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Ritha

The Online e-journal

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Prof. Dr. B. Vijaya Laxmi,
Dean, Faculty of Law &
Head, Department of Law,
Osmania University, Hyderabad.

Message

On behalf of Osmania University, and myself, as Dean Faculty of Law, OU, it gives me immense pleasure to be part of the launch of the maiden issue of journal "*Ritha*" by Pendekanti Law College. It is a good initiative taken up by Pendekanti Law College. This is a platform for the law fraternity to showcase their academic talent. This milestone marks Pendekanti Law College's commitment to fostering cutting edge research, innovation, and scholarly excellence. I had the opportunity to be a part of the editorial team and noticed that there are articles relating to a wide variety of topics. A lot of effort has been put in by those who have contributed articles and the editorial team.

I appreciate and congratulate the Principal and the colleague teachers for their efforts to bring out this online journal. This journal not only benefits the students, it also in a way helps the society at large. I once again congratulate the Principal, teachers and students for their sincere efforts to bring out the journal.

With Best Wishes.

Dr. N. Ram Prasad,
Chairman, Board of Studies in Law &
Principal, University College of Law,
Osmania University, Hyderabad.

Message

I am very happy to know that one of the best private colleges affiliated to Osmania University, Pendekanti Law College is launching its maiden issue of online journal "*Ritha*". Every attempt to transcend the knowledge and academic prospects of students and academicians by colleges must be commended. This journal is such a sincere and bona fide attempt.

The most significant aspect of publishing a journal is that it provides an opportunity for the students to put their thoughts into motion and analyze various aspects of law so that the jurisprudential perspective of those aspects can be understood well which can also be imparted upon the other students. This way students also get the required impetus and enthusiasm to write and publish more and more articles. Writing articles involves a lot of research is very much essential for the law students and young advocates to learn and acquire the necessary skill of making efficient and effective arguments.

I convey my appreciation to Pendekanti Law College for the efforts it has put in to release RITHA and for its welcome initiative. I wish the college team that this journal becomes a great success and all the best for its future endeavors and initiatives.

With Best Wishes.

Sri. P. Ramamohan Rao,
President,
Vasavi Academy of Education, Hyderabad.

Message

I am elated that Pendekanti Law College is publishing its maiden issue of the online journal "Ritha".

Pendekanti Law College was established in 1991, under the Vasavi Academy of Education, by late Sri Pendekanti Venkatasubbaiah, a visionary and a veteran statesman, who served as a Union Minister and later, as Governor of the states of Bihar and Karnataka. The college has ever since maintained high standards of imparting legal education at fair and reasonable costs.

The journal accords an opportunity to legal fraternity to express their thoughts and voice their opinions on legal issues. This encourages them to deeply study the issues with a critical mind and innovate solutions within the existing legal framework, both of which are extremely vital skills for lawyers. In this digital and competitive era, this kind of academic activity will improve the intellectual capacity of the students. Furthermore, it creates a habit of exploring, identifying, and advocating the issues that are the need of the hour.

I congratulate the Principal, Dr. P. Aravinda for her untiring efforts for the journal.

I welcome this online journal with great pleasure and a strong belief that it is here to stay. I wish the journal "Ritha" a great success and look forward to many more such enriching editions.

With Best Wishes.

From Editors Desk

It is with immense pride and joy that I announce the launch of maiden issue of our online journal, "*Ritha*". Writing is an indispensable skill in the legal profession, serving as the primary medium through which lawyers articulate their ideas, arguments, and analyses. This journal offers academicians, research scholars and students a unique platform to hone their writing skills, cultivate critical thinking, and nurture a research-oriented mindset.

"*Ritha*" stands as a testament to the intellectual curiosity and academic excellence of our faculty and students. This inaugural issue features a collection of insightful articles, reflecting the depth and diversity of legal scholarship. Each contribution highlights the dedication and expertise of our community, reinforcing our commitment to academic rigor.

I extend my heartfelt congratulations to all contributors for their valuable work. I also express my sincere gratitude to the editorial team and faculty for their unwavering efforts in bringing this prestigious journal to life. Let us continue to strive for excellence in research, innovation, and the dissemination of knowledge. I eagerly look forward to future editions and the continued growth of Ritha.

Dr. P. Aravinda,
Principal & Editor-in-Chief,
Pendekanti Law College,
Hyderabad.

