards creates a more effectual board as it broadens the "range of perspectives and expertise" Gender diversity leads to a better corporate image by higher firm performance enhancing resources access, and a better financial value for shareholder. However, the impact of gender diversity on decision-making processes is not without challenges. Gender biases, whether explicit or implicit, can still persist within organizations and influence how the contributions of board members are perceived and valued. Without a supportive and inclusive environment, the benefits of gender diversity might not fully utilized.

Thus, article attempts to elucidate to shed light on the advantages associated with a gender-diverse composition of boards, with a specific focus on how such diversity influences the decision-making dynamics and outcomes, Also, the challenges revolving around them. Further attempts to analyzethe mechanism followed for coping up with those challenges. Along with a comparitve analysis ofboard

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diversity culture and regulations in developed countries. Also, tries to do critical analysis ofIndian perspective of Gender Diversity. Finally the way forward and an insightful conclusion.

Keywords- Gender-Diversity, SEBI, Quota-System, Women empowerment, Corporate Governance.

INTRODUCTION

"In the future world, we will have a lot of women leaders… Because in the future, people will notonly focus on muscle, power, but they will also focus on wisdom. They will focus on caring and responsibility."

-Jack Ma-

Boards of directors are considered key instrument for establishing and upholding sound corporate governance. The configuration of corporate boards has been a significant research topic in corporate governance during the past few decades, although there are still strong arguments for theneed to examine composition of a board, especially with regard to gender diversity. Corporationsand their boards of directors have begun implementing corporate social responsibility (CSR)strategies[122], and because the presence of women on boards has an impact on various aspects ofthese strategies, it enhances corporate governance.

The G20/OECD Principles of Corporate Governance agrees that diversity in the boardroom is crucial element to good corporate governance[123], and a key component of this is gender diversity[124]. A board that is more diverse is more effective because it has a wider "range of perspectives and expertise.[125]" Gender diversity leads to a better corporate image by higher firm performance, enhanced resource access, and better financial value for shareholders. Gender diversity in the workplace can bring both

[122] 'Corporate Social Responsibility (CSR) Implementation: A Review and a Research Agenda towards an Integrative Framework - Journal of Business Ethics' (SpringerLink, 2 February 2022) <https://link.springer.com/article/10.1007/s10551-022-05047-8> accessed 8 September 2023

[123] 'Home' (Home | OECD iLibrary) <https://www.oecd-ilibrary.org/sites/bac3ebfa-en/index.html?itemId=%2Fcontent%2Fcomponent%2Fbac3ebfa-en&mimeType=text%2Fhtml> accessed 10 September 2023

[124] (G20/OECD principles of corporate governance) <https://www.oecd.org/corporate/ca/Corporate-Governance-Principles-ENG.pdf> accessed 8 September 2023

[125] Papangkorn S, Chatjuthamard P and Jiraporn P, 'Gender Diversity and Corporate Governance' (IntechOpen, 25 November 2021) <https://www.intechopen.com/chapters/79342> accessed 8 September 2023

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benefits and costs to the firm[126]. But there are many more aspects of gender than only the biological differences between men and women. Social constructs such as conventions, behaviours, and roles create the characteristics that a society considers appropriate for men and women. From one society to the next, it varies, and is modifiable.

A more diversified board will have access to more information and be more likely to come to better judgments, fostering fresh viewpoints if a director from a wider range of backgrounds is included. Owing to this, In 2013, India passed the historic mandate having one women director in board of publicly listed and other large companies[127].

Additionally, a diverse board can strengthen board independence; hence, a more diverse board may result in a more effective board monitoring role, which would improve the company's financial performance. There is conflicting research on how having more women on boards affectsprofits. The gender makeup of the board has a favourable association with the efficacy of the board,despite the fact that different studies have found a positive relationship between these two variables. i.e gender composition of the board has a positive relationship with board's effectiveness.[128] On the other hand, a diverse board may cause higher decision-making costs and increase the likelihood of conflicts and friction. A much-heated debate on this is the adoption of gender quota system.

THEORY BASED INSIGHTS OF GENDER DIVERSITY ON CORPORATE BOARDS

The drive for more gender diversity on corporate boards has important ramifications for the efficiency and sustainability of organizations. It is not just an issue of inclusivity and social justice.In order to clarify the potential effects of gender diversity in these potential leadership positions,a wide range of theories and viewpoints have evolved, including agency, resource dependence, and stakeholder theories.

[126] Lawrence Emeagwali O and Bhatti F (eds) (2022) Corporate Governance - Recent Advances and Perspectives. IntechOpen. DOI: 10.5772/intechopen.94778.
[127] Sec 149(1)The Companies Act, 2013 - Ministry of Corporate Affairs.
[128] (Gender diverity in boards and corporate governance - amity university)
<https://amity.edu/UserFiles/aibs/0fb3Article-X%20(Page%2062-71).pdf> accessed 10 September 2023

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Agency theory

According to this theory, female directors are better able to resolve conflicts of interest between shareholders and corporate managers. For ex-ante (visionary) strategic firm control connected to long-term planning and environmental monitoring, female directors are particularly valued[129]. They are viewed as more independent board members and may be more sensitive to internal compliance regulations or instances of prejudice[130].

Resource Dependence

This theory states that the involvement of more prominent women in corporate governance couldraise the standard of quality assurance as female leaders can passionately contribute through Innovative management, engineering, and product development skills, also be more receptive to environmentally friendly market trends and technology[131]. In addition, they might be more motivated and determined than their male counterparts to organize and oversee publicly accessibleinternal sustainability and quality reporting[132], as well as more proactive in forming networks acrossand outside of corporate hierarchies to foresee, identify, and resolve quality issues within organizations.

Stakeholder theory

It indicates that a board with women may be more creative, although it may take longer to negotiateand achieve consensus. The appointment of female directors, benefits the firm by building strong relationships with stakeholders, especially when determining business purpose and customer orientation.

STRATEGIES TO INCREASE THE REPRESENTATION OF WOMEN ONCORPORATE BOARDS

In recent years, there has been a lot of attention paid to the problem of gender diversity on corporate boards. Women are still underrepresented in the highest levels of corporate governance,

[129] Korenkiewicz D and Maennig W, 'Impact of Women on Corporate Boards of Directors on Product Quality' [2023] Journal of Management and Governance
[130] (Gender diversity - ICSI - home) <https://www.icsi.edu/media/webmodules/companiesact2013/Gender%20Diversity-Latest20012015.pdf> accessed 9 September 2023
[131] Korenkiewicz D and Maennig W, 'Impact of Women on Corporate Boards of Directors on Product Quality' [2023] Journal of Management and Governance
[132] ibid

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notwithstanding advancements in specific countries and industries. Organizations are looking for ways to increase the participation of women on their boards as they increasingly recognize the importance that different viewpoints bring to decision-making. To enhance the representation of women in senior management roles, governments, regulators, and businesses can implement policies adapted to certain settings.

The Government of India has enshrined different laws for the empowerment of women prominentof which is Companies Act 2013 and SEBI. The notion of 'diversity' is predominantly use to referto the addition of various demographic groups in the workplace.[133] Establishing networks and providing assistance to working women are effective ways to increase gender diversity in senior management positions and among board members. the approach to increasing gender diversity oncorporate boards varies from country to country, with some implementing legislated boardroom quotas, such as Companies Act, 2013 appointed a quota system for the appointment of women board Members under Sec. 149(1)[134], while others set voluntary targets such as targeted training, development programmes, leadership, and mentoring activities can also be established to facilitatethis.[135]

GENDER DIVERSITY IN CORPORATE BOARDS ACROSS DEVELOPED NATIONS

Globally, there is an increasing drive for gender diversity on corporate boards, with developed nations making great progress to rectify gender inequalities in the highest levels of corporate leadership. Countries like Norway, Spain, Belgium, and Germany have adopted a mandatory "quota system" to increase diversity, while countries such as Singapore, UK, commit to increasingboard diversity without any legal mandate. Whereas Australia follows the ASX Corporate Governance Principles and Recommendations.

[133] (Kartik Gupta | fellow | henry ford, Michigan | Division of ...) <https://www.researchgate.net/profile/Kartik- Gupta-12> accessed 10 September 2023
[134] Ibid
[135] 'L'OCDE s'est Fermement Engagée à Promouvoir Un Futur Meilleur et Une #viemeilleure: Découvrez Les Valeurs Qui Lui Tiennent à Cœur ! , The Women on Boards Association in Jordan Shows That Networking, Training and Mentorship Can Change the Dial on the Participation of Women on Boards. Find out More.' (OECD) <https://search.oecd.org/fr/apropos/impact/corporate-governance-policies-that-support-women.htm> accessed 10 September 2023

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Quota system

Norway

40% board gender quotas were first implemented in Norway in 2006; they became effective in 2008 after the Norwegian Public Limited Liability Companies Act[136] was amended. The well- known "quota approach" is founded on the idea of "equality of outcome approach," which places a priority on the outcomes. According to the quota strategy, if a company's board of directors doesnot meet the statutory minimum number of women, as set by law, consequences will be applied. Such punishment may take the form of either milder or heavier sanctions. The quota system compels businesses to act swiftly to develop, identify, keep, and advance women into leadership and executive positions[137]. The European Union as well as other nations including Belgium, Iceland, Italy, the Netherlands, and Spain (but with less harsh punishments)[138].

Germany

The biggest economy in the world with gender quotas is Germany. The gender quota law was enacted in 2015[139] and uses a 30% statutory quota for supervisory boards of publicly traded companies and those with worker participation in corporate governance. In accordance with the law's "flexi-quota" provision, listed companies or those subject to full codetermination must also establish their own objectives for increasing the presence of women on their management boards,supervisory boards, and the two management levels below the board. According to the "empty chair" hypothesis, organizations must appoint female candidates or leave the seats open if the required number of female board members is not filled. Additionally, failing to meet the quota might result in a EUR 50,000.

UK's Voluntary Approach

The UK has been actively working to broaden diversity on corporate boards since 2011. The 2011 Lord Davies review set a goal for 25% female representation on FTSE 100 boards by 2015. 2013saw

[136] Norwegian Public Limited Liability Companies Act, 1997

[137] (Women on boards – experience from the Norwegian quota reform) https://www.researchgate.net/publication/227383752_Women_on_Boards_-_Experience_from_the_Norwegian_Quota_Reform accessed 5 September 2023

[138] Ahern KR and Dittmar AK, 'The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation' (SSRN, 21 March 2009) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1364470 accessed 9 September 2023

[139] 'Germany: Second Law Establishing Gender Quotas to Increase Number of Women in Company Leadership Positions Enters into Force' (The Library of Congress) https://www.loc.gov/item/global-legal-monitor/2021-09-12/germany-second-law-establishing-gender-quotas-to-increase-number-of-women-in-company-leadership-positions-enters-into-force. accessed 10 September 2023

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an amendment to the UK Companies Act 2006 that mandates gender diversity reporting[140]. Inorder to promote diversity in board appointments, succession planning, and evaluation, the Corporate Governance Code was updated in 2018. Women's representation on FTSE 100 boards increased from 12.5% in 2011 to 32.4% in 2019, demonstrating the substantial progress made.

Australia's Comply or Explain Approach

The Australia Securities Exchange (ASX) introduced the "ASX Corporate Governance Council Principles and Recommendations" in 2003.[141] In 2010, these recommendations included a focus on board diversity[142]. They mandate corporations to establish a "diversity policy" that outlines plans for achieving diversity on the board. Additionally, businesses must establish board committees focused on diversity, set quantifiable objectives, and report on their success in reaching these goals. This encourages accountability and openness while increasing board diversity.

US's disclosure Approach

The U.S. Securities and Exchange Commission (SEC)[143] issued a regulation requiring disclosure of whether a nominating committee takes diversity into account when selecting nominees for director positions in December 2009. The law also mandates that, if corporations have diversity policies, they must disclose how they apply them and evaluate how well they are working. Importantly, the SEC rule does not stipulate a definition of diversity, leaving it up to businesses todecide what it means. Diversity can include a variety of elements thanks to this versatility, including but not limited to gender, ethnicity, race, and education. On February 28, 2010, these regulations came into force. It's crucial that all businesses follow the rule in all of its details. Complete compliance guarantees openness in their attitude to diversity. In the end, this openness is essential for investors and stakeholders in understanding how companies handle diversity- related matters in their boardrooms

[140] UK Companies Act 2006
[141] (Gender diverity in boards and corporate governance - amity university) <https://amity.edu/UserFiles/aibs/0fb3Article-X%20(Page%2062-71).pdf> accessed 10 September 2023
[142] 'ASX Corporate Governance Council' (Australian Securities Exchange) <https://www.asx.com.au/about/regulation/asx-corporate-governance-council> accessed 9 September 2023
[143] 'SEC Approves Enhanced Disclosure about Risk, Compensation and Corporate Governance' (Press Release: SEC Approves Enhanced Disclosure About Risk, Compensation and Corporate Governance; 2009-268; Dec. 16, 2009, 16 December 2009) https://www.sec.gov/news/press/2009/2009-268.htm accessed 5 September 2023

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INDIAN PERSPECTIVE OF GENDER DIVERSITY IN CORPORATE BOARD

The Indian government has established several committees over the past two decades for updatingand modernizes Indian Corporate laws, these committees are primarily composed of prominent entrepreneurs and government representatives Since the late 1990s, SEBI, the primary regulatory authority for India's capital markets, has convened a number of committees to help formulate corporate governance standards for publicly listed Indian companies.[144] Since the late 1990s, a number of committees have been established by SEBI, the main regulatory body for India's capital markets, to assist in developing corporate governance norms for publicly traded Indian companies.[145] Many of these requirements were motivated by global improvements in corporate governance.[146] In parallel, starting in 2002, the Ministry of Corporate Affairs attempted to revise the Companies Act of 1956 using a multi-committee procedure. Following years of discussion andmultiple failed attempts, India finally passed the New Companies Act, 2013, which completely revised the nation's system of company law.

In India, the Companies Act, 2013 recognizes the importance of gender diversity and mandates the appointment of at least one woman director in listed and other particular classifications of companies[147]. Globally, there is growing awareness of the importance of maintaining gender parityon corporate boards, and many nations have taken legislative action and implemented quotas in this area. The requirement to appoint one woman director is mandated by clause 49 of the equity listing agreement between a company and the stock exchange, and this requirement was to take effect on April 1, 2015, per the SEBI circular issued on September 15, 2014. The same is also provided under Regulation 14 of the SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015.

Kotak Committee's recommendations

The Kotak Committee, led by Mr. Uday Kotak, was established on June 2, 2017, by the Securities Exchange Board of India (SEBI)[148] with the primary goal of improving corporate governance

[144] (Www.multidisciplinaryjournal.in) <https://www.multidisciplinaryjournal.in/download/1644/3-2-103-480.pdf> accessed 10 September 2023
[145] ibid
[146] ibid
[147] ibid
[148] ibid

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standards for listed companies in India. The committee recognized the importance of gender diversity on boards and acknowledged the positive impact of gender-diverse boards on decision- making. While India had made progress in increasing the representation of women directors due to regulatory changes, it still fell short of international standards[149].

In response to the Kotak Committee's recommendations, SEBI introduced the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulation, 2018, on May 9, 2018. This amendment mandated that the top 500 listed entities should have at least one independent woman director by April 1, 2019, and the top 1000 listed entities should comply by April 1, 2020. The determination of the top companies was based on their market capitalization at the end of the previous financial year. As of March 2022, 48% of companies had appointed independent womendirectors, highlighting the need for significant efforts by companies to meet these regulatory requirements.

CHALLENGES IMPEDING THE PROGRESS OF GENDER DIVERSITY IN INDIANBOARDROOMS

Initial worries about the lack of appropriately competent female CEOs were raised by therequirement that Indian corporations appoint at least one independent female director. Comparedto ther major Asian nations, reports showed that India has a lower percentage of women in thelabour force. In addition, there were appallingly few women in senior executive roles oftenbetween 3 and 6 percent[150]. Private sector initiatives were started to solve this pipeline issue, andcorporate governance specialists were hired to coach capable women for possible director seats. The difficulties in this situation were complex. Despite creating a sizable number of women CEOs, financial services businesses frequently placed limitations on executives serving on externalboards due to potential conflicts of interest. In a similar vein, the banking sector is a wellspring offemale CEOs.

The greatest obstacles, though, may have come from India's long-standing gender expectations and conventions, which imposed heavy loads on women in terms of caring for their families and running the home[151]. Women's advancement into senior positions was hampered by genderdifferences in

[149] 'Codes and Standards of Corporate Governance' Corporate Governance Practices in India
[150] (Women's labour force participation in India: Why is it so low?) https://www.ilo.org/wcmsp5/groups/public/--- asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_342357.pdf; accessed 10 September 2023
[151] 'National Policy for Women Empowerment Ministry of Women & Child Development' (Home, 1 January 1970)

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education and literacy as well as cultural prejudices about women's duties, such as the widespread belief that caring for the family was a woman's top priority.

Despite the legislative mandate for women directors, compliance was slow, and many companies hurried to nominate women directors shortly before the deadline. Concerns emerged that some companies might prioritize token appointments over developing the skills and experience of women directors. Activists wanted to make sure that qualified women would make meaningful contributions to board processes and decision-making. Early efforts showed promise, with a notable increase in women appointed to directorship positions in various companies.

The biggest obstacles, though, may have come from India's conventional gender conventions and cultural expectations, which imposed heavy loads on women in terms of caring for their families and taking care of the home. Women's advancement into top positions was hampered by gender differences in education and literacy as well as cultural prejudices about women's duties, such as the predominate idea that women's primary duty was to take care of their families. Thus, the drivefor gender diversity on boards in India ran across a number of obstacles, including cultural norms, compliance concerns, and the necessity of giving women real opportunities to hold leadership positions[152]. Diverse stakeholders are collaborating to make progress towards the realization of meaningful gender diversity in corporate leadership.

IMPLEMENTING GENDER DIVERSITY IN WORKPLACES

The separation of job responsibilities for men and women in Indian society is influenced by deeper cultural elements in addition to the difficulties that women already encounter in the workplace, such as childbirth, spouse relocations, and maternity issues. In this situation, finding a balance between personal and work life can be very difficult. In order for women to succeed in the workplace, all stakeholders must work together. By giving female employees flexible working choices to maintain their work-life balance, employers can try to reduce this gender discrimination.When it comes to appointment, promotion, and renumeration, it ought to practice complete transparency and disclosure.

https://wcd.nic.in/womendevelopment/national-policy-women-empowerment accessed 3 September 2023

[152] (Measuring Women's Economic Empowerment - OECD) <https://www.oecd.org/dev/development-gender/MEASURING-WOMENS-ECONOMIC-EMPOWERMENT-Gender-Policy-Paper-No-16.pdf> accessed 10 September 2023

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Companies should appoint independent directors who are unconnected to any of the other directors, providing them all the freedom to make bold choices ontheir own.

To create a balanced environment inside the company, more women should be appointed at all levels. Their inclusion on important committees like the audit committee, stakeholder relationshipcommittee, and remuneration and nomination committee not only sends a favourable message to shareholders and investors, but it also inspires other female employees at work. The government, organizations, and NGOs should set up initiatives to inform women about their potential forbecoming directors.

CRITICAL ANALYSIS

The Sustainable Development Goals (SDGs) of the United Nations place a high priority on gender equality[153], and the Securities and Exchange Board (SEBI) of India has mandated gender diversity disclosures and the appointment of at least one independent woman director in the top 1000 listed companies by market capitalization. Women directors bring distinctive perspectives, intuition, and collaborative leadership styles to corporate boardrooms. Despite the growing percentage of womenin corporate leadership roles in India, India has also made strides in appointing women to companyboards, increasing from 6% in 2014 to 14% five years ago. There is a concerning decline in the number of women serving as board chairpersons, as per Deloitte Global's 'Women in the Boardroom' report.[154]

Women now occupy 17.1% of board seats in India, a 9.4% increase since the Companies Act, 2013 mandated having one woman on every board. However, only 3.6% of board chairs are women, down by 0.9% since 2018. Currently, women hold 17.6% of directorships in NIFTY-500companies[155]. But, the pace of new appointments has slowed, with just a 1% increase over the pastthree years. At this rate, India is not projected to achieve 30% gender diversity on boards until 2058.

[153] The Sustainable Development Goals (SDGs) of the United Nations https://www.undp.org/sustainable- development-goals/gender.
[154] 'India Sees More Women in Leadership Roles but Boardroom Diversity Progressing at a Snail's Pace: Press Release' (Deloitte India, 8 February 2022) https://www2.deloitte.com/in/en/pages/risk/articles/India-sees-more- women-in-leadership-roles-but-boardroom-diversity-progressing-at-a-snails-pace.html accessed 3 September 2023
[155] www.ETBFSI.com, 'International Women's Day 2023: Out of 2041 NSE Listed Companies Only 100 Have a Female Chief: Data - ET BFSI' (ETBFSI.com, 7 March 2023) https://bfsi.economictimes.indiatimes.com/news/industry/international-womens-day-2023-out-of-2041-nse-listed-companies-only-100-have-a-female-chief-data/98472053#:~:text=Women%20now%20account%20for%2017.6,over%20the%20last%20three%20years. accessed 10 September 2023

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With an average of approximately 24% women representation in boards of directors worldwide, progress in boardroom diversity is clear. This global average is higher in Europe and North America, with 34.4% and 28.6%, respectively, of corporate boards are made up of women. Franceis at the top with 44.5% representation of women on boards in 2021[156].

The Deloitte Global's report mentions that, in India, women directors have an average tenure that marginally increased to 5.1 years in 2021. In contrast, it fell internationally from 5.5 years in 2018to 5.1 years in 2021[157]. India has implemented policies to promote gender diversity in business leadership, but there is still a disconnect between these initiatives and the actual situation. The changing nature of business highlights the need for Indian firms to pay closer attention to gender diversity and balance.

CONCLUSION AND WAY FORWARD

Even though a country like India has adopted a legal step to regulate diversity in its boardroom, The corporation and the people holding executive positions should refrain from engaging in favoritism and biases. As was already said, most businesses choose women as directors just to follow the rules and not out of a genuine desire for gender equality. Tokenism is prevalent because company executives/leaders frequently choose women from their own families for senior positions. Companies are encouraged to hire women based on their qualifications and competencerather than just using them to fulfil quotas. Norway, Germany, Belgium, Italy, and other nations have mandated a specific proportion of seats for the minority gender on corporate boards, whereasIndia has simply designated one seat for women on boards, regardless of the board's overall makeup. It serves their dual objectives to appoint close female relatives to the position in order toboth satisfy the legal requirement and operate as a puppet for the other members. The spirit of thelaw should be upheld and followed.

By requiring the appointment of at least one female board member, the law essentially seeks to carve off the first piece of ground. Although a single woman director in a position of leadership can also significantly alter the organization, she may still experience stereotyping and be viewed by other male board members as being less effective and beneficial. In order to achieve greater corporate

[156] Supra 33
[157] ibid

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governance and more female board members, Indian boards must meet the "critical mass" condition. The company should make an effort to prioritise talent above gender. Because social acceptance of gender equality varies by region and because regulation would have varied effects in each, there is no "one size fits all" strategy to increasing gender diversity. It is finally time for women to stop being treated as a different gender and instead be valued for their skills and competence, regardless of their gender.

IJLRA

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LEGAL REGIME FOR INTERNATIONAL COMMERCIAL ARBITRATION PROCEEDINGS IN ASIAN COUNTRIES

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Abstract

The use of arbitration continues to rise in Asia. Leading Asian arbitration institutions, such as the Singapore International Arbitration Centre, have seen an increase in the number of case filings. In response to the increasing demand, new arbitration institutions have been established in the region. Arbitration's popularity in Asia can be explained by a multitude of factors, including growth in the region, as well as the relative ease with which arbitral awards can be enforced around the world. This paper examines growth of Arbitration in Asia and the legal framework supporting the same.

Keywords: *International Commercial Arbitration, Asia, Legal Framework.*

Introduction

The popularity of arbitration in Asia continues to rise. Notwithstanding challenges caused by the covid-19 pandemic in 2019, the Singapore International Arbitration Centre (SIAC) set a record high of 1,080 new case filings – the first time that the SIAC's caseload has crossed the 1,000 mark.[158] The Korean Commercial Arbitration Board (KCAB) handled a total of 443 arbitration cases in 2021, reporting a 12.7 per cent increase in the number of cases filed with the institution. The China International Economic and Trade Arbitration Commission (CIETAC) has seen a steady increase in the number of cases it handles, reaching a total of 3,615 cases in 2022. Asian arbitration institutions have also taken steps to enhance and update their regulations to compete with international arbitral institutions. In October 2020, the Standing Committee of the Shenzhen Municipal People's Congress passed the revised Regulations of the Shenzhen Court of International Arbitration. The revised

[158] SIAC Annual Report 2020
https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf [accessed 20 April 2023].

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Regulations are modelled on the Arbitration Law of the People's Republic of China.

Indeed, the ability of arbitration institutions in Asia to adapt to the challenges caused by the covid-19 pandemic entrench their position as leaders in this field. Institutions such as the SIAC continued to administer hearings remotely, even as the Singapore government imposed stringent lockdown measures from April to June 2020. The Seoul Protocol on Video Conferencing in International Arbitration,[159] which was an initiative introduced in 2018 by lawyers in Asia with support from KCAB International and the Seoul International Dispute Resolution Centre (SIDRC), has taken centre stage with the rise of virtual hearings in a post-covid-19 world. With China's continued push of the Belt and Road Initiative in Asia and Africa, it is likely that there will be more disputes involving Asian parties in the longer term, with arbitration continuing to be a preferred dispute resolution option. One further factor, which explains the popularity of arbitration (compared to court proceedings) in general, is the relative ease with which arbitral awards may be enforced worldwide. What is the cause of rise of Arbitration in Asia? The short answer – the stars aligned themselves to trigger a burgeoning of the arbitral market in Asia. Over many years, international arbitration in Asia has evolved and matured to become an attractive and reliable dispute resolution mechanism. The confidence placed in the process is now common across industries. In recent years, the growing trade among Asian countries and as between Asian companies and non- Asian companies coupled with the lack of confidence in the judicial system in Asia has sparked a demand for international arbitration.

Rationale and Significance of Study

The growth of international trade and investment has led to an increase in cross-border disputes, and international commercial arbitration has emerged as an effective alternative to resolving these disputes. Asian countries, such as Singapore, Hong Kong, China, Japan, and South Korea, have become popular destinations for international commercial arbitration, and their legal frameworks play a crucial role in ensuring the efficiency and effectiveness of the arbitration process. However, there is a need to examine the effectiveness of the legal regimes governing arbitration proceedings in these countries. This study aims to address this need by providing insights into the effectiveness of the legal

[159] KCAB International, 'Notice: KCAB INTERNATIONAL Webpage Renewal' (22 February 2018) http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=172&CURRENT_MENU_CODE=MENU0015&TOP_MENU_CODE=MENU0014 accessed 20 April 2023.

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regimes for international commercial arbitration in Asian countries.

Strength of Arbitration Infrastructure in Asia

The core building blocks of any arbitral infrastructure are a sound legislative framework and a pro-arbitration/pro-enforcement judiciary. Upon this foundation rests a neutral and reputable arbitral institution as well as a community supportive of the development of international arbitration.

As the backbone of an arbitral seat, the legislative framework of a given jurisdiction defines the roles of the players involved in the process and structures the fundamental rules of the game. Over the years, Asia-Pacific jurisdictions have proactively adopted the UNCITRAL Model Law on International Arbitration and Conciliation. Of the ninety-six jurisdictions that have adopted the 1985 UNCITRAL Model Law, the highest concentration of Model Law Countries can be found in Asia. In addition, eleven of the twenty-one jurisdictions to have adopted the UNCITRAL Model Law, with the 2006 amendments are based in Asia.[160] The relative conformity to one uniform template allows countries that have adopted the UNCITRAL Model Law to benefit from a common body of case law and contribute to the development of transnational arbitration law.[161] The engagement of the judiciary goes along with this development. Whilst there is less regional uniformity on the approach judges take in addressing arbitration matters, the Hong Kong and Singaporean judiciaries are leading examples with several other Asian jurisdictions developing better appreciations of the role that international arbitration plays vis-à-vis the court systems.

Arbitral institutions are also an integral part of the arbitral infrastructure. They serve as the administrators of the arbitral process and shape the policies that govern the process. Arbitral institutions often serve as a key resource centre for new users to the region. In Asia, there is a growing number of institutions achieving international recognition and, by all counts, they are starting to see the gravity of work shift eastwards.

The arbitration regime in Hong Kong and the practice of the HKIAC provide a good example of the

[160] UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006, United Nations Commission on International Trade Law, http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html accessed 20 April 2023.
[161] Gabrielle Kaufmann-Kohler, 'Globalization of Arbitral Procedure' (2003) 36 Vand. J. Transnat'l L. 1313, 1329.

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strength of the arbitral infrastructure in Asia and can be illustrated by looking at its legislation, judiciary and flagship institution, the HKIAC.

Evolution of Sound Arbitration Legislative Framework

Arbitration in Hong Kong is not a recent phenomenon. The history of arbitration in Hong Kong is long, making it one of the most established seats in Asia. Hong Kong has officially recognized arbitration as an alternative dispute resolution mechanism dating back to 1855 when the Civil Administration of Justice (Amendment) Ordinance was enacted. Indeed, the very first arbitration ordinance, Ordinance No. 6, was enacted as an interim measure while a legal system was established in the colony. Interestingly, arbitration's predominance in Hong Kong was short lived. As Ordinance No. 6 was not sanctioned by London, the Colonial Office prohibited the ordinance five months after its enactment, believing it gave the Governor too much power.[162]

As one would expect of any sophisticated jurisdiction, Asian or otherwise, Hong Kong arbitration legislation has strongly evolved and developed since the 1855 Arbitration Ordinance, to reflect important international developments, and incorporating some of the most innovative and progressive changes in the region.

Possibly the two most significant developments in the legislation for international spectators, took place in 1977 and 1990. The first addresses one of the cornerstones of international arbitration, the reciprocal enforcement of arbitral awards through the primary instrument, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

At a time when Hong Kong was still under the British rule, the New York Convention was incorporated into Hong Kong legislation in 1975 as a result of the United Kingdom's accession to the Convention.[163] The legislation incorporating the Convention took effect in 1977, making arbitral awards rendered in Hong Kong recognizable and enforceable in other Convention territories. Upon resumption of sovereignty over Hong Kong on July 1, 1997, the Chinese Government extended the territorial application of the Convention to Hong Kong. As such, today awards rendered in Hong

[162] Neil Kaplan, 'The History and Development of Arbitration in Hong Kong' (1996) 1 Y.B. Int'l Fin. & Econ. L. 203, 205.
[163] Michael J. Moser and Teresa Y.W. Cheng, Hong Kong Arbitration: A User's Guide (2nd ed, 2008).

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Kong continue to be recognizable and enforceable in Convention territories.

The second development was in 1990 when Hong Kong became the first jurisdiction in Asia to adopt the UNCITRAL Model Law for international arbitrations having their seat in Hong Kong, upholding the founding principle that local courts should support, but not interfere with, the arbitral process. An extension of this development and an important part of the maturation process of the legislative framework in Hong Kong took place when Hong Kong took steps to amend the long-standing arbitration legislation by incorporating the 2006 amendments to the UNCITRAL Model Law and unifying the domestic and international arbitration regimes. In turn, this bolstered its attractiveness as a seat for arbitration, effectively extending the UNCITRAL Model Law to all arbitrations seated in Hong Kong.

The purpose of the reform was fourfold.

- First, it sought to make the law of arbitration more conducive to arbitration parties both in and outside Hong Kong.
- Second, reform would enable the Hong Kong business community and arbitration practitioners to operate an arbitration regime that accords with widely accepted international arbitration practices and developments as the Model Law is familiar to practitioners from both civil law and common law jurisdictions.
- Third, it would attract more business parties to choose Hong Kong as the place to conduct arbitral proceedings.
- Finally, it would promote Hong Kong as a regional centre for dispute resolution.

As a result, arbitration in Hong Kong is currently governed by the Arbitration Ordinance, 2011.[164] The arbitration legislation contains many features one would expect to see in pro-arbitration legislation together with some unique features, which are intended to encourage parties to seat their arbitration in Hong Kong. For example, as confidentiality in arbitration proceedings is paramount, the New Ordinance establishes that court proceedings relating to arbitration are in general to be heard in closed court.[165] The court may also order a person to attend proceedings before an arbitral tribunal,

[164] Arbitration Ordinance, Hong Kong Laws CAP 609 (June 2011), available at http://www.hkiac.org/en/arbitration/arbitration-ordinance
[165] Arbitration Ordinance, Section 16.

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to give evidence or to produce documents or other evidence.[166] Additionally, discovery during the arbitral process can be flexible and narrow as the matter is left to the discretion of the arbitral tribunal.[167]

An interesting feature of the New Ordinance that has been retained and enhanced from the old regime is the "med-arb" provision whereby a member of the arbitral tribunal assumes the role of mediator in the course of the proceedings in an effort to facilitate settlement. Another element carried over from the previous ordinance worth noting is that arbitral tribunals are expressly empowered to grant interim measures including the preservation of assets and evidence, and the Hong Kong courts may also grant interim measures in proceedings commenced inside or outside Hong Kong. Increasingly, arbitral institutions are providing parties with the possibility to apply to the institution for interim relief before the tribunal has been appointed using the emergency arbitrator provisions.

One of the most recent amendments to the arbitration legislation facilitates this process by providing for any emergency relief granted by an emergency arbitrator, whether granted in or outside Hong Kong, to be enforceable in the same manner as an order or direction of the Court that has the same effect.[168] This change was prompted by the recent revisions to the HKIAC Rules.

In response to the HKIAC's request for this legislative amendment, the Hong Kong government worked closely with the HKIAC to draft appropriate legislation to provide for the enforceability of emergency arbitrator decisions in and outside of Hong Kong. Such swift and well-thought out amendment reflects the Hong Kong government's support towards the development of arbitration in Hong Kong.[169] This new legislation, which is clearer, more user-friendly, and more flexible than the previous Arbitration Ordinance, certainly evidences the strength of Asia's arbitral offering and ability to respond to market demand.

[166] Ibid, Section 55(2).
[167] Ibid, Section 56.
[168] Ibid, Section 22B.
[169] Commerce, Industry and Technology Bureau of the Government of the Hong Kong Special Administrative Region Professional Services Development Assistance Scheme, Hong Kong International Arbitration Centre Booklet (2003), http://www.psdas.gov.hk/content/doc/2003-2-02/HKIAC_Booklet%20-%202003-2-02.pdf accessed 21 April 2023.

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Role of the Judiciary

The attitude courts hold in relation to arbitration is also paramount to the strength and reliability of any arbitral infrastructure. The Hong Kong judiciary has long been a beacon in the region, upholding the rule of law and representing a truly independent judiciary free of any influence.[170] In fact, Hong Kong is ranked Number 5 among the 148 countries on the index of judicial independence.[171]

That the Court of Final Appeal, the highest court in Hong Kong, comprises non-permanent judges which hail from other common law jurisdictions, specifically, the United Kingdom and Australia, only further evidences the independence of Hong Kong's judiciary. In addition to this excellent reputation, Hong Kong courts have maintained a pro-arbitration stance in their supervisory role. For example, Hong Kong judges have followed the UK case law of broad construction of arbitration clauses. Hong Kong courts have also taken a pro-enforcement stance.[172] The ability of the Hong Kong judiciary to produce reasoned and sound decisions which have influenced the development of substantive international arbitration law has commanded international recognition and respect. Three recent cases demonstrate the Hong Kong court's approach to arbitration.

Lin Ming v. Chen Shu Quan[173]

In this case, the Hong Kong Court of First Instance granted a stay of court proceedings in favour of an HKIAC arbitration and refused to grant an anti-arbitration injunction in parallel proceedings.

The dispute concerned the alleged failure by a food processing group owned by Mr Lin Ming to comply with a put option contained in a share purchase agreement with the Sequedge Group. An HKIAC arbitration was commenced in September 2011 by the Sequedge companies while Mr Lin filed a claim in the Hong Kong courts against the Sequedge companies and 26 other defendants in November 2011. Mr Lin then applied for an anti-arbitration injunction on 29 November 2011, while the Sequedge companies brought a mirror application for a stay of the court proceedings in favour of arbitration on 19 December 2011.

[170] Teresa Y.W. Cheng and Michael J. Moser, Hong Kong Arbitration: A User's Guide (2nd ed, 2008) 17.
[171] Hong Kong Government Information Centre, 'Hong Kong Remains World's Freest Economy in 2020' (16 June 2020) https://www.info.gov.hk/gia/general/202006/16/P2020061600521.htm accessed 21 April 2023.
[172] Grand Pacific Holdings Ltd v Pacific China Holdings Ltd (No 1), [2012] 4 H.K.L.R.D. 1
[173] Lin Ming v. Chen Shu Quan H.C.A. 1900/201.

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Article 8(1) of the UNCITRAL Model Law, given effect by Section 20 of the 2011 Arbitration Ordinance, provides that a court before which an action is brought in a matter, which is the subject of an arbitration agreement, must refer the parties to arbitration unless the arbitration agreement is null and void, inoperative or incapable of being performed.

The Court considered that since a good prima facie case had been established that a valid arbitration agreement existed between Sequedge and Lin, it was bound to grant the stay application in favour of the HKIAC arbitration. When considering whether to grant the anti-arbitration injunction, the relevant legislation was Section 12 of the Arbitration Ordinance, adopting Article 5 of the Model Law, which provides that "*In matters governed by this Law, no Court shall intervene except where so provided in this Law*" and Section 21L of the High Court Ordinance confers on the courts a general jurisdiction to grant injunctive relief.

The court did hold that it retained discretion to restrain arbitration cases, as part of its general jurisdiction to grant injunctive relief, but noted that such jurisdiction must be exercised "very sparingly and with great caution". The Hong Kong courts interpreted the potentially conflicting legislation in favour of arbitration by taking a restrained approach by refusing to grant anti-arbitration injunctions.

Grand Pacific Holdings v. Pacific China Holdings[174]

In this case, the Hong Kong Court of Appeal held that an award could be set aside on procedural grounds only if the violation was "sufficiently serious or egregious so that one could say a party has been denied due process", refusing to set aside an ICC arbitration award made in Hong Kong.

The ICC arbitration seated in Hong Kong began in 2006. The tribunal rendered an award in August 2009 ordering the claimant, Grand Pacific Holdings Ltd (GPH), to pay the respondent, Pacific China Holdings Ltd (PCH) a sum in excess of US$55 million together with interest. PCH then applied to set aside the award in Hong Kong, relying on Article 34(2)(a)(ii) and (iv) of the UNCITRAL Model Law, claiming that it was unable to present its case and that the arbitral procedure was not in accordance with the agreement of the parties.

[174] Supra n. 15.