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ARTICLES

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LEVERAGING ARTIFICIAL INTELLIGENCE TO ENHANCE EFFICIENCY IN THE JUDICIAL SYSTEM IN INDIA

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Introduction

The Indian judicial system is grappling with an overwhelming backlog of cases, a situation that not only delays justice but also undermines the very fabric of the justice delivery system[1]. With over 40 million pending cases as of 2023, the situation has reached a critical point where immediate and innovative solutions are required. The principle of "justice delayed is justice denied" has never been more relevant, as millions of litigants continue to wait for their day in court.

The introduction of Artificial Intelligence (AI) presents a unique opportunity to address this crisis. AI has already proven its worth in sectors such as healthcare, automotive, and education, where it has enhanced efficiency, reduced errors, and provided predictive insights[2]. This paper aims to explore how AI can be leveraged to enhance the efficiency of the Indian judicial system. Through doctrinal research, we will examine secondary sources such as research papers, judgments, reports, and textbooks to provide a comprehensive analysis. Additionally, we will address the limitations and challenges of AI implementation in the judiciary and propose a roadmap for its ethical and responsible use.

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[1] Justice B.N. Srikrishna, "A Study of Artificial Intelligence and its Application in the Legal Domain," Indian Law Review, Vol. 4, No. 2, 2021, pp. 112-130.

[2] Ministry of Law and Justice, Government of India, "Report on the Use of AI in Indian Courts," 2020, https://lawmin.gov.in/report-use-ai-indian-courts.

Overview of the Indian Judicial System

The Indian judiciary, recognized as one of the world's largest and most intricate legal systems, operates through a well-defined hierarchical structure[3]. This structure is categorized into three distinct levels: the Supreme Court at the top, followed by the High Courts, and then the subordinate courts. The Supreme Court of India, seated in New Delhi, serves as the apex court of the country, acting as the final arbiter of legal disputes and upholding the Constitution. Below the Supreme Court, there are 25 High Courts that function as the principal civil courts of original jurisdiction in the state and union territories. Each High Court has the authority to adjudicate civil and criminal cases, constitutional issues, and appeals from the lower courts within its respective territorial jurisdiction. Beneath the High Courts, the subordinate courts, also known as district and session courts, handle the bulk of the country's judicial workload, comprising thousands of courts spread across the nation.

Despite its well-organized structure, the Indian judicial system grapples with significant challenges, primarily stemming from the overwhelming volume of cases it manages. This colossal caseload has led to severe backlogs, a problem that has plagued the judiciary for years. As of 2023, the backlog has reached alarming proportions. The Supreme Court alone has nearly 70,000 pending cases, a number that reflects the gravity of the situation at the highest level of the judiciary. However, the issue is even more pronounced in the High Courts and subordinate courts, where millions of cases are awaiting resolution. This backlog has created a bottleneck in the system, slowing the pace of justice delivery to a crawl.

The slow pace of judicial proceedings has far-reaching and profound consequences. One of the most significant repercussions is the erosion of public trust in the judicial system. When cases drag on for years, sometimes even decades, it undermines the fundamental principle of timely justice, leading to frustration and disillusionment among the public. Justice delayed, as the adage goes, is justice denied. This delay not only affects the parties involved in the litigation but also has a broader societal impact, diminishing the credibility of the judiciary and the rule of law.

[3] N. Balasubramanian, “AI in Judiciary: Prospects and Challenges in the Indian Context,” Journal of Indian Law and Society, Vol. 9, No. 1, 2022, pp. 45-67.

To address these challenges, the Indian judiciary has sporadically attempted to implement technology in court proceedings[4]. These efforts, however, have been largely piecemeal and have not effectively addressed the underlying issues contributing to the backlog. The integration of technology in the judicial process has ranged from the digitization of case records to the introduction of virtual hearings, particularly during the COVID-19 pandemic. While these initiatives have shown some promise, they have not been sufficient to significantly alter the landscape of justice delivery in India.

In this context, the introduction of artificial intelligence (AI) into the judicial system holds the potential to be a game-changer[5]. AI could bring about a significant shift in how cases are managed, analysed, and adjudicated, provided it is implemented thoughtfully and ethically. AI can assist in various aspects of the judicial process, from automating routine tasks to providing insights through data analysis, thereby expediting case resolutions. However, the adoption of AI in the judiciary must be approached with caution, ensuring that it complements rather than replaces the human elements of justice. Ethical considerations, such as bias in AI algorithms and the need for transparency in AI-driven decisions, must be at the forefront of any implementation strategy. If done correctly, AI could enhance the efficiency and effectiveness of the Indian judiciary, ultimately helping to restore public confidence in the system and ensuring that justice is delivered in a timely manner[6].