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After reviewing commentaries on Articles 18 and 34 of the UNCITRAL Model Law, the Court of Appeal stated, as quoted above, that in order to set aside an award, the misconduct "must be sufficiently serious or egregious so that one could that a party has been denied due process." Furthermore, the court stated that a party who has had a reasonable opportunity to present its case would "rarely be able to establish that he has been denied due process."

However, the court agreed with the lower court's consideration that "if the violation had no effect on the outcome of the arbitration that is a good basis for exercising one's discretion against setting aside."

With this set out as guidance, the Court concluded that the conduct was not sufficiently serious or egregious and refused leave to appeal against the judgment of the Hong Kong Court of Appeal, underlining once again what has been deemed "the jurisdiction's arbitration-friendly credentials and the reluctance of its courts to interfere with the arbitral process and the awards."

Arbitration Institutions

The growth of transparent, efficient and international arbitral institutions in the region has also contributed significantly to the strength of the arbitral infrastructure in Asia. Parties are more likely to seat their arbitration in a place where they are comfortable that their administered proceedings will be handled impartially, professionally, efficiently and cost effectively by a reputable institution.[175] Arguably, there is a preference for regional expertise when dealing with Asian parties, and the regional institutions in Asia have risen to the challenge of providing local knowledge within an independent multinational framework. The HKIAC certainly has been on the regional stage for some time but has met the pressing market needs over recent times offering users of arbitration from across the globe a viable option.

As an arbitral jurisdiction that originally served an industry more accustomed to an ad hoc process with some institutional support – the construction industry – for many years, the HKIAC did not have a set of its own rules. In 1995 construction disputes represented 54% of the total number of cases that came to the HKIAC, maritime disputes represented 22% of the total cases, while commercial disputes

[175] White& Case and Queen Mary University of London, 'International Arbitration Survey: Choices in International Arbitration' (2010) http://www.whitecase.com/files/upload/fileRepository/2010International_Arbitration_Survey_Choices_in_International_Arbitration.pdf accessed 21 April 2023.

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represented only 13%.50.

With the popularity of the UNCITRAL Arbitration Rules, HKIAC formulated a set of Procedures for the Administration of Arbitrations under the UNCITRAL Arbitration Rules in 2005. These Procedures proved to be an attractive alternative to purely ad hoc arbitration without institutional support.

Then, in 2008, the HKIAC went one step further. As a result of the burgeoning Chinese companies in commercial trade, the HKIAC established its own institutional rules. Keeping in mind Hong Kong's roots as a traditionally ad hoc seat and also with the desire to give parties an option that is distinct from the other arbitral jurisdictions in the region, the HKIAC adopted a set of rules that were based on the UNCITRAL Arbitration Rules. These rules were promoted to be light touch in approach – meaning, primarily, that arbitral awards are not scrutinized.

Furthermore, in light of the growing discontent with costs associated with arbitration, the institution wanted to give parties the choice of how to pay its arbitrators – by hourly rates or by a schedule of fees. This can be tough decision for the parties as it has been anecdotally evidenced that the larger disputes (in value) might be more economically handled if the arbitrators are paid by the hour. The explanation to this seems to be that the larger disputes do not necessarily require more work from an effective arbitrator than the smaller disputes.

Given the success of this specific process and the increasing number of multi-party and multi-contract disputes the HKIAC has seen over the past five years, the HKIAC began a revision process of the 2008 Rules in late 2011. Despite the fact that the 2008 Rules were working well overall, the increasingly complex, multi-party and multi-contract cases being submitted to the HKIAC and developments across institutions globally together with feedback received from users prompted the review.

The 2013 Rules have retained the light-touch approach found in the 2008 Rules, whilst improving the HKIAC's ability to supervise and manage proceedings efficiently. The goal was to ensure that HKIAC met its changing users' needs and maintained international best practice. This goal has been achieved and, in addition, the 2013 Rules introduce some innovative 'state of the art' features, which

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given the feedback to date, further strengthen the arbitral framework, attracting more arbitrations and hence adding to the rise of international arbitrations in the region.

The 2013 Rules retain the system which allows parties to choose to pay arbitrators an hourly rate or according to a schedule of fees. However under the 2013 Rules, if parties choose the hourly rate option, the rate is capped at $6,500 (US$838), unless they agree otherwise.[176] This mechanism allows parties to better control costs and at the same time provides a more transparent system. Standard terms of appointment for arbitrators have also been introduced to streamline the appointment process and to avoid any awkward conversations between parties and tribunals.

Many institutions now also include emergency arbitrator provisions in their rules. The HKIAC introduced an emergency arbitrator provision despite the Hong Kong courts being some of the most efficient when it comes to applications for interim relief in arbitral proceedings, for those arbitrations where parties do not have the luxury of efficient courts that are well versed in matters of arbitration. A party may apply for such emergency prior to the constitution of the arbitral tribunal. Usually, the HKIAC will proceed to the appointment of the emergency arbitrator within two days after receipt of the application and the emergency arbitrator will render his or her decision within 15 days of receipt of the case file.

Some of the most innovative features introduced by the 2013 Rules are the provisions regulating the joinder of additional parties, consolidation of arbitrations, and single arbitration under multiple contracts. These changes are specifically designed to address the growing complexity of commercial disputes involving multiple party and multiple contract arbitrations, which represent about a third of the cases submitted to the HKIAC.

Conclusion

The trend in Asia is one that generally continues to converge in favour of arbitration. That said, parties (and parties' counsel) may still face practical challenges in enforcement, whether as a result of needing to familiarise themselves with the different nuances in law in a foreign jurisdiction (where enforcement is being considered) or being dissuaded as a matter of perception of the foreign court's

[176] HKIAC Rules Article 33 (2013).

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attitude towards arbitration. However, these are challenges that can be overcome with time with training and education of relevant stakeholders in these jurisdictions on the Model Law and the New York Convention.

Mumbai Centre for International Arbitration (MCIA): MCIA is an independent, non-profit organization established in 2016. It aims to promote institutional arbitration in India, particularly in the commercial capital of Mumbai. MCIA provides a state-of-the-art arbitration facility and a panel of experienced arbitrators. It follows international best practices and has adopted the MCIA Rules, which are based on the UNCITRAL Arbitration Rules.

International Centre for Alternative Dispute Resolution (ICADR): ICADR is an autonomous institution established by the Indian government in 1995. It has its headquarters in New Delhi and regional centres in various cities across India. ICADR provides a platform for the resolution of international commercial disputes through arbitration, conciliation, and other alternative dispute resolution methods. It has its own panel of arbitrators and mediators and offers facilities for conducting arbitration proceedings.

Delhi International Arbitration Centre (DIAC): DIAC is an arbitral institution established by the Delhi government in 2008. It aims to promote Delhi as an arbitration hub and provide a cost-effective and efficient platform for international commercial arbitration. DIAC offers arbitration facilities, including hearing rooms and administrative support, and maintains a panel of arbitrators with expertise in various fields.

International Centre for Dispute Resolution (ICDR): ICDR is the international division of the American Arbitration Association (AAA). It has a presence in India and provides administrative services for international commercial arbitrations conducted in India. ICDR offers a comprehensive set of rules and procedures for arbitration, including the ICDR International Arbitration Rules.

International Court of Arbitration (ICC): The International Chamber of Commerce (ICC) has a national committee in India, which promotes the use of ICC arbitration for international commercial disputes. The ICC International Court of Arbitration, based in Paris, is one of the leading arbitral institutions globally. It provides rules and guidelines for conducting arbitration and offers administrative support for ICC arbitrations held in India.

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ARTIFICIAL INTELLIGENCE: EFFECTIVE TOOL FOR REDUCING LITIGATION IN INDIA

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Abstract

A wide range of applications have already been produced by the use of Artificial Intelligence (hereinafter referred to as "AI") in society, including recommendation engines, automatic interpretation, object classification, success and threat forecasting, and fingerprint scanners (including facial) identification. Some are made for legal research and to reduce the burden of the judiciary. But "whether AI can help in Reducing Litigation in India" and whether is there any possibility to introduce AI in the legal sector by comparing different AI tools that are generated for legal purposes. Is AI preferable to reduce the burden of the judiciary in any way? The goal of the study is to look at the legal problems and the numerous ways AI affects the legal system. The research methodology is inductive, qualitative, and descriptive.

Background

Cognitive computing is how AI in litigation functions. AI and signal processing are included in cognitive computing, which is a term for technological platforms that imitate human mental processes under the influence of cognitive science. To do this, computers must be taught to think, communicate, and make judgments. With the emphasis on detecting patterns in data, putting the data to the test, and discovering/providing outcomes, cognitive tools are taught rather than programmed to perform activities that have historically been done by people or as I like to imagine it, a research assistant who can comb through the cards and report what it discovers. According to Moore's Law, the number of transistors per square inch on integrated circuits has quadrupled every year since its inception this also signifies the evolution of technology.[179]

[177] *(B.B.A.LL.B) Hons., Galgotias University*
[178] *(B.B.A.LL.B) Hons., Galgotias University*
[179] *Reforms with respect to speedy disposal of cases related to women in fast track courts* (2022). https://www.ijllr.com/post/reforms-with-respect-to-speedy-disposal-of-cases-related-to-women-in-fast-track-courts.

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Several reasons have contributed to the current significant increase in AI applications:

Firstly, thanks to advancements in the electronics used in sophisticated digital circuits, computers' processing and storage capabilities have been growing while becoming less expensive over the past few decades. As a result, computers are becoming more and more accessible. The availability of powerful computers with lots of memory and storage, which are now reasonably priced, is one of the key prerequisites for using AI. It has gotten more support thanks to cloud computing. Deploying AI applications is now viable without incurring significant upfront costs[180].

Secondly, the development of AI techniques, including deep neural networks and other tools, is the second crucial aspect. Although ideas like machine learning, neural networks, and other notions have been around since the 1960s, decades of study have greatly expanded the sophistication of algorithms. The development of machine learning has had a big influence on how AI is used in real-world situations. [181]

Thirdly, as a result of technological advancements such as the Internet of Things (IOT), low-cost sensors, high-speed communication networks, and mobile devices, there is a third element that involves the production, storage, transmission, and processing of high volume, high speed, and high variety data. Multiple sorts of insights that have not before been feasible can be provided by large amounts of data. For instance, Google uses sizable text corpora from many languages to do machine translation between two languages. It divides the material into phrases and utilizes them to teach the phrases' translations between two languages. [182]

Law and AI-based Apps

In the meanwhile, a number of AI-based apps have been created and services are being provided in the legal industry. AI-based systems have been created for legal research, which entails locating instances with a similar outcome to the one at hand in order to decide the case at hand or to support arguments in the case at hand. There are companies like Lexus and Westlaw have been providing

[180]Do, J. *et al.* (2020) 'Cost-effective, energy-efficient, and scalable storage computing for large-scale Artificial Intelligence applications,' *ACM Transactions on Storage*, 16(4), pp. 1–37. https://doi.org/10.1145/3415580.
[181]V. Sze, Y. -H. Chen, T. -J. Yang and J. S. Emer, "Efficient Processing of Deep Neural Networks: A Tutorial and Survey," in *Proceedings of the IEEE*, vol. 105, no. 12, pp. 2295-2329, https://doi.org/10.1109/JPROC.2017.2761740.
[182]Kumar, S., Tiwari, P. and Zymbler, M. (2019) 'Internet of Things is a revolutionary approach for future technology enhancement: a review,' *Journal of Big Data*, 6(1). https://doi.org/10.1186/s40537-019-0268-2.

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applications based on keyword base matching for quite some time. However, it was realised that the results have high number of positive false as well as negative true. As keyword base searching is based on literal meaning of the words and not on its interpretation. AI based technique gives better result as it searches using the content of the case.[183]

Interactive conversational apps have been created to provide legal guidance. For instance, if there are good reasons for disputing the issuance of parking citations, a chatbot named *DoNotPay* assists individuals in doing so. In a short amount of time, it was utilized in 375,000 instances in New York and London for the filing of appeals for fines totalling 7.2 million pounds. It provides easy advice and queries to the user. Utilizing the data provided by the user in response to various queries, it also creates an appeal after contact. Free of charge service is being offered. Similarly, another application was developed to provide legal advice to the people seeking asylum in the US, Canada and the UK. After success of these applications, 1000+ bots have been developed for a range of topics for the people in 50 States in the US and the UK.[184]

For contract analysis, notably in the business sector, AI algorithms have been created. Finding important provisions requires doing a thorough review of a large number of contracts and associated documents that have been utilized throughout time. The time needed for this is frequently excessive, and in many circumstances, it may not be really viable to accomplish the work. It is conceivable to employ AI-based technologies in this circumstance to scan the texts and highlight the most important clauses. Lawyers can focus on these clauses rather than going through all the documents which may not be possible within the limited time and resources.[185]

Human Judges and AI

The judicial system has made substantial use of AI technologies recently. AI is more effective, competent, and unbiased than human judges in the legal system. It has several restrictions since it relies more on massive data, algorithms, and processing power than on inborn intelligence, Because of disparities in the conceptual framework, application scenario, competence, and potential, AI for

[183]Houlihan, David. ROSS Intelligence & Artificial Intelligence in Legal Research. *Blue Hill Research. 2017 Mills, Michael*. Artificial Intelligence in Law: The State of Play 2016. Thomson Reuters Legal executive Institute (2016).
[184] DoNotPay (2020) *Save Time and Money with DoNotPay!* http://www.donotpay.co.uk/.
[185] *EBrevia* (2023). https://ebrevia.com/.

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the judiciary cannot replace human judges. It is essential to make it clear that judicial AI will never take the role of human judges. The continually increasing number of cases that are pending in Indian courts has alarmed the legislative, executive, and judicial departments of the Indian government. Although some steps are being taken to address this problem, such as promoting ADR processes and removing antiquated legislation, applying the freshly found area of AI to resolve this dilemma is yet unknown. [186]

India, the world's most populous democracy with a population of more than 135 crores (1.35 billion), faces resource shortages in practically every sector, including the judiciary. Due to the issue of judge scarcity and the ongoing rise in the number of cases filed, a civil as well as a criminal trial may take a very long time to be determined, in contrast to industrialized countries where trials may be finished in a matter of days. Justice is ultimately rendered ineffectively and slowly, which is not particularly advantageous for any community.

Understanding historical data on the verdict decisions by the kinds of cases filed in India may be aided by a statistical data analysis technique. For courts of law, such as sessions courts and subordinate courts, which base their decisions on judgments, repetition of this sort of study is conceivable. Sessions and subordinate courts, not higher courts, are handling an increasing number of bail-related matters. Naturally, higher courts may also benefit from AI.[187]

The bulk of matters are presently heard by the District, Taluka, and high courts. Such pending cases have a cascading effect that reduces the effectiveness of the judiciary and, as a result, limits the public's access to justice. The Judiciary's Use of Technology Due to how effectively AI has performed in many domains, it is recommended for use in courts to help judges speed up different legal processes in order to address the issue of growing pending cases. For legal professionals like law firms and attorneys, AI is already saving time and money. For instance, attorneys now employ robotic voice processing software like Dragon to enable speedy writing and note-taking. Similar to this, AI-powered robots are helping attorneys evaluate papers, particularly contracts, more swiftly and

[186] Sushina, T. and Sobenin, A. (2020) ' Artificial Intelligence in the Criminal Justice System: Leading Trends and Possibilities,' *Advances in Social Science, Education and Humanities Research* [Preprint], (2352–5398). https://doi.org/10.2991/assehr.k.200526.062.
[187]Ram, U. and Kumar, P. (2020) 'Incarcerated population in India: how many are dying? How are they dying?,' *International Journal of Prisoner Health*, 17(2), pp. 171–186. https://doi.org/10.1108/ijph-07-2020-0045.

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effectively than it would take a human.

COIN, short for Contract Intelligence, is the name of the program used for this. Not only that, but in a recent trial involving attorneys and an AI-powered system to predict case outcomes, the AI-powered processor was able to do so with 86.6% accuracy compared to attorneys' 66.3% accuracy. This exemplifies how AI will be utilized in the future by lawyers to counsel clients on the optimal legal course of action. Legal research is another area where AI technology is being used by attorneys.[188]

Law Bot Pro is another AI innovation in the legal sector; it is an AI platform built in India that works with knowledge about the law. It is a ground-breaking software that provides a thorough and convenient platform for finding legal information. The intelligent chatbot is one of Law Bot Pro's primary features. The chatbot is designed to respond to inquiries in straightforward English, increasing public access to legal knowledge. Users only need to enter their legal query into the chatbot, which will then deliver a succinct and straightforward response.[189]

Smith.ai is a revolutionary outsourcing platform that seeks to enhance the customer experience for legal firms by combining human and AI. The platform has a "virtual receptionist," which is staffed by a real person. However, Smith.ai's chatbot features and call logging and directing decision-making process make use of the AI capabilities of the platform. These functions may be effortlessly incorporated with Clio, enabling even higher productivity and efficiency in a legal context. With Gideon, attorneys may use a chatbot powered by AI that learns how to respond to inquiries from prospects to speed up the lead qualifying process. Gideon engages prospects with a straightforward discussion instead than using lengthy, friction-heavy input forms. Additionally, Gideon smoothly connects with Clio to improve the operations of attorneys.[190]

Casetext is a platform for legal research that makes use of AI to give attorneys a quick and simple way to identify pertinent cases. Legal professionals may do searches on the site with only one click, streamlining the research process. Additionally, Casetext's seamless integration with Clio makes it

[188]Baldominos, A. and Sáez, Y. (2019) 'Coin. Artificial Intelligence: A Proof-of-Useful-Work scheme for Blockchain-Based distributed deep learning,' *Entropy*, 21(8), p. 723. https://doi.org/10.3390/e21080723.
[189]Mokhtarian, E. (2018) *The Bot legal code: Developing a legally compliant* Artificial Intelligence. https://scholarship.law.vanderbilt.edu/jetlaw/vol21/iss1/3.
[190]*Smith.ai - How to get started with virtual receptionists for your business | smith.ai Receptionists* (2021). https://smith.ai/how-it-works/easy-as-1-2-3.

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simple to save searches straight to the active matter. Casetext's capacity to assess instances to make sure they are pertinent to the issue at hand is one of its most noteworthy characteristics, Casetext can also help attorneys save time and increase the precision of their research by leveraging AI technology.[191]

Diligen is a machine learning-powered AI application that assists attorneys with their due diligence by swiftly scanning contracts for certain clauses, provisions, or revisions. The outcomes of the contract analysis are conveniently summarized using this tool. Lawyers and other legal professionals may import documents between Diligen and Clio without any hassle because the two systems are integrated.[192]

Thoughts and Statements

In reality, several well-known jurists and judges have talked positively about the need for Al-based technologies that may aid the docketing system and simplify the decision-making process. The following are some of the statements made by these illustrious individuals:

We must progressively focus on utilising IT and IT-enabled services (ITES) for delivering more efficient and cost-effective access to the delivery of justice, "Justice SA Bode stated. This must also involve a thorough examination of the future of AI in the legal field, particularly how Al can aid in judicial decision-making. For a variety of reasons, I believe that investigating this interface would be quite valuable. It would, for example, allow us to reduce court caseloads by enabling improved court management. This is a low-hanging fruit opportunity. On the other hand, it will enable us to redirect court time away from routine-simple-straightforward topics (e.g., non-rivalrous cases) and toward more complex matters that demand more human attention and engagement. As a result, identifying such issues and implementing suitable technologies should be our next priority in India."[193]

"The idea of AI is not to supplant the human brain, the human mind, or the presence of judges," said Justice D.Y. Chandrachud, "but to provide a facilitative tool to judges to reassess the processes they follow, to reassess the work they do, and to ensure that their outcomes are more predictable and

[191]Teply, L.L. (no date) *Teaching civil procedure using an integrated Case-Text-and-Problem method*. https://scholarship.law.slu.edu/lj/vol47/iss1/11.
[192]*Diligen | Machine Learning powered Contract Analysis* (2021). https://www.diligen.com/.
[193]Saxena, N.N. (2022) ' Artificial Intelligence in Legal Profession,' *Haridra Journal*, 3(10), pp. 39–45. https://haridrajournal.com/ssah/index.php/1/article/download/109/79.

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consistent, and ultimately to provide wider access to justice to the common citizens."[194]

Reason either to believe or not

AI Advantages in law and legal proceedings:

1. Using AI software to help lawyers identify important case laws and statutes smartly:

Without having to browse through paper papers or search engine websites, AI software can assist lawyers in focusing on cases that are pertinent to them.

It is more practical to utilize Al software that can rapidly search pertinent cases and legislation because these old techniques require more time and effort to execute. Legal practitioners may be able to create highly precedented legal findings by using NLP and AL in their case law study.[195]

2. Converting difficult legal challenges into easy solutions:

In a matter of minutes, these systems can manage more difficult issues while maintaining objectivity and quality. It helps in the fulfilment of clients' requests for top-notch content. It compiles data from earlier case law and provides rulings and precedents.[196]

3. Drafting and evaluating contracts/documents:

Al systems are far more sophisticated than most people realize, and they will really considerably reduce the need for attorneys to have secretaries. Both parties would be able to understand their liabilities, obligations, and other obligations by simply submitting the necessary clauses and details that one would wish to incorporate in the legal document. All necessary information would be uploaded in the documents and be available for use within minutes.[197]

4. Ensuring Due Diligence:

Due Diligence is an essential service offered by law firms, but because it is so thorough and requires caution, it is always possible for a human error to occur. AI (AI) may be highly helpful while

[194] Ibid.
[195] Faggella, D. (2021) Artificial Intelligence *in Law and Legal Practice – A Comprehensive View of 35 Current Applications*. https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/.
[196] Bharadwaj, R. (2019) *Applying* Artificial Intelligence *to Legal Contracts – What's Possible Now*. https://emerj.com/ai-podcast-interviews/applying-ai-legal-contracts-whats-possible-now/.
[197] Ibid.

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performing due diligence since it helps with the gathering of crucial data and offers extra insights for completing diligence projects, making the process more precise and efficient. It expedites the procedure, gets rid of manual mistakes, and helps attorneys provide better service to their clients overall.[198]

5. Ensuring electronic billing and live tracking of completed work:

The majority of Al software can monitor work being done, which helps companies and attorneys create invoices for the job they have completed. This makes it possible for the job to be done to be more transparent, which is advantageous for law firms and attorneys, clients, and auditing agencies.[199]

Negative side

While there are various advantages for lawyers/firms and the judiciary in incorporating Al into the legal profession, there are also some drawbacks. However, on the negative side, technology has the potential to literally take over the jobs of millions of individuals around the world, regardless of their occupation. In this regard, a McKinsey Global Institute study estimates that between 40 million and 160 million women around the world will require occupational transitions by 2030. Although increased reliance on automation may result in more demand for jobs in robotics, science, and engineering, the number of people who will be unemployed as a result of automation is vastly greater than the number of people who will be employed. There are also some concerns about the nature of Al's ethics. It's crucial to remember that AI software doesn't have its thoughts.[200]

Although they think before acting, their behaviours are programmed, and there is always a question of trustworthiness because AI systems must have a clear ethical goal as well as be technically strong and trustworthy. These problems were also observed in the highly praised ROSS, which had several bugs. Another difficulty that emerges while deploying AI is cost. The cost of these AI programs is something that should be considered. With corporations investing in privatised AI research centres, as discussed before, the upkeep of these AI facilities is also a challenge. As a result, the initial

[198]Kuppala, J. *et al.* (2022) 'Benefits of Artificial Intelligence in the legal system and law enforcement,' *2022 International Mobile and Embedded Technology Conference (MECON)*. https://doi.org/10.1109/mecon53876.2022.9752352.
[199] Ibid.
[200]Saisubramanian, S., Zilberstein, S. and Kamar, E. (2021) 'Avoiding Negative Side Effects due to Incomplete Knowledge of Artificial Intelligence Systems,' *Artificial Intelligence Magazine*, 42(4), pp. 62–71. https://doi.org/10.1609/aaai.12028.

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expenditure to build and operate would be prohibitively expensive, necessitating a separation of technological skills. This also takes into account the unknown probability of the learning curve associated with working with lawyers, firms, and members of the judiciary who use such technologies.[201]

With these concerns in mind, the legislation governing AI use, particularly as it relates to the judiciary, must be kept in mind. There has always been and will always be a sense of mistrust in technology like these, but development must be gradual and cannot be done quickly without first knowing the legal, financial, and security effects.

Conclusion

AI is a helping tool in almost every sector and it will be a helping hand in legal proceedings as well but only as an analyser or as a judge in cases which does only consist of practical data. AI cannot replace judges and lawyers in terms of analysing and interpreting the fact that those cases consist of emotional suffering and reasoning that needed emotional thinking. Meanwhile, it will work as a great help in the corporate sector where the monetary and practical data is analysed as well as in minor offences where long proceedings are not needed. AI will help in research, drafting and pleadings, finding cases with similar facts, etc., and this will be adopted by many legal firms and further suggested to be a better tool.

[201]Valle-Cruz, D., García-Contreras, R. and Gil-García, J.R. (2023) 'Exploring the negative impacts of Artificial Intelligence in government: the dark side of intelligent algorithms and cognitive machines,' *International Review of Administrative Sciences* [Preprint]. https://doi.org/10.1177/00208523231187051.

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ALL IN ONE ARTICLE ABOUT LGBTQ COMMUNITY

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The article is about LGBTQ community in India and what are the difficulties faced by LGBTQ community in India and the protection of LGBTQ from abuse and discrimination and also about LGBTQ rights and what way the LGBTQ protect there self in blackmailed , harassed , threatened with violence and about section 377 and latest update on and about LGBTQ community and also in this article tell about how the rainbow flag become a symbol of LGBTQ pride? and recent judgement about same sex marriage community and section 377 judgements and what are the issues with the criminalisation of homosexuality and what are the related judgements of sec 377 and what are the initiative taken for transgender persons and how the bullying and harassment lead to addiction and also about the family conflict and rejection of LGBTQ community and last conclusion.

Difficulties faced by LGBTQ community in India

Same sex marriages are not legally recognised in India and criminalisation of homosexuality leads to discrimination and results in LGBTQ people getting poor or inadequate access to services within the healthcare system and the LGBTQ people suffer from social as well as economic inequalities due to the discrimination they face then the LGBTQ community is struggling for acceptance and equal rights. finding acceptance is particularly challenging for transgender people's, the LGBTQ community recently judged negatively. Numerous LGBTQ individuals deals with significant problems each year linked to violance, unemployment, access to healthcare. when the people's hold prejudices have problem then how LGBTQ individuals live their lives. The homeless LGBTQ youth are thrown out their homes because they are queer, or they ran away in order to escape from the abuses and in the absence of economic support they are resort to drug abuse and risky sexual behaviours

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LGBTQ rights:

People around the world face violence and inequality and sometimes tortures, even execution because of who they love, how they look, or who they are. sexual orientation and gender identity are integral aspects of our selves and should never lead to discrimination or abuse

The human rights of all persons are universal and indivisible. Everyone should enjoy the same fundamental human rights, regardless of their sexual orientation and their gender identity and expression

Article 1 of the human rights declared that " all human being are born free and equal in dignity and rights " **Article 2** declared that " everyone is entitled to all the rights and freedoms " ser forth in this declaration all the people, including LGBTQ individuals are entitled to enjoy the protection provided by international human right law, which is based on equality and non - discrimination

Are you being blackmailed, harassed or threatened with violance because you are LGBTQ:

" whoever voluntarily has carnel intercourse against the 'order of nature' with any man, women or animal shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and shall also be liable to pay a fine"

It is illegal to blackmail someone using section 377 as a threat

Latest update on and about LGBTQ community:

- Neglecting queer children in India: intersecting rights violation
- LGBTQ couple facing threat from family: Delhi High court direct police to provide security,and shift them to safe house
- Pride not prejudice - LGBTQ representation in the judiciary

Recent judgement about same sex marriage (LGBTQ) community:

In November 2022, same sex couples moved the supreme court, arguing that their inability to marry under Indian family law amounted to a violation of their fundamental rights to equal, life, liberty, dignity, free speech and expression etc… after hearing that lasted 10 days the court reserved its judgement in May 2023 and delivered it final verdict on October 17

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Judgement:

Supreme court refused to give marriage equality rights to the LGBTQ community in India

How did the rainbow flag become a symbol of LGBTQ pride

It goes back to 1978, when the artist Gilbert Baker, an openly gay man and a drag queen, designed the first rainbow flag Baker later revealed that he was urged by Harvey milk one of the first openly gay elected official in u.s to create a symbol of pride for the LGBTQ community. Baker decided to make that symbol a flag because he saw flag as the most powerful symbol of pride. As he later said in an interview,'our job as a gay people was to come out to be visible, to live in the truth, as I say, to get our of the lie. A flag really fit that mission, because that's a way of proclaiming your visibility saying,' this is who I am!' Baker saw the rainbow as a natural flag from the sky, so he adopted eight color for the stripes, each color with its own meaning (hot pink for sex, red for life, orange for healing, yellow for sunlight, green for nature , turquoise for art , indigo for harmony, and violet for spirit) the first version of the rainbow flag were flown on June 25 , 1978.

Section 377 judgement:

For prelims (முதற்கட்ட தேர்வு):

Fundamental rights, justice k.s puttaswamy vs. Union of India, LGBTQ community

For main:

Importance of section 377 judgement, issues with criminalisation of homosexuality, issues related to transgender

Section 377:

Sec 377 of Indian penal code (IPC)1860, a relic of British India, states that " **whoever voluntarily has carnel intercourse against the order of nature with any man , women or animal "** shall be punished

This included private consensual sex between adults of same sex

After the recent supreme court judgement , provisions of sec 377 remain applicable in case of non-consensual carnal intercourse with adults, all acts of carnal intercourse with minors and acts of

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bestiality

What are the issues with the criminalisation of homosexuality?

Fundamental rights:

- Sexual orientation and it's relationship to the fundamental rights of the individuals has been. At the heart of the debate
- SC in its judgement specifically said that the right to privacy and the protection of sexual orientation lie at the core of fundamental rights. Guaranteed by article 14 (equality before law), article 15 (prohibition of discrimination on the basis of face, religion, caste , sex , place of birth), article 21 (protection of life and liberty), article 19 (freedom of expression) of the constitution
- The supreme court,while discrimination consensual sex between homosexuals, observed that members of the LGBTQ community possessed the same fundamental rights as others

health issues:

- Criminalisation of homosexuality leads to discrimination and results in LGBTQ people getting poor or inadequate access to services within the healthcare system
- It also creates barriers to both the availability and the ability to access HIV prevention, testing, and treatment services
- Public health evidence also indicates a clear relationship of a social acceptance and legal rights with substance abuse, violence, isolation and mental illness

Law and morality:

- Those against legalising gay sex argue that it is against the moral values of the society. However, activists arguing for it say. What is forbidden in religion need not be prohibited in law

What are the related judgements?

1. Naz foundation vs. Govt of NCT Delhi (2009) :

Judgement:

The judgement was restricted to adults when sec 377 also applied to minors. Sec 377 had permitted

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the harassment of LGBTQ people in law

2. Suresh Kumar koushal case (2013)

Judgement:

Supreme court ruled that it was for the legislature to look into desirability of deleting sec 377 of IPC

3. Justice k.s puttaswamy vs. Union of India (2017)

Judgement:

Supreme court declared that bodily autonomy was an integral part of the rights to privacy

This bodily autonomy has within its ambit sexual orientation of an individual

4. Navtaj Singh johar vs. Union of India (2018)

Judgement:

Decriminalized homosexuality

Dismissed the position taken by supreme court in Suresh Kumar koushal case (2013) that the LGBTQ community constitute a minuscule minority and so there was no need to decriminalized homosexuality sex

5. National legal services authority vs. Union of India (2014)

judgement:

The court declared transgender as the third gender and affirmed the fundamental rights guaranteed to them

They were also guaranteed reservations in admission to education institutions and jobs

What are the initiative taken for transgender persons?

INDIA:

- Transgender Persons Act, 2019:

The Act defines a transgender person as one whose gender does not match the gender assigned at birth. It includes transmen and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such

as kinnar and hijra.

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Judgements of the Supreme Court:

- National Legal Services Authority (NALSA) v. Union of India, 2014 : The SC declared transgender people to be a 'third gender'.
- Transgender Persons (Protection of Rights) Rules, 2020: The Central Government made the rules under the powers conferred by the Transgender Persons (Protection of Rights) Act, 2019.
- National Portal for Transgender Persons : was launched under consonance with the Transgender Persons (Protection of Rights) Rules, 2020.
- Scheme of 'Shelter Home for Transgender Persons: To provide safe and secure shelter to transgender persons in need, the Ministry of Social Justice and Empowerment is setting up 'Garima Greh'shelter homes for them.

GLOBAL:

- International Labour Organisation (ILO) released a document on"Inclusion of LGBTQ persons in the world of work" : It provides certain recommendations to ensure equal opportunities and treatment for LGBTIQ+ persons at work.

How the bullying and harassment lead to addiction?

Bullying and harassment drive behaviors such as:

- Low self-esteem
- Insecurity
- Depression
- Anxiety
- Anger issues
- Hopelessness
- Resentment
- Suicidal thoughts

Instead of opening up about their problems, many choose to bottle their emotions. This is especially common in the LGBTQ community where individuals feel like there is no one they can talk to. Many choose to self-medicate instead of healthily dealing with their issues. They turn to drugs and alcohol, and such actions can bring harm to themselves and the people around them.2

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The best way to help someone with an addiction is to encourage them to find treatment. Many treatment programs start with detox, so the body overcomes physical addiction, followed by customized therapeutic methods so patients overcome issues of low self-esteem and low self-worth.

Family conflict and rejection of LGBTQ community:

Usually, one can turn to their family when they have an issue. They know their relatives will provide unconditional love and stand next to them no matter what problems they are experiencing. However, many people in the LGBTQ community are not so lucky. They may have mothers, fathers, and other relatives who don't understand their sexuality. Their relatives may reject them and even refuse to speak or interact with them. Not only does this increase the likelihood of addiction, but it also makes recovery more challenging. LGBTQ adults who experienced parental conflict due to their sexuality were 3.4% times more likely to do illegal drugs as opposed to LGBTQ adults with healthy parent-child relationships. LGBTQ adults with strained family relationships were also 8.4 times more likely to attempt suicide, 5.9 times more likely to experience depression, and 3.4 times more likely to have unprotected sex.

How to support LGBTQ community:

The word "ally" is a powerful one. It means someone who has your back and is on your side, because they know it's the right thing to do. In the LGBTQ movement, an "ally" describes someone who may not be LGBTQ themselves, but who are committed to equality and who speak out against discrimination.

Here's what you can do to be an ally to LGBTQ youth:

Everyone:

- Don't make assumptions about people's sexual orientation or gender identity.
- Speak out against homophobia, transphobia and anti-LGBTQ harassment and discrimination.
- Speak out against the use of antigay slurs.
- Be supportive of anyone who chooses to come out.

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Classmates:

- If you witness anti-LGBTQ harassment or discrimination, report it in writing to the school principal.
- Stand up for your LGBTQ friends, and voice your support for their being treated with respect and acceptance.
- Support friends in their decision to bring a same-sex date to the prom or other social events.
- Advocate for my school to adopt and enforce a nondiscrimination policy that includes sexual orientation and gender identity.
- Request books by LGBTQ authors and about LGBTQ people and issues for the school library.

Faculty and Staff:

- Make your classroom a safe space where antigay language is not tolerated.
- Advocate for your school to adopt and enforce a nondiscrimination policy that includes sexual orientation and gender identity.

Parents and Family Members:

- Support your children and their friends who question their sexuality or identify as LGBTQ.
- Be available to meet with school faculty or staff about these issues.
- Help your children or their friends file complaints about discrimination or harassment.

If you've done any of these things, then you're already an ally—keep up the good work! If you haven't, now is a great time to start.

Conclusion:

Today, homosexuality and queer identities may be acceptable to more Indian youths than ever before, but within the boundaries of family, home and school, acceptance of their sexuality and freedom to openly express their gender choices still remain a constant struggle for LGBTQ (lesbian, gay, bisexual, transgender) people.

Section 377 was made non-criminal by the Supreme Court. The next stage should be to make society nice toward the LGBTQ community and discourage any type of prejudice or hatred toward them.

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While the constitutions of Mexico, New Zealand, Portugal, South Africa, and Sweden all include protections for people based their sexual orientation, India is still lacking a fundamental law that acknowledges the protection of those who identify as LGBTQ people's rights or criminalises any harassment or discrimination against them. India should enact legislation allowing LGBTQ couples to be married, have children, and inherit their spouse's assets. Additionally, the community should build a separate public restroom as soon as feasible. In order to guarantee this community's right to equality, right to life, and right to personal liberty, India still has a long way to go, according to Indian culture is not sufficiently educated or informed to adopt an accepting attitude toward non-cisgender individuals.

Bibliography:

This all in one article is refrenced by some online resources, journal,books, article etc…

Websites:

- https://www.international.gc.ca
- https://www.hrw.org
- https://www.livelaw.in
- https://www.britannica.com
- https://www.drishtiias.com
- https://www.arrowpassage.com
- https://legacy.lambdalegal.org
- www.livemint.com
- https://article.manupatra.com

Book:

- Humjinso (a resource book on LGBT rights in India)

published by:

India centre of human rights and law

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- Dejure nixus law journal author : Roshni Agarwal

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ANALYSIS OF ANTI-CIRCUMVENTION LAWS IN THE US

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Introduction

This chapter throws light upon the digital copyright management in the context of Digital Millennium Copyright Act, 1998. The increased ability to copy and distribute information, in the digitally networked age has provoked a series of responses. In order to protect their rights, copyright holders have made use of technological protection measures including the digital right management prevents the unauthorized use of authors' original work. With the current technological developments in Information Technology, information can be accessed easily. The object of the chapter is to highlight and focus on the provisions of the DMCA in the arena of Digital rights and to discuss how far the legal clauses are efficient to protect and motivate individuals to come up with more creative work and enjoying the commercial benefits out of it.