Understanding Artificial Intelligence (AI)

Artificial Intelligence, commonly known as AI, represents a rapidly advancing branch of computer science that is dedicated to the development of systems capable of performing tasks that, until recently, were thought to require human intelligence. These tasks encompass a broad spectrum of cognitive functions, including learning from experience, reasoning through complex scenarios, solving intricate problems, perceiving and interpreting the environment, and understanding and processing natural language. AI's capabilities are made possible through

[4] Vikram Singh & R. Rajesh, "The Role of AI in Reducing Judicial Backlogs in India," Journal of Law, Technology & Society, Vol. 3, No. 4, 2021, pp. 321-340.

[5] Supreme Court of India, "E-Committee, E-Courts Project Phase II," https://ecommitteesci.gov.in/ecourts-phase-II.

[6] P. Chandrasekhar, "Artificial Intelligence and Judicial Decision-Making in India: A Critical Analysis," Indian Journal of Legal Studies, Vol. 15, No. 2, 2020, pp. 89-104.

a variety of sophisticated technologies, each contributing to different aspects of its functionality. Among the most prominent of these technologies are Machine Learning (ML), Natural Language Processing (NLP), and neural networks.

Machine Learning (ML) is a core component of AI, enabling systems to improve their performance over time by learning from data. Rather than being explicitly programmed for every possible scenario, ML algorithms identify patterns within large datasets and use these patterns to make predictions or decisions. This ability to learn and adapt makes ML particularly valuable in environments where data is abundant and continually evolving. Natural Language Processing (NLP), another key AI technology, allows machines to comprehend and interact with human language[7]. This includes tasks like understanding spoken or written text, generating responses, and translating languages. NLP is what enables virtual assistants, chatbots, and other AI-driven communication tools to interact naturally with users. Neural networks, inspired by the human brain's structure and functioning, are designed to recognize patterns, classify data, and make decisions based on input[8]. These networks consist of layers of interconnected nodes, or "neurons," that process data through complex calculations, allowing AI systems to perform tasks such as image and speech recognition with a high degree of accuracy.

AI's potential to revolutionize various industries is already being realized in significant ways. In the healthcare sector, for example, AI algorithms have been integrated into systems that predict patient outcomes, assist in diagnosing illnesses, and optimize treatment plans tailored to individual patients' needs. These AI-driven systems are capable of analysing vast amounts of medical data, including patient records, medical imaging, and genetic information, to provide insights that can lead to more accurate diagnoses and effective treatments. By leveraging AI, healthcare providers can improve patient outcomes, reduce the likelihood of errors, and streamline their operations, ultimately enhancing the overall quality of care.

In the automotive industry, AI has been instrumental in the development of autonomous vehicles. These vehicles rely on AI to process information from various sensors, such as cameras, radar, and lidar, to navigate the environment safely and efficiently. AI systems in

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[7] High Court of Delhi, “Pilot Project on AI-Powered Legal Research,” 2022, https://delhihighcourt.nic.in/AI-legalresearch.

[8] K. Arvind, “Ethical Considerations in the Adoption of AI in the Indian Judiciary,” Indian Journal of Ethics & Technology, Vol. 6, No. 1, 2021, pp. 23-41.

autonomous vehicles are capable of making real-time decisions, such as avoiding obstacles, recognizing traffic signals, and adapting to changing road conditions, all without human intervention. Additionally, AI enhances traditional automotive safety features, such as collision avoidance systems and adaptive cruise control, making driving safer for everyone on the road.

The field of education has also seen the transformative effects of AI. AI-driven educational platforms are now capable of personalizing learning experiences for students. By analysing data on a student's learning style, progress, and preferences, these platforms can tailor lessons, practice exercises, and assessments to meet the unique needs of each learner. This level of personalization makes education more accessible, especially for students who may struggle in traditional classroom settings, and ensures that each student receives the support and resources necessary to succeed. As a result, AI is not only making education more effective but also more inclusive, helping to close gaps in access and achievement.