Pamela Samuelson a pioneer in Digital Copyright Law stated, "The main purpose of DRM is not to prevent copyright infringement but to change consumer expectations about what they are entitled to do with digital content." DRM makes use of several technological measures of which not all are at the cost of consumers. Such as programs to ensure that the content created or e- books are not altered or modified and are disseminated in its original form and to ensure this creator makes use of DRM. Other example is when DRM acts as a ticket collector i.e. it enables consumers to watch the content after paying for it. DRM may be used for privacy and security concerns, allowing the consumer to see only those documents, which are not confidential, and not those, which are confidential. Another is copy protection whereby the content creator limits the amount that can be copied, transferred or duplicated from his work. Following industries make use of DRM: Music industry, Video games, Movies, Mobile phones, Software, e books.[202]

[202] For more information refer to http://drm.web.unc.edu/

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DRM can be said to be a mechanism, which enforces Copyrights. Pamela Samuelson has criticized the concept of DRM by saying that DRM system although can prevent illegal copying or unauthorized access; it can also easily prevent copying, transmission of those works, which are already in the public domain as copyrighted works.[203] Although Copyright law gives the author the right to prevent public performance and display of their work, the DRM system can control fair use of the work such as private performances and display of digital content and other fair use privileges. DRM also coerces the viewer to view unnecessary commercials, which exceeds copyrights.[204] She further mentions that DRM is a personal domination system where computer is programmed in such a way that it regulate the activities, which a user is permitted to do than rights management information. DRM system actually gives more control to the author than is permitted by the copyright law. The technology does not protect digital rights but manages permission to do certain acts 'P', 'Q' or 'R' with digital information.[205]

Legal Framework of Digital Rights Management

The Digital Consumer's Bill of Rights[206]

- Right to time-shift content--Users can record video or audio for later use that they have legally acquired.
- Right to space-shift content--Users have the right to use the content that they have legally acquired at different places; however, such use should not be commercial and should be personal. For example one can copy songs from a CD to pen drives and can use in cars.
- Right to make backup copies of their content to prevent losing the content forever in circumstances.
- Right to use content, which is acquired legally on the medium chosen. For example, right to watch DVDs content on your computer etc.
- Right to modify the content, which is legally acquired to make it more suitable for use. For example conversion of a book into such a readable format which can be used by a blind person.

[203] Stefan Bechtold, The Present and Future of Digital Rights Management — Musings on Emerging Legal Problems, in digital rights management — technological, economic, legal and political aspects, lnc 2770, at 597, 603 available at http://www.emeraldinsight.com/journals.htm?articleid=1593813&show=pdf
[204] Pamela Samuelson, "DRM {AND, OR, VS.}THE LAW, Communications of the ACM: Digital Rights Management, Volume 46 Issue 4, April 2003, 41-45, University of California at Berkeley, New York, USA
[205] Ibid
[206] For more information refer http://www.digitalconsumer.org/

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- Right to make use of technology for the effective usage of rights conferred by the copyright laws such as fair use. The Bill of rights provides that the user cannot be deprived of the fair use right by any technological barriers.

Circumvention of Technological Protection Measures

Act of circumvention

Anti-circumvention laws were globalized with the creation of the WIPO Copyright Treaty in 1996.207 Anti-Circumvention laws are those laws which prevent the users of a digital goods from circumvention of the technological barriers for using the content in such a way which harms the right holders or right holder do not wish it to be used in other manner as well as prohibit the removal or alteration of rights management information. These laws of Anti circumvention were implemented in the United States through Digital Millennium Copyright Act, which implemented the provisions of the WIPO Copyright Treaty to prevent copying of intellectual property by circumvention of technological barriers. Section 1201 of DMCA resembles Article 11 of the WCT and Article 18 of the WPPT which contains nearly identical language.

These provisions provided under WIPO copyright Treaty were incorporated and implemented in US through the Digital Millennium Copyright Act (DMCA) in response to the vulnerability of DRM to mutilations. The Digital Millennium Copyright Act is a federal statute that criminalizes the activity to circumvent a copyright holder's DRM subject to certain exceptions. The provisions of the Act provides for the protection against the act of circumvention of technical measures, the relevant provisions are Section 1201(a) (1) (A) which prohibits circumvention of technological measures used by the copyright owner to control access to a work protected. Section 1201(a)(2) makes distribution, import etc. of such technology which is designed or produced for the purpose of circumventing the technological measure used to control access to a work. Violation of these provisions gives rise to a claim and the injured can sue for damages, injunctions etc. Further, if anyone violates these provisions for pecuniary gains and willfully then it will constitute an offence of felony.

Section 1201 provides for two things one is the measure that is used to prevent the unauthorized access to a protected work and other is the measure that prohibits unauthorized copying of the

[207] Available at http://www.wipo.int/treaties/en/text.jsp?file_id=295166.

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copyrighted work. In certain circumstances producing and selling devices or services that are employed to circumvent the technological measures in either of the case is prohibited. However the act of circumvention is prohibited itself i.e. in case of unauthorized access the attempt to access without authorization is prohibited, however in second case it is not so.

Sec 1201 (a) (A) (1) prohibits "the act of circumventing a technological protection measure".208.Since the term effective in article 11 of WCT does not import a unambiguous meaning, the DMCA defines the terms "effectively controls access" in Sec 1201 (a) (3)(B) which provides that "a technological measure 'effectively controls access to a work if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work." In addition Sec 1201 (a)(3)(A) provides that "to 'circumvent a technological measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner."

Trafficking in circumventing technology

Sec 1201 (a) (2) outlaws the business of trafficking in products and devices used for circumventing the TPMs. It provides that "no person shall manufacture, import, offer to the public, provide, or otherwise traffic in technology, product, service, device, component, or part thereof" which circumvent technological protection measures. The term traffic is a generic term, which signifies manufacture, import, or otherwise traffic of circumventing technology and circumventing technology means technology, product, service, device, component, or part used for circumventing the TPMs.

To be prohibited, "the circumventing technology must indeed meet any of the three following conditions" (Sec 1201 (a) (2):

- be primarily designed or produced for the purpose of circumventing the access technological protection measure or
- Have only limited commercially significant purpose or use other than to circumvent a technological protection measure

[208] No person shall circumvent a technological measure that effectively controls access to a work protected under this title.

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- or they are marketed for use in circumventing

The definition says that those devices which are primarily designed for the purpose of circumventing or produced for the same and have limited commercial significant other than to circumvent, this could cause uncertainty and give rise to vague interpretation by the courts because what is commercial purpose is nowhere defined, it could be a very wide term. What if device is sold for legitimate purpose but eventually it is utilized for circumventing, will it be considered unlawful. European Directive also set up the similar tests, which is also causes uncertainty.

Further, the Supreme Court in the Sony case[209] the contributory liability of Sony was denied because of the existence of "substantial non infringing uses" of the Betamax video tape recorders (VTRs). Thus the primary purpose test laid down in section (Sec 1201 (a) (2) departs from the test laid down in this case. As a result the machinery might qualify as an item of commerce, with a substantial non infringing use, and hence be immune from attack under Sony's construction of the Copyright Act but nonetheless still be subjected to suppression under Section 1201. Therefore, equipment manufacturers in the modern world are required to vet their products for compliance with Section 1201 in order to avoid a circumvention claim, rather than under Sony to negate a copyright claim.

No mandate

Section 1202 (c) (3) provides that the prohibition provided under the said section on circumvention does not render manufacturers of consumer electronics, telecommunications etc to devise their goods in such a manner that they support the particular technological measures. [210]. Although no mandatory rule is there under the section, yet section 1201(k) provides for mandatory requirement for an affirmative response with respect to a specific type of technology, within 18 months of enactment. It provided that all analog videocassette recorders must be devised in such a manner that they affirmatively support the specific technologies, used for preventing unauthorized copying.

[209] *Sony Corp. of America v. Universal City Studios, Inc*., 464 U.S. 417 (1984)
[210] The non mandate provision of Sec 1201 (c) (3) "does not provide immunity for products that circumvent technological measures in violation of Sections 1201(a)(2) or (b)(1)." If this were the case, "any manufacturer of circumvention tools could avoid DMCA liability simply by claiming it chose not to respond to the particular protection that its tool circumvents." *Realnetworks, Inc. v. Streambox, Inc*., 2000 U.S. Dist. LEXIS 1889.

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Exceptions

However this is the part where attempt have been made to strike a balance between consumer fair use and protection of author's rights. Section 1201 consists of numerous exceptions, which are as follows. First is the operation of the whole section, Law Enforcement, Intelligence, and Other Government Activities. Others are with respect to section 1201 (a), which deals with technological measures category that control the access to works.

Further section 1201 (a) (1) (B)-(E) talks about administrative rule making proceeding which will assess the effect of prevention against the act of circumventing such access control mechanism. This prohibition takes place at the expiry of 2 years from the enactment of the provisions/ chapter of the Act. Further once the prohibition is given effect, it is subjected to the exception in a particular class of work which is used by the user in making non infringing work, if prohibitions are likely to adversely affect such non infringing use. Such applicability of the exemptions are affected by the proper rulemaking by the Librarian of congress, on the recommendation of the Register of Copyrights, who will consult the Assistant Secretary of Commerce for Communications and Information. There are other exemptions also laid down under section 1202 (d), (f) (g).

Exemption for Nonprofit library, archive and educational institution (section 1201(d)).

It provides that the prohibition provided under subsection (a) on the act of circumvention is subjected to the exemption provided to the nonprofit libraries, archives and educational institutions. They are allowed to circumvent only for the purpose of making a good faith decision in order to determine whether they want to subscribe to obtain authorization for access to work. However this is also subject to certain conditions like the copy of work to which access has been granted cannot be kept for a period longer than necessary and cannot be used for any other purpose except the good faith purpose. Further the exemption is available only when the identical copy of that work is not reasonably available in another form. Violation of these provisions for personal gains will incur liability. For the first offense, civil remedies will be subjected to the offence and for repeated offence in addition to civil remedies, the exemption provided will be forfeited.

Reverse engineering (section 1201(f))

This exception is with respect to the computer programs. It says that a person who has a legal right to use a copy of computer program may circumvent a technological measure that controls the access for

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the sole purpose of identifying, comprehending the elements of the program so as to achieve interoperability with other programs, only to the extent permitted under the copyright law.

Encryption research (section 1201(g)).

Encryption research has been defined as those activities which are necessary to identify and analyze faults and vulnerability of encryption technologies used to protect the copyrighted work, if the experiment is done to advance the skill and knowledge in the field of encryption technology or to develop more efficient encryption products. Therefore not withstanding subsection (a) it will not be violation to circumvent any technological measure as applied "to a copy, performance or display of a published work in the course of an act of good faith encryption research provided the copy obtained is legally obtained, such act is necessary and such act does not constitute infringement under this title or the violation of applicable law other than this section".

Exceptions Regarding Minors. Sec 1201 (h)

This is for the benefit of minors; it enables the court to consider necessity for the incorporation of prohibition in technology that prevents access of minors to material on the internet.

Personal injury (section 1201(i))

This exemption is for the protection of online activities of a natural person. This permits circumvention in those cases where technological measures are capable of collecting online activities of natural persons and their activities.

Security testing (Section 1201 (j)

This exemption permits development of technological means for the circumvention of access control mechanism for the purpose of conducting security tests of a computer with the authority of the owner.

Integrity of Copyright Management Information

Now the researcher will be analyzing another section 1202. This section implements the provision of article 12 of WIPO Copyright Treaty and Article 19 of the WPPT which also contains nearly identical language.

Section 1202 provides for the protection of integrity of the copyright management information (CMI).

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Subsection (c) defines CMI as information which identifies the author, the copyright owner, performer, writer or director of work, terms and conditions with respect to the work, and other information as may be prescribed by Registrar of Copyrights by regulation. It specifically excludes information with respect to the users of work. [211]

The section can be divided into two parts, the first part deals with the false CMI and the other talks about removal or modification of CMI. Subsection (a) provides that no person shall provide copyright management information, which is false, or distribute or import copyright management information, which is false for the purpose of inducing, enabling or concealing information. Subsection (b) provides that no person knowingly can alter or remove any CMI or knowingly distribute or import CMI, which has been removed or altered without the authority of copyright owner or law. The violation of this section will lead to liability; however the liability under the section requires that the act should be done with knowledge or with regard to civil remedies, there should be reasonable grounds to know that it will induce, enable, facilitate or conceal an infringement.

Exceptions

Section 1202 is also subjected to general exemption for Law Enforcement, Intelligence, and Other Government Activities provided under Section 1202 (d). There are certain limitations on the liability under section 1202 (e) on person who is acting as broadcast station or as cable system will not be liable for removal or modification of CMI in few situations when such person did not intend to induce, enable, conceal etc an infringement.

Remedies

Section 1203 provides that for violation of section 1201 and 1202, the injured person before United Court District Courts may bring civil action. Section 1203 gives power to the court to grant permanent or temporary injunctions, impounding for device, which violated, equitable relief, monetary compensation including statutory damages, attorney's fees, costs of suit etc. similar to those available under the Copyright Act. The court has the discretionary power in case of innocent violations to reduce or remit damages; provided the violator proves that he was unaware of the fact that his activity constituted violations. (Section 1203(c) (5)(A)). Further Section 1203(c) (5) (B) provides special

[211] Mark J. Davison, "The legal protection of Databases", Cambridge University Press, United Kingdom, 2003

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protection to nonprofit libraries, archives, educational institutions or public broadcasting and court may completely remit the damages if they prove that they were unaware of the violations.

The person violating the provisions is liable for actual damage and any additional profits or statutory damages. For each violation of section 1201, a complaining party may at any time before final judgment is made, elect to recover an award of statutory damage for each violation for not less than $200 or more than $2,500 per act of circumvention and for violation of section 1202 for sum not less than $2,500 or more than $25,000.

In addition to civil remedies, there are criminal remedies also. Section 1204[212] provides that it is a criminal offense to violate section 1201 and 1202 willfully and for the proposes of commercial advantage or pecuniary gains. Under the section penalties up to $500,000 fine or upto five years imprisonment for a first offense and for subsequent offenses fine upto $1,000,000 or upto 10 years imprisonment can be levied. Under Section 1204(b), nonprofit libraries, archives educational institutions are entirely exempted from criminal liability.

Conclusion

Although DRM makes restrictive use of the copyright despite of the fact that sometimes it may harm public good, it has failed to effectively protect the copyrighted work with the widespread use of internet. Video games, digital libraries are the most struggling industries in the field of piracy. The problem arises because of the conflicting interests of so many stakeholders involved; efforts have been made to strike a balance between the competing interest of IP owners and consumers with the help of Digital rights management techniques which itself comes along with harms and benefits. DRM is used for achieving different goals with the help of different techniques for example a user of CDs or DVDs might be restricted to use the CDs or DVDs on multiple computers or multiple media player by a music company, other example could be when in a video the users cannot skip the advertisements. Both the restrictions further the goals of the copyright owner in a different way. It can therefore be said that it is a kind of limitations on the use of copyrighted work with the ultimate aim to prevent mutilation of work or unauthorized access to work etc.

[212] Mergers, Robert P. "Intellectual property in the new technological age" Aspen Publishers, United States of America (5th Ed, 2010)

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UNHEARD SUFFERING BEYOND IMAGINATION- MARITAL RAPE

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Abstract:

Marriage is considered as a sacred union of two souls coming together in the auspicious movement. It is said that couple often made in heaven. However, husband often misunderstood marriage as licence to make sexual advancement towards her wife without her consent and in the process, violates the dignity and personal liberty of his wife. A wife can never imagine that the same sacred union of two souls would turn into the silenced sufferings and pain beyond imagination with the horrible trauma of marital rape. The irony is that the wife have to suffer humiliation and subjugation from her husband without any remedy in silence. It's unfortunate that the Indian legal system which claims to protect rights of every individual, failed to protect the very basic dignity of a victim of marital rape. Since the Preamble of Indian Constitution has highlighted the importance of dignity of each and every individual, there is an urgent need to bring legislative change to secure the dignity and modesty of women. This paper would analyze various aspects of marital rape and its causes and impacts.

Key Words – Marriage, Dignity, licence, trauma, imagination

Introduction

Marital rape is a form of sexual violence where husband forces her wife in sexual intercourse and advancement without her consent under coercion and threats. It undermine the fundamental rights of a victim of marital rape under Article 21 which gives right to protect her personal liberty and to live with dignity. It led to the subjugation and exploitation of a victim by her partner under coercion and threats. It not only shakes the very foundation of harmonious marriage but also led to exploitation of a victim in other domains such as decision making power, financial issue etc. Unfortunately, marital rape is widely prevailing in our society. According to the National Family Health Survey 5 (2019-

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21), "majority of women (84 per cent) said that their husbands " physically forced her to have sexual intercourse with him even when she did not want to ". Therefore, there is an urgent need to make marital rape as an offence under Bhartiya Nyaya Sanhita to liberate women from perpetual sufferings and gender centric violence.

Violation of Fundamental rights in Marital rape - It is well written in Article 14 that there should not be any discrimination on the basis of sex, and if both are equal in the eyes of the law, then how can a man control a woman only for his sexual needs? This thing violates women's fundamental rights, which are mentioned in Article 14.

In marital rape, when a man wants sexual activity without her will, it will violate her fundamental right, which is clearly mentioned in Article 21. A woman has the right to make decisions related to her body, and that is called body autonomy.

" Right to Autonomy of the "Body"— This protection is given under Article 21. "Right to Autonomy means a woman can use her body according to her choice, but no one can put pressure on her for sexual activity. If she doesn't want, then she can deny.

Victim will suffer from many issues due to the marital rape.

In marital rape, women suffer from guilt, shame, and loss of self-worth, and due to this type of trauma, they will feel anxiety as well as depression. A woman would not heal for several years after getting traumatised by her husband, even though she also needed help from a psychologist so she could recover from this trauma. When men do the penetration against the will of women ,she will also face these types of health problems.

1. **Infection transmitted through sexual contact:** A woman can get the infection from unwanted sex, and many infections are not curable, like herpes, HPV, and HIV.

2. **Persistent health problem –** After getting sexually transmitted diseases, women will experience immune system disorders.

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3. **Mental suffering –** Marital Rape Women will suffer from many problems, like feeling depressed in the future, as well as anxiety.

4. **Hurt from spouse** – When a man has sex intercourse with a woman without her consent, he gives her the wound that never heal Because those wounds hurt a woman's soul.

5. **Unintended Fertility:** This type of pregnancy can be the result of marital rape. A child also bears the pain because, at this time, women are not able to take care of babies because they are already going through shock and unbearable mental pain.

Reasons behind the silence of the women and these reasons are-

Now a question: why are women still silent on this heinous crime? Women remain silent on this just because of societal mentality, fear of their status, no support from their parents, and even rejection from society if they disclose it to other people.

1. **Afraid of revenge**: Women remain silent on this heinous crime because she feels that her husband will take revenge on her after that.

2. **Dishonor from the society** – Behaviour of the society will changed after that , just because of she have to tolerate thing

3. **Stress & anxiety** – Women Facing the anxiety and stress due to the behavior of her husband will fell helplessness

4. **No support from society** - Few women's don't have good people who can help then so on that time she felt Powerless

5. **Fear of Reputation in the society** – Reputation in the society is the most important for the women so she will not speak to anyone regarding this for seek of honor

6. **Monetary dependence on the husband**: Most women are totally dependent on their husbands, so they have to tolerate this type of torture. She feels worried about her future because she is unable to earn due to her illiteracy.

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Need to be criminalised for marital rape.

Yet, India hasn't criminalized marital rape, but there is urgent need. Marital rape is a very serious issue; so many other countries have already criminalized it. But still, there are many countries where marital rape is not illegal. This is a heinous crime and violates the rights of women, so many women activists debate this topic. But now there is a serious need to make a law on this crime. Absence of law will violate the dignity of the women.

Marital rape affects women emotionally and physically around the world. According to the survey, 30 percent of the women are victims of marital rape. This ratio highlights the serious need to educate women about their rights.

Section 375 of the IPC criminalises the husband when he does sexual intercourse with women when she is under 15 years of age, but there is an exception when women are major and above the age of 18 years, and in this situation, if a man has sexual intercourse against her will, even then she can't do anything because there is no law regarding this. But this exception will lead to women suffering from harassment every night, and after that, they will feel lonely and helpless. So there is an urgent need to make a law on this matter so that a woman will feel safe in her matrimonial home and preserve the purity of the marriage.

Legislative bodies need to implement laws to prevent marital rape so women's dignity and rights can be preserved. After that, it will be helpful to prohibit the ill-treatment of women. There must be a strict law for the preservation of reproduction rights and bodily autonomy for females so that they can easily make decisions related to their bodies without any fear or injury.

Benefits of the Criminalization of Marital Rape: When a marital rape is criminalized, women will be more safe at matrimonial homes, but only enforcement of the law is not sufficient. There is also a need for education and understanding about her rights

1 **Lawful safeguards** – After the criminalization of marital rape, women can seek protection from the court. She can file a lawsuit against her husband for the cruelty done by him, and she can protect her fundamental rights easily.

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2 **Uplift the status of the women** – It uplifts the status of women because when they become empowered and know about their rights, they can do anything for their lives.

3 **Change the mentality of the society** – These types of laws change the mentality of society towards women. After that, society will also feel that consent is most important in the relationship between husband and wife.

4 **Backbone of the female –** Law on the marital rape will be treated like the backbone of the female. After this type of law, women will feel more secure. After that, she can help by way of a helpline, a home shelter, or a legal Assistance.

Conclusion

Undoubtedly, Marital rape shakes the conscience of a woman and undermine her dignity and bodily autonomy. In K.S Putta Swamy case , honourable Supreme court's decision to include right to bodily autonomy as part of Art 21 under personal liberty gave hope to victims of marital rape. However, the new Bhartiya Nyaya Sanhita Act, 2023 which replaces IPC,1860 continues to exempt marital rape. In the 21st century, where even more than 107 countries across the world make marital rape as an offence , India is yet to make a much awaited and progressive change in the direction of women empowerment. Women's respect and dignity is preliminary for India to emerge as "Viksit Bharat" in next 25 years. There is an urgent need to bring legislative change to make marital rape as an offence to liberate half of the population from suppression and humiliation of relentless suffering and make way forward to enter in Amrit kal period with equal dignity and mutual respect of both man and woman.

References-

1. Krina Patel
The Gap in Marital Rape Law in India: Advocating for Criminalization and Social Change Posted: 2019-01-19
2.Sangamithra Logananthan
Marital rape must be fully criminalized in India. 2. Both minor as well as major married women must be legally protected against marital rape Posted: 2019-01-19

 ISBN: 978-81-948082-7-5

3. Iram, S., & Patri, S. K. (2023). Is Marriage a Contract for Sexual Slavery? A Study on marital rape NUALS LJ, 17, 60.

4.The Constitution of India, Articles 15(3) and 21

5 Tarafder, A., & Ghosh, A. (2020). The Unconstitutionality of the Martial Rape Exemption in India. U. Oxford Hum. Rts. Hub J., 202.

6 Stafford, N. K. (2007). Permission for domestic violence: Marital rape in Ghanaian marriages. Women's Rts. L. Rep., 29, 63.

1036−1058

(Report No. NCJ-154348). Washington, DC: National Institute of Justice.

Basile, K. C. (1999). Rape by acquiescence: The ways in which women “give in” to unwanted sex with their husbands. Violence Against Women, 5,

1036−1058

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AN ANALYSIS OF LAW RERALTING TO ADULTERY AND WAY FORWARD

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ABSTRACT

Adultery law in India is one of the most controversial laws in India after the enactment of Bhartiya Nyaya Samhita, 2023. This Samhita does not contain any provision about the criminalization of Adultery. In essence, it does not regard Adultery as an offence. This article deals with the concept of Adultery & the laws relating to the same in olden times. It also contains a comparative study of the historical evolution in India and other countries. Then the paper deals with whether Adultery should be a part of the civilised society. The paper further explores the terrific outcomes of Adultery and the danger it possess to the institution of marriage. The paper subsequently delves into an analysis with the of the Apex Court's judgement in the landmark case of Joseph Shine verses Union Of India in 2018 declaring section 497 of Indian Penal Code & section 198B of Code of Criminal Procedure unconstitutional. Furthermore, Paper aims to traverse the grounds for deeming the provisions relating to Adultery inconsistent with the constitutional scheme. In the process the Paper aims to highlight the additional considerations the honourable Apex Court may take due note of. The paper at last tries to discover the way forward in this regard.

Key Words: *Adultery, Institution of Marriage, Criminalization, Women Dignity*

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INTRODUCTION

The word **"Adultery"** comes from the Latin word **"Adulterium",** which alludes to committing sexual acts with individuals besides their partners. As per Black's Law Dictionary, "adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife."[213] Section 497 of the Indian Penal Code, 1860, defines adultery as engaging in sexual intercourse with a person known or reasonably believed to be the wife of another man, without the consent or connivance of that man. The legal concept supporting this provision is the Doctrine of Coverture, which posits that a woman loses her identity and legal rights upon marriage. This doctrine, however, has been criticized for violating a woman's fundamental rights. It stipulates that only the man involved in the extramarital affair is guilty of the offense, and the wife cannot be punished as an abettor. The validity of Section 497 of the Indian Penal Code was brought before the courts in cases such as Yusuf Abdul Aziz v State of Bombay[214], Sowmithri Vishnu[215], and V. Rewathi[216]. However, the landmark judgment in *Joseph Shine vs. Union of India*[217]marked a historic moment. The honourable apex court declared Section 497 unconstitutional; citing its infringement upon the Fundamental Rights outlined in Part III of the Constitution.

HISTORICAL BACKGROUND

Section 497 of the Code of Criminal Procedure, which criminalized adultery, faced a legal challenge in the case of Yusuf Abdul Aziz v State of Bombay[218]. The court addressed the specific challenge related to the prohibition on treating the wife as an abettor. The court rejected this challenge, emphasizing that Article 14 must be interpreted in conjunction with other provisions of Part III, which define the scope of fundamental rights. The court upheld the prohibition on treating the wife as an abettor, considering it a special provision protected by Article 15(3). In the Sowmithri Vishnu case, the challenge centered on the denial of equality in formal and narrow terms. The court noted that for the provision to be invalidated, a clear constitutional violation must be established, emphasizing it as a matter of legislative policy. However, the case fell short in addressing the substantive aspects of constitutional jurisprudence relevant to the validity of Section 497. These aspects include the

[213] Black law dictionary
[214] 1953 SCR 930: AIR 1954 SC 321
[215] (1985) Supp SCC 137 : AIR 1985 SC 1618
[216] (1988) 2 SCC 72
[217] (2019) 3 scc 39
[218] Ibid

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assurance of equality as genuine protection against arbitrariness, the recognition of life and personal liberty as essential elements acknowledging dignity, autonomy, and privacy, and, most importantly, the principle of gender equality as a fundamental pillar of a truly egalitarian society.

Justice. Anna Chandy, , advocated for the removal of Section 497, asserting that it was opportune to assess whether the offense of adultery outlined in the section aligned with contemporary perspectives on a woman's status within marriage. The Law Commission's report highlighted the existence of divergent opinions on the advisability of maintaining a provision like the one found in Section 497 on the statute book. However, it was underscored that the section could not be invalidated solely on the basis of its desirability for deletion.[219]

The ruling emphasizes that considerations regarding the desirability of deleting Section 497 are within the purview of the legislature, and such desirability alone does not warrant the invalidation of the section. In the case of V Revathi v Union of India[220], a two-judge Bench addressed a challenge to Section 497, coupled with Section 198(2) of the Code of Criminal Procedure, which prevents a wife from prosecuting her husband for involvement in an adulterous relationship. The court noted that Section 497 and Section 198(2) form a "legislative packet." It further observed that the provision doesn't permit either the wife to prosecute an erring husband or vice versa. According to the court, this lack of discriminatory treatment based on gender indicated that there was no discrimination under the law.

The preceding descriptions indicate that, in cases prior to Joseph Shine, only partial challenges were presented before the Court. Joseph Shine marked the first instance where the constitutionality of Section 497 was comprehensively contested, leading to the court deeming the section unconstitutional for violating Fundamental Rights.

Joseph Shine case serves as the most recent precedent concerning adultery. This case specifically addressed the rights of armed forces personnel in relation to adultery. The Supreme Court, in its ruling, clarified that its judgment, which invalidated Section 497 of the Indian Penal Code, would not impact court martial proceedings initiated against armed forces personnel for engaging in adulterous conduct.

[219] Sowmitri Vishnu case
[220] 1988 AIR 835, 1988 SCR (3) 73

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STATUS BEFORE AND AFTER THE JUDGEMENT

Before the landmark judgment of the apex court, Section 497 dictated that only the husband, in whose marital relationship the sexual act occurred, had the exclusive right to initiate legal proceedings. If the husband consented or connived in the extramarital relationship, the offense of adultery was not deemed to exist. Essentially, the law positioned the decision regarding a woman's engagement in a sexual act with another person solely in the hands of her husband. Consequently, Section 497 was criticized for undermining a woman's agency, autonomy, and dignity, reducing her to the status of her husband's property. Notably, the absence of an adultery offense if the husband consented further perpetuated the notion that a woman relinquished her voice and autonomy upon marriage. In recognizing these inherent flaws, the court, through its judgment, decriminalized the offense outlined in Section 497.

STATUS AFTER THE DECRIMILISATION OF THE OFFENCE

In the case of Joseph Shine vs. Union of India[221], the Court declared Section 497 unconstitutional, leading to significant positive outcomes and consequences. The judgment effectively eliminated the stigmatization of women as the property of their husbands, granting women equal rights in a manner akin to men. This recognition elevated women to the status of co-equals, shedding the subordinate role traditionally assigned to them within marital relationships. Consequently, the judgment stands as a beacon of empowerment and dignity for women in India. However, it is essential to acknowledge that, like any legal decision, it also carries certain drawbacks.

AFFECT OF JOSEPH SHINE: SECTION 498, INDIAN PENAL CODE

Reads as follows: - *"Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with the intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."* [222]

[221] Ibid
[222] Sec 498 Indian Penal Code

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For a comprehensive analysis of the Section post the Joseph Shine Judgment, several key points emerge:

i) The Section indirectly upholds the former adultery law of Section 497 by referencing illicit intercourse, a stance that is problematic given the prior invalidation of Section 497. This raises concerns about the continued relevance and appropriateness of this provision.

ii) The Section presupposes a woman to be the property of a man, assuming that she can be carried away or enticed without her free will. It allows the husband to prosecute a third party in cases involving his marriage but does not extend the same recourse for prosecuting his own wife. This reflects an outdated perspective on marital dynamics.

iii) The significance of a woman's consent is disregarded under Section 498. The Joseph Shine Judgment emphasized that women are entitled to equal rights as their male counterparts, asserting that a woman's sexuality is not the property of her husband but is based on her free will. Section 498, however, ignores this principle, as highlighted in the Joseph Shine case. The provision doesn't consider a woman's free will or her agency, diminishing her sexual autonomy, a facet the apex court sought to restore through its judgment.

iv) Section 198(2) of the Code of Criminal Procedure designates the husband of the woman as the aggrieved party in cases under Section 498 of the Indian Penal Code. In the absence of the husband, the provision extends this status to a person who had the care of the woman on his behalf. This arrangement is deemed unconstitutional on similar grounds as Section 497, as the definition of the aggrieved person does not encompass the woman herself. This exclusion renders the provision arbitrary and manifestly unfair. By conferring exclusive rights on the husband to address the offense as he deems fit, the provision is criticized for being excessively empowering and disproportionate. Such a legal framework potentially allows for an imbalanced and inequitable exercise of authority by the husband over the wife, raising concerns about fairness and gender equality.

v) Section 498 appears to exclusively focus on the husband's control over his wife's sexuality, without aiming to preserve fidelity as husbands engaging in extramarital intercourse are not subject to prosecution. Similar to Section 497, this provision reflects patriarchal notions, granting men the exclusive right to prosecute anyone involved with enticing or taking away their wife, while denying the wife a reciprocal right regarding her husband.

vi) The restriction of a married woman's free will to the care of her husband or his agent is arbitrary and violates constitutional provisions such as Article 14 (equality before the law),

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Article 15 (prohibition of discrimination based on sex), Article 19(1)(d) (freedom of movement throughout India), Article 19(1)(e) (right to reside and settle in any part of India), and Article 21 (right to life and personal liberty).

vii) If consensual intercourse occurs, society or the state should not be in a position to grant or deny a woman a license for such acts. Although such actions may impact the sanctity of her marriage, they do not diminish her rights to self-determination and privacy, thereby infringing on the married woman's right to privacy.

viii) Section 498 appears to perpetuate a colonial mindset by treating women as chattels of men. It restricts a woman's freedom and decision-making to her husband's approval, allowing anyone to take her away with the husband's permission. In light of changing times and recent cases such as Joseph Shine, Navtej Johar, and KS Puttuswamy, there is a compelling case for a judicial review of Section 498, aiming for its decriminalization to align with the principles upheld in the landmark rulings of the apex court.

JOSEPH SHINE JUDGMENT AND THE PRACTICAL REALITIES

In the landmark case of Joseph Shine vs. Union of India[223], the court observed that -

"59. …… This judgment has dwelt on the importance of sexual autonomy as a value which is integral to life and personal liberty under Article 21. Individuals in a relationship, whether within or outside marriage, have a legitimate expectation that each will provide to the other the same element of companionship and respect for choices. Respect for sexual autonomy, it must be emphasized is founded on the equality between spouses and partners and the recognition by each of them of the dignity of the other."[224]

"Laws should not be so ahead that the society besides."-

Unanonimous

After the historic judgment of the Joseph Shine, Adultery is no more an offence. It means that it is no more prohibited by the law. In other words, it is removed as an offence from the statute. The removal of any act as an offence may have various implications and ramifications on society. The ramifications of decriminalizing adultery on society can be diverse. Such a move could erode the traditional values

[223] Ibid
[224] Joseph Shine DY chandrachud

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associated with marriage. In India, the marriage is considered as a relationship of the seven births. It suggests the social norm that the spouses not only dedicate themselves in this life, but the coming lives also. Here, the females do fast for the long life of their husbands. Thus in such a pious institution of marriage, slightest deviation from the trust, may cause a huge harm. Man is a social animal. He is what he observes others. Thus if the some sect of society will damage this very pious institution of marriage expressly, then it may effect to the other spouses from their commitment. The studies on the Recognition of Divorce in Hindu, Study on extra marital affairs, and Recognition of Divorce by mutual consent manifestly suggest this contention

The study of all the above mentioned subjects suggest that as these are recognized by the law, cases of concerned act rapidly increased. Thus if the law decriminalize the adultery, the number of cases will rapidly increase. In other words, if the law will not criminalise the adultery, consequently the number of cases of adultery will increase and will threat to pious institution of marriage. It will also lead to concerns about the potential breakdown of social norms. The interference of individual by committing sexual act in the very pious relationship i.e., institution of marriage is a serious threat to institution of marriage and other penal provisions.

There is a concern that removing legal consequences might contribute to a more permissive attitude toward infidelity, potentially leading to an increase in relationship challenges and breakdowns. The legal system plays a role in upholding societal values, and removing legal consequences for adultery might undermine the institution of marriage. Society may resist the change, maintaining stigmatization of those involved in extramarital affairs. Traditional or conservative communities may find it challenging to accept a shift in societal attitudes. The traditional family structure could be undermined, leading to potential negative consequences for children and the stability of households.

WHY RELYING ON THE DIVORCE IN CASE OF VIOLATION OF ADULTERY NOT GOOD?

The apex court in Joseph Shine observed that the adultery may be good ground for divorce, but it should not be made penal provision. With due respect, the author contends that the proving the adultery itself a big task due to the private nature of relationships. Concrete evidence is often elusive, relying on circumstantial clues, making it difficult to establish clear proof. Privacy laws and ethical considerations are also a hindrance in way of investigation. Thus there should an extra liability

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imposed on the part of the offensive party that if they do not wish to follow the marital obligation, then should take divorce on its own. And the other pious party has not to suffer. Thus there should be gender neutral provision for criminalizing the adultery in which both the spouses possess equal rights and liabilities and including the provision for punishment for both the offending parties. And there should also be option on the part of the parties that they wish to continue their institution of marriage or they would like to take divorce.

THE ADDITIONAL POINT WHICH THE COURT SHOULD ALSO CONSIDER?

In India, the institution of marriage evolved as a sacred institution. It is regarded as bond of the seven births. It shows the high weightage of dedication and faith society believes in this institution. In India, undoubtedly it was male dominated society, but the women were provided better place of respect in the society and in this institution also. Wife is regarded as the "Ardhangni" which means the half of the body. There are a lot number of cases on record to suggest that the wives have sacrificed their lives to secure the institution of marriage. In the West, the concept of divorce was much more prevalent from the ancient, but in India, the concept of divorce came in picture in majority community i.e., Hindus first in the year 1955. Thus the law clears the picture here that by virtue of having male dominated society, the Wife was not regarded as subordinate of her husband, but as a counterpart who is equally liable for the deeds of the husband. The nature of marriage in Britain and in the India is not quit same. As in the case of concept of Secularism, concept of feudal system, concept of internationalism or concept of State differs just on the same footing, the concept of marriage also differs. In India, the institution of marriage was regarded as sacred institution. There are a lot of limb stories which suggest the dedication of husband towards his wife and wife towards her husband. World is witnessed that when the West was in the Dark Age, at that time thousands of women sacrificed their lives to preserved their sexuality from the outsiders in India. Thus here, the women were not considered liability from the starting. In place of sub ordinate being, she was always considered as co-lateral. In India, marriage was considered as a sacred institution. Thus on the part of the state, every step which devalues the institution of marriage is wrong and bad in eyes of law and the society.

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CONCLUSION

Thus Sec 497 was the archaic law which was decriminalized by the honorable apex court in the Joseph Shine case. The judgment has a long lasting effect not only limited to the institution of marriage but the society at large also. The marriage which was regarded as a sacred institution before few decades assumes unbreakable. First introduction of rule of divorce and then introducing such an attempt impact society at large. The removal of restriction of having sexual intercourse on the spouses while having within the institution of marriage is serious threat to the same. **Law punishes even slightest harm, then why not the harm of so much great level of the reputation of institution should not be punished.** It creates doubts within the minds of the people that when the virtues which could be found in marriage are begotten outside the marriage and then what is the need to marry and following the liabilities concerned. As per the Buddha, Middle way is the best way. Thus the balance between the sacred institution of marriage and the individual freedom should be maintained. For this purpose, it is needed to preserve both the values. Thus in our opinion it will be more appropriate to rely on the recommendation of the Malimath Committee that the adultery should be criminalized and the both the spouses should provided the equal opportunity to sue the other spouse with the option of divorce in case of infringement.

BIBLOGRAPHY

1. *Author, *Assessing The Issues of Honour and Violence Against Women: A Human Rights Discourse Framework for The Detection of Violence Against Women.*
2. *Jared Diamond, Rise and Fall of the Third Chimpanzee 77-78 (1992).*
3. *Id. at 71-83.*
4. *Charles Jean Marie Letourneau, The Evolution of Marriage, 220-222 (Havelock Ellis ed., 1911).*
5. *Siegel, supra note 6, at 46.*
6. *Jeremy Weinstein, "Adultery, Law, and the State: A History," 38 Hastings Law Journal 195, 197 (1986).*
7. *Id., at 200-1.*
8. *Viator, supra note 6, at 840.*
9. *Charles Torcia, "Wharton's Criminal Law" 210, at 528 (15th ed., 1994). See also Viator, supra note 6, at 841.*

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10. Feinberg, "Debris", supra note 16 at 259.

11. "Married Women's Property Act, 1882" (45 & 46 Vict., c. 30).

12. Ann Summer Holmes, "The Double Standard in English Divorce Laws, 1857-1923," 20(2) Law and Social Enquiry 601, 605 (1995).

13. LCI 42nd Report, supra note 27, at 326.

14. Report of the Committee on Reforms of Criminal Justice System (2003).

15. Abhinav Sekhri, "The Good, The Bad and The Adulterous: Criminal Law and Adultery in India," Asian Journal of Law and Policy, vol. 3, no. 1 (January 2023): 39–47, Pg - 45.

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ISSUES AND CHALLENGES RELATED TO PERSONS WITH DISABILITY IN INDIA

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Abstract

A disability is defined as a malfunction, disruption or loss in the normal functioning of physical, mental or psychological systems. This article explores the obstacles and accomplishments of India's disability rights, with an emphasis on the Rights of Persons with Disabilities Act of 2016. The Indian government began by amending legislation such as the Persons with Disabilities Act, 1995. To comply with the UNCRPD, the Rights of Persons with Disabilities Act of 2016 superseded the PWD Act of 1995. Indian government signed and ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The importance of an inclusive approach, efficient execution of social security programmes and expanded chances for education and work are highlighted in order to empower the handicapped people in India.

Equal access to inclusive education, vocational training and facilities for individuals with disabilities were highlighted in this article. It supported strategies and efforts aimed at protecting and promoting their well-being, such as cultural, recreational and sporting activities. Furthermore, it mandated reserved seats in higher education institutions and government organisations for persons with qualifying disabilities, as well as recognition for private businesses that provide reserved employment. Initiatives for awareness and sensitization were also pushed. With the assistance of this research work, the breadth and significant concerns, obstacles, and rehabilitation measures in India are being examined and adopting methods for health care for the disabled in the community are being attempted.

Key Words: Disability, Education, Issues and Challenges, Employment, Government Organisation.

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I. INTRODUCTION

Persons with disabilities are a crucial note that portrays impairments and limitations to public engagement. Impairment is described as the state of having a medical or mental condition that implies that part of your body or brain does not perform correctly, whereas a restriction on public participation is essentially an issue that a person encounters when involved in ordinary employment. Such groups are deemed marginalised because they expect more care, attention, and support than non-disabled individuals. These individuals are more susceptible to disease and require special attention in terms of immunisations and immunological development programmes. They are persons who devalue themselves in society because of their physical characteristics and require moral development programmes. They may even have a lower health margin, due to social isolation and poverty as well as being predisposed to a variety of other disorders such as bed sores, sciatica and other bone-related issues.

In India, the disability rights movement has existed since 1970. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 saw significant progress in disability rights, notably in the service and employment sectors. Individuals with disabilities (PWDs) are entitled to three percent of all government positions under the Act. As a result of the movement's momentum, India signed and ratified the Convention on the Rights of Persons with Disabilities in 2007. The gradual transformation from a charity-based to a rights-based strategy, while also developing and enforcing the legislative rights of people with disabilities has occurred over time. Another significant development is the transition from the medical model of disability envisioned in the 1995 Act to the social model of disability and the human rights approach, which gained traction following the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Rights of Persons with Disabilities Act of 2016 (RPWD Act). The Incheon Strategy for the Inclusiveness of People with Disabilities also helped to pass the 2016 Act on a worldwide scale.

People with one or more impairments are common among India's diverse population. According to the 2011 population census, there are approximately 26.8 million people with disabilities in India, accounting for 2.21% of the overall population. Similarly, according to a 2021 estimate, just roughly 34 lakh of India's 1.3 crore 'employable' handicapped people had work. That's the number Mitti Café hopes to make a little impact in people working for handicapped people's rights, as well as other social professionals, believe that the numbers reported in the census represent a small fraction of the real

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statistics. According to the World Bank, there are 40 to 80 million people in India who have impairments. According to data collected from across the world, handicapped people in India are far more numerous than in other industrialised economies. Despite accounting for a sizable fraction of India's overall population, people with disabilities face severe living conditions. Employers interpret their disability as their inability, and individuals have formed their own opinions about their talents. There have been several situations when businesses have declined employment offers to candidates with disabilities based on their circumstances rather than raising their morale; nonetheless, studies show that impaired people are often more productive than non-disabled individuals.

Disability should not be an impediment to achievement, but rather a ladder to climb the extraordinary. We have a moral obligation to remove obstacles to participation and invest adequate funds and skills to realise the enormous potential of persons with disabilities. Governments throughout the world can no longer ignore the hundreds of millions of individuals with disabilities who are denied access to health, rehabilitation, assistance, education and jobs, never having the opportunity to shine. Despite several attempts and campaigns, India continues to fall behind in terms of providing infrastructure for handicapped people. It is now time for us to collaborate to create a stress-free atmosphere for such people, breaking down barriers with the goal of turning unfavourable views towards handicapped people into positive appreciation of their traits, abilities and individual rights.

Recently, the Chief Justice of India, D.Y. Chandrachud has constituted a committee to review the physical and functional access of the top court's facilities to make them accessible to those with disabilities. The panel will be led by Justice S. Ravindra Bhat of the Supreme Court. The Supreme Court has tasked its Supreme Court Committee on Accessibility (SCCA) with developing and disseminating a survey to everyone who utilises the Supreme Court's facilities for work or pleasure who happens to be disabled. This includes SCCA employees, attorneys, litigants and interns.

II. WHO IS A PERSON WITH DISABILITY

A significant topic raised in the discussion is who may be called handicapped. Disabilities vary from individual to person. Every disabled person can be classified based on the parameters that cause their disability, as in order to obtain government grants and subsidies, one must submit a disability certificate from a medical practitioner who will certify after examining the percentage of disability in any part of the body and how he became disabled.

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There is no common definition of what defines a handicap or who should be classified as having one. Furthermore, there is no one, unchanging condition of impairment. A disability results from the interplay between a person with a health condition and a specific environmental circumstance.

A handicap is sometimes characterised as a malfunction, disruption or loss in the regular functioning of physical, mental or psychological processes or a problem in learning or adjusting socially that interferes with a person's normal growth and development.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 includes a medical definition. According to section 2(t), a 'person with disability' is defined as having at least 40% of any handicap as certified by a medical authority.

Section 2(i) defines disability as being blind or having limited eyesight. After leprosy treatment, individuals may experience hearing impairment, locomotor difficulty, mental retardation or mental illness.

III. SOCIAL DEFINITION OF DISABILITY

The 1993 UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities describe disability as "people may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness." Such limitations, disorders or illnesses might be permanent or temporary in nature.

The United Nations Conventions on the Rights of Persons with Disabilities define disability differently. According to the statement, disability occurs when individuals with impairments face attitudinal and environmental hurdles that prevent them from fully participating in society on an equal footing as others. Persons with disabilities are persons who have long-term physical, mental, intellectual or sensory impairments that, when combined with other impediments, prevent them from participating fully and effectively in society on an equal footing. The World Report on Disability 2011 summarises the many definitions of disability by noting that "Disability is complex, dynamic, multidimensional and contested".

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IV. RIGHTS OF PEOPLE WITH DISABILITIES

People with disabilities are among the most disadvantaged groups in society. The term disability is viewed as a social stigma, with parents feeling ashamed of their children and the majority of them feeling uncomfortable in public. This not only makes the lives of people with disabilities terrible, but it also causes them to be sad for their whole lives. The Rights of Persons with Disabilities Act, 2016, was introduced over a year ago by the Indian government to empower individuals with disabilities and promote confidence and dignity in society and the workplace. It contributed to the development of individual autonomy and decision-making capacity.

Right to Access to Justice: Section 12 of the Right to Access to Justice states that the appropriate government must ensure that people with disabilities have access to any court, tribunal, authority, commission, or other body with judicial, quasi-judicial or investigative powers without discrimination based on disability. The upshot for people with disabilities is that they can approach any court without having to demonstrate that they are not actively symptomatic.

Legal Capacity: Section 13 of the Legal Capacity Act states that the appropriate government must ensure that people with disabilities have the same rights as others to own or inherit movable or immovable property, to control their financial affairs and to access bank loans, mortgages, and other forms of financial credit. Persons with mental disabilities can enjoy legal competence on an equal footing with others in all parts of life, and they have the right to equal recognition before the law, just like any other individual.

Provisions for Guardianship: Section 14 articulates the provisions for guardianship, which include both restricted and entire guardianship. A person with a mental handicap might request guardianship based on the level of assistance they need. When the designated authority determines that a PwD is unable to make legally binding choices, he or she may be supplied with the assistance of a limited guardian to make legally binding decisions on his or her behalf, in conjunction with the person with disability. In some cases, the designated authority may provide whole guardianship, assuring assistance for a person with a disability who requires many limited guardianships to be granted repeatedly. The National Trust legislation for Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities addresses the process of petitioning for guardianship under the legislation.

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Punishment for Atrocities: According to Section 92 of the Act addresses the punishment for atrocities against people with disabilities. The maximum jail sentence for such atrocities is 6 months, which can be extended to 5 years with or without a fine. The atrocities mentioned are: - (a) intentionally insulting or intimidating with the intent to humiliate in public, (b) assaulting with the intent to dishonour or outrage a woman's modesty, (c) knowingly denying food or fluids to a person with a disability, and (d) sexually exploiting a woman or child with a disability. (e) intentionally injuring or damaging or interfering with a PWD's use of any limb or sense or supporting device, and (f) performing or conducting or directing any medical procedure on a woman with disability that causes or can lead to pregnancy termination without her or her guardian's expressed consent and without the opinion of a registered medical practitioner.

V. CHALLENGES IN THE INDIAN MENTAL DISABILITY ASSESSMENT SCALE

The scale for assessing mental impairment must be precise, easy to administer and time-efficient. There should be enough protections in place to prevent the misuse of public monies. In this respect, the Rehabilitation Committee of the Indian Psychiatric Society updated and adapted the WHO Disability Assessment Schedule (WHO-DAS 2.0) to the Indian setting, creating an assessment instrument known as the Indian Disability Evaluation and Assessment Scale. IDEAS have been tested in eight centres across India. The test is straightforward and thorough in measuring mental disease impairment. IDEAS was originally developed and supported for four major mental disorders: schizophrenia, bipolar disorder, OCD and dementia. However, the Ministry of Social Justice and Empowerment, Government of India has issued a directive to use IDEAS to assess disability on five dimensions (Self-Care, Work, Interpersonal Activities, Communication and Understanding, and Duration) and to assess disability for all mental disorders. In comparison to IDEAS, administering the WHO-DAS 2.0 takes more time, and training the personnel to administer it is more challenging. IDEAS has been shown to be quite beneficial in the field of assessing mental disabilities. Thus, IDEAS is more adapted to the Indian context. However, IDEAS has the following problems, which include:

a. It is not comprehensive.
b. It does not address all mental illnesses.

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c. It is challenging to calculate the entire length of sickness for episodic disorders like Bipolar Disorder and Depressive Disorder. In the authors' initial version, the approach was referred to as ‘MY 2Y’ months of sickness over the previous two years. It may be used to estimate the duration of continuous sickness in PMI. As a result, IDEAS requires additional development for measuring mental impairment.

VI. CHALLENGES OF PSYCHIATRIC DISABILITY CERTIFICATION

Disability is well documented in mental retardation, schizophrenia, anxiety disorders, OCD, mood disorders, depression, dementia, and posttraumatic stress disorder. Is it necessary to certify all mental diseases as disabilities? There have been heated arguments across the world about whether drug use illnesses, personality disorders, paraphilias, and gender identity problems should be eligible for disability benefits. According to the gazette announcement, disability certificates can be given for any mental disease, regardless of the diagnosis. Mental health providers should be aware that a disability certificate is issued based on the extent of disability experienced by the individual, not the diagnosis. In this regard, Indian officials have gone beyond the standard approach and included all mental illnesses in disability assessments and benefits.

VII. CHALLENGES OF CERTIFYING TEMPORARY VS. PERMANENT DISABILITY

Psychiatric disorders are frequently episodic, changeable, dynamic and devastating. However, for certification purposes, mental disability should be examined when the psychiatrist determines that additional psychiatric therapy and rehabilitation are unlikely to lessen the severity of the impairment. Such medical issues are often treated for a duration of 6 months. If there is any question that there is a chance of improvement even after 6 to 12 months of therapy, a temporary disability certificate might be obtained. The temporary certificate will be valid for five years. For example, after treating bipolar affective disorders with mood stabilisers and rehabilitation, the disability percentage may vary, as seen by improvements in mood symptoms, cognition, everyday activities, job, and so on. In such instances, it is recommended to grant a temporary disability certificate.

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If a person receives a disability certificate for a psychiatric illness during the active period of the disease and then recovers owing to treatment and rehabilitation, the percentage of impairment may change at the review.

For permanent disability, once given, the certificate is permanent and everlasting. As a result, before granting a permanent certificate, members of the medical authority must take a reasonable degree of caution to ensure that the mental state has improved to the greatest extent currently conceivable and is unlikely to improve further. Before awarding a permanent disability certificate, psychiatrists should consider all alternatives for reducing, treating, rehabilitating, and correcting the condition. However, considering the practical difficulty and financial limits and using a comprehensive approach, a certificate cannot be rejected due to a lack of mental treatments. The percentage of impairment reported in the certificate is based on the condition on the day of evaluation when there were no possibilities of improvement through normal therapy. In the event that a disability evaluation is conducted following specialised psychiatric and rehabilitative intervention, the percentage of impairment specified in the certificate previously will be invalid.

VIII. CHALLENGES IN QUANTIFYING DISABILITY

On January 4, 2018, the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, issued the Guidelines for determining the degree of a specific impairment. IDEAS was notified to measure impairment associated with mental illness is illustrates the global disability scores on IDEAS for mental illness, which are classified as mild, moderate, severe, or profound impairment.

Although these ranges have been published in the Gazette, in many circumstances benefit administrators insist on a particular percentage equivalent to physical disability to give benefits and refuse to accept the range format. They should be informed on the regulations' requirements. An alternative would be for those giving certification to express the calculated score as a median percentage rather than a range. If this issue is not rectified, the PMI's rights will be taken away.

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IX. CHALLENGES IN THE CERTIFICATION OF AUTISM

Autism assessments have yet to be issued under the RPWD Act of 2016. Another major difficulty is that the notified disability criteria specify which experts, such as paediatric neurologist, rehabilitation psychologist and so on, can certify various impairments. This problem will become a serious impediment to issuing the disability certificate. Many medical specialisations have been excluded from certification for impairments that they often treat. For example, psychiatrists have not been included in the evaluation of learning disabilities. This naming of the specialist has to be modified and let the medical authorities pick the specialist necessary for certification so that people with disabilities do not have to travel from one city to another and one hospital to another to receive the disability certificate.

Many disability certificates can now be granted by primary health care doctors with specialised training, which will benefit many handicapped individuals in remote locations. However, the disability rules should have also provided the authority of certification to private practicing doctors, so that the scarcity of human resources could have been addressed with sufficient checks and balances.

X. JUDICIAL PRONOUNCEMENT ON DISABILITIES

Deaf Employees Welfare Association v. Union of India 2013

The petition was filed seeking a Writ of Mandamus mandating the Central and State governments to provide comparable transportation allowances to government employees with hearing impairments as they do to blind and other handicapped government employees. The hearing-impaired employees received a much smaller stipend than other employees with impairments.

The Supreme Court granted the petition and required the Respondents to provide transportation allowances to speech and hearing-impaired individuals on the same basis as blind and orthopedically challenged government employees. The Supreme Court also ruled that "there cannot be any further discrimination between a person with 'blindness' and a person with 'hearing impairment'." Such discrimination was not intended under the Disabilities Act. It ruled that all people with impairments have equal legal rights and equal protection under the law when they participate in government duties. The court determined that the dignity of people with hearing impairments must be respected by the

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state. The Supreme Court also ruled that deaf and mute persons should be granted transit allowances on the same basis as blind and orthopedically disabled government employees.

Vikash Kumar v. Union Public Service Commission & Others (2021) 5 SCC 370

The first of these issues is that the Consortium has denied the right to a scribe to applicants who do not have a baseline impairment but have a real difficulty writing. In this context, reliance has been placed on the following principle, which was laid down in the decision in Vikash Kumar while elaborating on the statutory entitlement of Persons with Disabilities under the Rights of Persons with Disabilities Act 2016: 'To limit the facility of a scribe to those who have benchmark disabilities would be to deprive a class of people of their statutorily recognised entitlements. To do this would be antithetical to both the simple wording and the goal of the statute.'

Arnab Roy v. Consortium of National Law Universities & Anr. Writ Petition (Civil) No. 1109 of 2022

The Supreme Court bench in this case has taken a progressive stance in dealing with the Examination Guidelines to ensure equal opportunities for candidates with disabilities in the LL. B admissions process, particularly regarding provisions for necessary accommodations and support to participate in the CLAT examination.

The bench clarified that candidates taking the CLAT (Common Law Admission Test) exam administered by the Consortium of National Law Universities can either bring their own scribe or, if that is not possible, request the Consortium to provide a scribe, who is then made available to the candidate. Where candidates are unable to locate their own scribe and the Consortium supplies one, the court mandated that at least two days be granted for the candidate to communicate with the scribe.

XI. UGC'S ACCESSIBILITY GUIDELINES

A PIL was recently brought before the Supreme Court on behalf of people with disabilities, as defined by the Rights of Persons with Disabilities Act of 2016. The University Grants Commission told the Court on July 25, 2022, that it had finished the Accessibility Guidelines and Standards for Higher Educational Institutions and Universities to guarantee that people with impairments have access to specific educational institutions. The Court directed the UGC to ensure that the recommendations be monitored and that periodic efforts are taken to progress their implementation.

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According to the Guidelines, all higher education institutions under government control or receiving government aid must reserve at least 5% of their seats for people with disabilities when admitting students to educational courses each year; otherwise, the institutions will face consequences.

XII. CONCLUSION

Disability is regarded as a social stigma in society that has to be remedied. Disability is defined as a mental impairment rather than a physical disability. People in society have such strong beliefs in them that they are unable to stand on their own. The funding, training and attitudes of family and friends are key elements contributing to the delayed growth of impaired people. In the areas where they have been cared for they have demonstrated their mettle, reaching new heights and receiving the greatest marks in society. Disabled people who set objectives for themselves and worked hard to achieve them are now successful and hold significant positions in both government and commercial organisations. People are marginalised and unable to participate successfully on equal terms in mainstream society. Disability is a terrible aspect of human life that may have an impact not only on the natural way of life, but also on despair, strength and power. It is claimed that a person can win everywhere except at home, and that losing the struggle at home is when a person dies.

With the revisions to the Rights of Persons with Disabilities Act of 2016, new measures have been incorporated for the benefit of handicapped people. Our laws have also been reinforced and handicapped people now get gross benefits. Section 6(3) of the Limitation Act of 1963 permits legal representatives to launch a claim after the death of a person suffering from legal infirmity, this provision is reinforced by Order 22, Rule 3(1) of the Civil Procedure Code of 1908. Everyone has the right to a dignified existence, including handicapped people as provided by Article 21 of the Constitution. However, simply passing the act is insufficient it must be implemented by deeds. Through careful examination, it is clear from acts and actions that legislators have been able to implement improved measures for the handicapped sector of society. It is apparent that the situation for the disabled will not change unless the government, non-governmental organisations and other sections of society actively participate. The government has done an admirable job of focusing its attention on the education and employment of the disabled. Several schemes and perks have been effective in providing equal opportunity to the handicapped members of society. The government should introduce additional social security plans for the disabled and create more job chances for them. To execute all social security plans, the government or society must work together to eliminate

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socio-legal hurdles that have hampered the efforts of the state, non-governmental organisations (NGOs) and social workers. Its scope includes rehabilitation, transparency between the state and its inhabitants and the technique to be used in the execution of rehabilitation programmes.

India has a large disabled population that cannot be neglected. Although estimates of India's disability population differ, academics have estimated the total at 70 million. This is a large population, comparable to the complete population of any foreign country. An estimated 75% of persons with disabilities live in rural parts of developing nations and have limited access to the services they require. The greatest way to teach, educate and promote morale among impaired members of society is to connect them to labour work prospects. The government, businesses, non-governmental organisations and the handicapped community are all important stakeholders. There are obstacles on several levels. When a person is able to study and develop themselves despite all difficulties and then finds themselves in a circumstance where they are unable to locate acceptable professions, their self-confidence suffers. Disabled persons living in rural regions are excluded from self-centred development, and they suffer the most since they lack knowledge of English and computers, both of which are required for work. The government's 3% reservation policy in government and public sector positions does not convert into reality since handicapped people cannot pass online recruitment exams and the job identification process is difficult. In the public sector, people with disabilities account for 1-1.5 percent of the workforce. In most circumstances, if a person believes that he can achieve success by breaking down all societal and familial boundaries, he will succeed. For example, a firm in Gujarat is run by a group of physically challenged people who benefit by creating bags out of recycled garments.

The government should offer technical assistance to training facilities for people with disabilities. The NSDC and other government ministries should be pushed to establish a distinct funding window for the handicapped. A campaign could also be launched on social networking websites to encourage such discouraged individuals to learn new things and engage with others, which would make them more active and live their lives with ecstasy. This will assist develop a good climate for the public, especially key stakeholders, to come on board to mainstream persons with disability.

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XIII. SUGGESTIONS

- Enhancing the existing legal framework relating to disability rights and accessibility is vital. This involves ensuring that law, such as the Rights of Persons with Disabilities Act is properly implemented, enforced and amended as necessary. Continuous assessment and enhancement of legislative rules might spur institutional reform.
- Clear protocols and rules are necessary for institutions to ensure accessibility and inclusiveness. This may involve developing accessibility standards, design guidelines, and methods for reasonable adjustments.
- Training programmes and efforts for government officials, business sector employees, educators, and service providers can increase knowledge of disability rights and accessible needs.
- Collaboration and Partnerships: Encourage collaboration among government agencies, civil society organisations, disability rights campaigners, and accessibility specialists.
- Public Awareness and Sensitization: Promoting inclusivity and acceptance through awareness campaigns and programmes is crucial. Promoting good attitudes towards disability, dispelling myths, and fostering empathy and understanding will help institutions become more inclusive in general.

XIV. REFERENCES

- H. Khalfan*, Education and Employment of the Bind, World Year Book of Education* (South Asian Publishers UNESCO, Delhi,1985).
- Hassen Uddin, *Normal and Handicapped Children: A Comparative Approach* (Ashish Publishing House, Delhi, 1995).
- ACCESSIBILITY GUIDELINES AND STANDARDS FOR HIGHER EDUCATION INSTITUTIONS AND UNIVERSITIES, *available at*: https://www.ugc.gov.in/pdfnews/8572354_Final-Accessibility-Guidelines.pdf (last visited on December 29, 2023).
- Guidelines for Assessment of Disabilities Under RPWD Act. 2016 Notified. 2018, *available at*: http://www.egazette.nic.in/WriteReadData/2018/181788.pdf (last visited on December 26, 2023).

 ISBN: 978-81-948082-7-5

- The Rights of Persons with Disability Act. 2016, *available at*: http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf (last visited on January 03, 2024).
- UNCRPD. United Nations Convention on the Rights of Persons with Disabilities. 2006, *available at*: https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities (last visited on January 04, 2024).
- Aditya Mehrotra, "The Indian Supreme Court and Disability Rights – Critiquing the Underpinnings of Disability Rights Jurisprudence in India", *available at*: https://www.livelaw.in/top-stories/how-supreme-court-protected-disability-rights-2022-217751?infinitescroll=1 (last visited on January 03, 2024).
- Moumita Barman, "Towards Inclusivity: Assessing the Rights of Persons with Disabilities Act, 2016", *available at*: https://www.linkedin.com/posts/centre-for-development-policy-and-practice_disabilityrights-disabilityrightsindia-inclusiveapproach-activity-7113041812642004993-cgaA (last visited on December 31, 2023).
- "Driving Change for Inclusivity: Challenges and Solutions in India's Disability Law Jurisprudence", *available at*: https://www.vaidicslucknow.com/current-affair/driving-change-for-inclusivity-challenges-and-solutions-in-indias-disability-law-jurisprudence/ (last visited on January 03, 2024).
- Sushovan Patnaik, "On disability rights, we need to look beyond the Supreme Court", *available at*: https://www.scobserver.in/journal/on-disability-rights-we-need-to-look-beyond-the-supreme-court/ (last visited on December 30, 2023).
- Legal Rights of Persons with Disabilities in India, *available at*: https://www.freelaw.in/legalarticles/Legal-Rights-of-Persons-with-Disabilities-in-India (last visited on January 04, 2024).
- Sushovan Patnaik, "The perpetual struggles of disability rights litigation", *available at:* https://www.scobserver.in/journal/the-perpetual-struggles-of-disability-rights-litigation/ (last visited on January 03, 2024).
- Sohini Chowdhury, "Finalised Disability Access Guidelines For Higher Educational Institutions And Universities: UGC To Supreme Court", *available at*: https://www.livelaw.in/top-stories/supreme-court-ugc-accessibility-guidelines-higher-educational-institutions-204786 (last visited on January 03, 2024).

 ISBN: 978-81-948082-7-5

ACKNOWLEDGING THE SIMILARITIES BETWEEN ANCIENT INDIAN JURISPRUDENCE AND CONTEMPORARY PRINCIPLES OF INTERPRETATION

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Introduction

Indian knowledge system is very rich as to content and as to applicability, to have fruitful life. Our New Education Policy acknowledges this aspect. This is an endeavor to study present legal system and jurisprudence in light of ancient Indian legal system. Law is meant for the society. Individual being part of the society is regulated through law; however not everyone may understand it in its whole spirit. Interpretation is a way to reach to the proper understanding of law. Knowledge of Principles of interpretation is very important for any person working in legal fraternity. These principles pre-supposes existence of law and for the testing of authenticity of the sources of law, interpretation is desirable. Laws are set of rules for regulating conduct of citizens and that is enforceable by institute of Government. Law is important for the good governance of the society, for preserving rights and liberties of the members of the society. Dominance of Rule of Law is necessary in a State. This ensures stability of legal system, transparency, accountability by following due process of law. A.V. Dicey has laid down three principles of Rule of Law as supremacy of the law, Predominance of legal spirit and equality before law. British Legal System lay emphasis on Dicey's Rule of Law and it is followed by Indian Legal system also. The Constitution of India is supreme as Article 13 declares law inconsistent with Part III of the Constitution will be unconstitutional or invalid. Article 14, 19, 21 restricts arbitrary action on the part of the State.

According to Edward Coke, "Rule of Law means: A) Absence of arbitrary power on the part of the Government. B) No man is punishable or can be made to suffer in body or good except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.[225] Even

[225] Rule of Law by Dicey Presentation by Ms. Chintu Jain Law Centre- II, https://lc2.du.ac.in/DATA/Presentation%20on%20Rule%20of%20Law_Chintu%20Jain.pdf

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though Rule of Law seems to be modern and western, concept but we can trace it from ancient legal system also. While interpreting Indian laws Indian Judiciary takes note of the same with respect to different aspects of good governance through law.

Sri Gajendragadkar quoted the Upanishad to say:

"Law is the king of kings, far more rigid and powerful than they; there is nothing higher than law; by its prowess, as by that of the highest monarch, the weak shall prevail over the strong."[226].

No one is above the law. Even a King is bound by the Rule of law. Enforcement of Laws can be done through the institution of the King and now through the entity of the State. Law is an immense instrument to enumerate and protect rights and liberties of the subjects. However, western culture emphasis on Austin's theory of law as a command of sovereign, backed by sanction. That means necessarily it is an imperative of some superior power. Sovereign is a fountainhead of legislature, executive and judiciary. Hindu Jurisprudence emphasis on importance of Dharma. Above quote reflects that even a King has to abide by the law. Law is even superior to the King. King has to implement law by following *Raj dharma*. Following Shloka prescribes various sources of law:

"श्रुति-स्मृति-सदाचार:
स्वस्य च प्रियम आत्मान:I
सम्यक संकल्पज:
कामो धर्म-मूलं इदं स्मृतम् II"

"The Vedas, the Smritis, good conduct or approved usage, what is agreeable to conscience proceeding from good intention, are the source of law."

Ancient Indian Legal system has its origin through Vedas i.e. *Shrutis*, Dharma Sutras, *Smritis*, Commentaries, Customs & usages, digests etc. Vedas were source of every law, which has an authoritative text. Source of *Shruti* (which was heard and handed down from generation to generations vocally) was believed to be divine. It include four Vedas, six *Vedangas*, and eighteen *Upanishads*. *Shrutis* are religious scriptures; there is no direct provision as to law. However, there are certain indications given in the form of positive and negative injunctions. There are several *Vidhis* and *Nishedhas* e.g. '*Satyam Vad*'(Tell the truth), '*Dharmam Char'*(Follow Dharma) etc. These formed the foundation of *Smriti* laws. Rights and duties were based on these injunctions only like contract,

226 https://www.ebc-india.com/lawyer/articles/76v2a1.htm#:~:text=Sri%20Gajendragadkar%20quoted%20the%20Upanishad,shall%20prevail%20over%20the%20strong.%22, visited on 1-2-2024

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maintenance, cause of action, acquisition and disposal of property etc.

Dharma was ultimate authority, not only for religious purposes but also for political purposes. No power was conferred on the King to make the law; his power was confined only to enforce the same. In present legal system, also laws are enacted to lay down rules of conduct. Present laws also have definite source in Indian Legal system i.e. The Constitution of India. Present Indian Legal system is based on western philosophy and political system. There are three limbs of the State i.e. Legislature, Executive and Judiciary. Legislature mainly has the power to make law, Executive to implement the same and Judiciary to enforce the rights and decide its validity. Validity of the provisions of law tested on the touchstone of the Constitution. Any inconsistent provision declared as unconstitutional. Similarly, during ancient period laws inconsistent with Vedas declared as invalid.

Need & Importance of Interpretation

Interpretation is an important facet of jurisprudence; one can acquire knowledge of law only after correct interpretation of the same. Application of the provisions of the law appropriately needs understanding of real meaning of the law. There may be different meanings, general, popular or technical for a particular word used in law, which is not defined in the same. There can be two contradictory provisions, ambiguous words or sentences, which need proper construction. Principles of interpretation play vital role in giving true meaning to the law. In modern State, the Judiciary while resolving disputes in relation to the problems of law develops these principles. However, we can trace its origin in *Mimansa*, which was developed firstly to interpret religious scripture, Vedas, given in difficult and secret brief language. Eminent Vedic Scholars, who were well versed in not only language but also its grammatical connotations, wrote these principles of interpretations. Maharshi Jaimini gave title to these rules of interpretation as 'Mimansa'. Mimansa means, critical investigation, or to analyze and realize deeply. Later on, the commentators, to interpret the provisions of civil and criminal laws given in *Smritis* or Dharma Sutras, adopted these. Earlier knowledge of Mimansa was an important qualification for person to be appointed as judge.

Construction of conflicting provisions requires keeping note of prescribed duties. *Smritis* prescribe three duties or debts, which a Hindu should discharge. Many Indian Jurists like Jaimini, Sabara Swami, and K.L.Sarkar etc. insist on taking note of these rules while interpreting texts relating to rights and duties. These debts are Devruna, Rishiruna, Pitruruna. These debts are due to God, Saints

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and parents. Where person has to do various religious sacrifices, to acquire and impart knowledge, to keep tradition and continuance of the family institution by begetting children. Sacrifices are to be done at every stage of life i.e. write from mother's womb until his death, individual should acquire knowledge in different areas, perpetuating family name by sons. Construction in favor of performing these duties should be adopted instead of construction inconsistent with such performance.

In contemporary period, also for maintenance of rule of law i.e. supremacy of law, equality before law and predominance of law, interpretation of law in true spirit is desirable. Laws are enacted to recognize rights, liabilities and duties. Intention of the legislature must be given correct interpretation.

Principles of Interpretation

Interpretation of laws in appropriate manner is necessary to arrive at correct meaning of the statute i.e. to know exact intention of the legislature. Ancient scriptures suggest that intention of enforcing Dharma is to do justice and to help in the upliftment of all living beings. Dharma constitutes foundation of all affairs of the world; therefore, things that ensure welfare of the living being are Dharma. Dharma holds every righteous conduct. There are few assumptions, maxims that can be taken into account while interpreting the provisions of law:

1. There is a presumption as to the validity of the Statute. The burden of proof is on a person who challenges its validity. In a similar way, there was a presumption as to validity of *Smritis* (remembrance) rules, if there was no conflict with *Shruti* (Veda) text. However, this is rebuttable presumption, in case of improper or selfish motive, irrelevant considerations.
2. There are no superfluous words used in law. Maker of law do not use words or sentences without intention, these have some meaning. It was known as *Sarthakya* principle/maxim. "*Shabdadhikyat Arthadhikyat*", means 'More words more meanings'. Interpretation is done without taking note of any part such interpretation will be useless i.e. *Anarthakyadosha*.
3. In a statute when one word is used at different places rule is that, same word has same meaning throughout the statute. Many statutes provide interpretation clause in the beginning to avoid confusion. This was known, as '*Arthaikatva*' i.e. there should be consistency in the meaning given to the same word in different contexts[227].

[227] Justice M. Rama Jois, 'Legal and Constitutional History of India', Universal Law Publishing Co. Pvt. Ltd. 1st ed. 1984, Reprint 2004, Pg. 448

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However, if it is specifically given to have different meaning at different places in the same statute it has to be interpreted accordingly, e.g. interpretation of the word 'parent' in Hindu Adoption & Maintenance Act.

4. When subsidiary rule or clause is inconsistent with main or principal clause principal clause will prevail i.e. '*Gunapradhana*'. However, if subsidiary clause is given in the form of proviso i.e. '*Paryudasa*' then effect should be given to the same.
5. Whenever there is a conflict in interpreting, two provisions of the statute effect must be given to both of them, as each provision must be added to give effect to them. As S.C. in Minerva Mills case laid down Harmonious Construction Rule for resolving conflict between directive principles and Fundamental rights. This was known as '*Samanjasya*' i.e. all the clauses of *Shruti* should be construed harmoniously.

   If '*Samanjasya*' rule fails than '*Vikalpa*' rule becomes applicable, i.e. effect may be given to one of them. Choice between two meanings is permitted and to treat one of the conflicting provision as an exception or proviso '*Paryudasa*' to another. It is also permitted to treat them as applicable to different situations.

   In contemporary period, there is no wider choice to select any one of the conflicting provision, whereas new aspects are added like provision included later or latest one will prevail. Doctrine of Precedent is also applicable, wherein, interpretation done by higher judiciary is binding on all lower courts and accordingly provision has to be interpreted unless & until overruled. For example Art. 21 of the Indian Constitution is now interpreted to have just, fair and reasonable procedure after Maneka Gandhi case[228] irrespective of no such words in the text of Art. 21.
6. There is a presumption that legislature does not commit mistakes or make omissions. Legislature is well versed with grammatical rules. *Shruti* has divine origin and was considered to be perfect piece of legislation. Therefore, it is not subject to any validation process.
7. *Shruti* means hearing, direct assertion, when something is heard it is explicit in sense. Understanding the sentence in the same sense as heard will not allow departing from the implied meaning. This reflects intention of the maker. In modern era, this is given as Literal Construction rule i.e. where language is plain and there is no ambiguity, effect should be given to all words, and plain meaning should be taken irrespective of harsh effect.

[228] Maneka Gandhi vs. Union of India, (1978)1 SCC 248.

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However, in modern legal system if after giving ordinary meaning with all grammatical connotations if it leads to absurdity or repugnance with the intention of the legislature, language may be modified to avoid inconvenience. This is known as 'Golden Rule'.

8. Whenever any general word is used in a statute, it is difficult to construe, as sometimes-literal meaning may not suffice to arrive at correct meaning according to intention of the legislature. In such situation general word is construed according to the context in which such word is used e.g. a word 'practice' under Advocates Act has to be construed as 'to appear and plea in front of the court' and not 'to do a thing repeatedly'.

   Mimansa also has a principle of *Linga*[229] or indicative power i.e. when a word or expression used in a provision has more than one meaning, its correct meaning has to be determined by the context in which that word has been used.

   'Sandhigdasya vakyaseshannirnayaha' i.e. the meaning of an ambiguous expression is to be determined from the context.

9. In contemporary period a Latin phrase '*noscitur a sociis*' is used while interpreting, which means ' to know the meaning according to association or according to the context' or 'a word is known by the company it keeps'. An individual word may not be interpreted in isolation but meaning may be determined with the help of other words in a sentence, which are indicative of the context.

10. In contemporary period there is a rule of '*ejusdem generis*', which means if general word follows specific word of the same category than it takes color of the same, e.g. pen, pencil, eraser etc., here the word etc. should be interpreted to include only stationery items and nothing else.

    Earlier '*Gobaleevardanyayaha*' i.e. two adjourning words having almost similar meaning, one is specific and other is more general, specific word qualifies the general.

    Other one '*Ghata-patanyayaha*', is given exception to earlier rule, i.e. words appearing one after another in a provision cannot be understood as qualifying the other. The Supreme Court in Rajasthan Electricity Board vs. Mohanlal applies this rule[230], while interpreting State under Article 12. However, later on in R.D.Shetty vs. International Airport Authorities case S.C. construed the term State to include instrumentalities of the State.

[229] Justice M. Rama Jois, 'Legal and Constitutional History of India', Universal Law Publishing Co. Pvt. Ltd. 1st ed. 1984, Reprint 2004, Pg. 457
[230] AIR 1967 SC 1857

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Mimansa system as founded by Maharshi Jaimini and later on developed by many jurists or authors. Detailed analysis and interpretation of Vedic text, Smritis, Dharmashastra, Purana is available. There are several available commentaries written on Mimansa itself. Analytical study of Hindu Jurisprudence for the development of law of contemporary period will be helpful to develop healthy and efficient legal system.

Conclusion

There is a great road ahead for research in relation to Principles of Interpretation.

Supreme Court of India is the final interpreter of the Constitution of India i.e. fundamental document of the land, in contemporary period, has following Motto:

यतो धर्मस्ततो जय: (Sanskrit): Yato Dharmastato Jayah (Where there is righteousness and moral duty (dharma), there is victory (jayah))

Thereby the interpretation of all laws in Indian legal system are expected to be interpreted in righteous manner i.e. according to Dharma. Dharma is obligatory for King as well as its subjects. Presently Basic document of the land i.e. Constitution is obligatory in a Political State. It also confers power to follow one's own religious practices. However, Hindu Jurisprudence or Dharma provide rules for not only spiritual or religious matters but also lays down rules for the adherence of good life. Duty is casted on the King to determine rights and liabilities according to Dharma and to do justice. Even King was not above law and bound to follow *Rajdharma*. Conservation of Rule of Law is a sign of good governance. Supremacy of the Law was recognized not only in ancient Indian Legal System but it is emphasized today also. Principles of interpretation has reference of Western Political system, therefore we think these are borrowed from Western nomenclature, whereas these are indigenous concepts.

In depth-study of Dharma and its various aspects needs to be carried out for understanding its relevance to present legislative provisions. Study by eminent scholars will contribute in development of healthy and righteous legal system, peace, harmony and sustainable development.

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