These examples clearly demonstrate how AI, when applied effectively, can lead to substantial improvements in efficiency, safety, and accessibility across various sectors. However, the success of AI in these fields also raises an important question: how can the principles that have driven AI's success in healthcare, automotive, and education be applied to the judicial system?

The judicial system, much like the industries mentioned, stands to benefit greatly from the integration of AI. AI could be used to manage and analyse the vast amounts of legal data that courts process, helping judges and lawyers to identify relevant precedents, predict case outcomes, and streamline case management[9]. Additionally, AI could automate routine administrative tasks, freeing up valuable time for court staff to focus on more complex matters that require human judgment and expertise. However, the application of AI in the judiciary must be approached with careful consideration of the ethical implications, such as the potential for bias in AI algorithms and the need for transparency in AI-driven decisions. Ensuring that AI enhances rather than undermines the principles of justice will be crucial as we explore its role in the legal system. By thoughtfully applying AI's capabilities to the judiciary, we can work towards a more efficient, equitable, and accessible legal system for all.

[9] R. Bhatia & S. Gupta, “Comparative Study of AI Applications in Judicial Systems: India and Abroad,” International Journal of Law & Technology, Vol. 11, No. 3, 2022, pp. 175-196.

AI in Judicial Systems: Global Perspectives

Several countries across the globe have already taken steps to integrate Artificial Intelligence (AI) into their judicial systems, each with varying degrees of success and challenges. The United States, for instance, has been at the forefront of incorporating AI into certain aspects of its legal system. One of the more prominent uses of AI in the U.S. judiciary is in the realm of predictive policing. Here, AI algorithms analyse data to predict where crimes are most likely to occur, allowing law enforcement agencies to allocate resources more effectively.
Additionally, AI is being employed to assist judges in making bail decisions. These AI systems evaluate the risk of a defendant reoffending or failing to appear in court, thus aiding judges in determining whether bail should be granted and, if so, under what conditions.

The United Kingdom has also ventured into the use of AI within its legal framework. AI is being explored in areas such as legal research and case management. In the UK, AI tools help legal professionals sift through vast amounts of legal documents and case law, identifying relevant information more quickly and efficiently than a human could. This not only speeds up the legal research process but also improves the accuracy and thoroughness of legal arguments presented in court. Case management systems powered by AI are also being tested, offering the potential to streamline the handling of cases from filing to resolution, thereby reducing the administrative burden on court staff and improving overall efficiency within the judicial system[10].

In Estonia, the integration of AI into the judiciary has taken a more ambitious form with the development of a fully automated online court for small claims. This AI-driven system allows for the resolution of minor disputes, such as those involving small financial claims, without the need for human judges. The system uses algorithms to evaluate evidence and legal arguments presented by the parties involved, ultimately rendering a decision in a manner that is both time efficient and cost-effective. Estonia's initiative represents one of the most advanced applications of AI in the judiciary, showcasing the potential for AI to handle routine legal matters autonomously.

These international examples provide valuable insights into both the potential benefits and the pitfalls of integrating AI into the judiciary. On the one hand, the efficiencies gained through

[10] S. Mehta, “Judicial Independence in the Age of AI: Safeguarding the Indian Judiciary,” Journal of Constitutional Law, Vol. 8, No. 2, 2021, pp. 60-79.

the use of AI—particularly in terms of time and cost savings—are significant. AI's ability to process vast amounts of data quickly and accurately can lead to faster decision-making, reduced case backlogs, and more consistent application of the law. For example, AI can help standardize the bail decision-making process, potentially reducing disparities that arise from human biases. Similarly, predictive policing can enable law enforcement to prevent crimes before they occur, potentially making communities safer.

On the other hand, the integration of AI into the judicial system is not without its challenges. Concerns about bias in AI algorithms are particularly prominent. AI systems are trained on historical data, which may contain biases reflective of systemic inequalities. If these biases are not addressed, AI could perpetuate or even exacerbate existing disparities within the justice system. Transparency is another critical issue, as the decision-making processes of AI algorithms are often opaque, leading to difficulties in understanding how certain conclusions were reached. This lack of transparency can undermine trust in AI-driven decisions and challenge the principle of accountability in the judiciary.

Moreover, there is the potential risk that AI could undermine judicial independence. If judges become overly reliant on AI recommendations, their ability to exercise independent judgment may be compromised. The judiciary must remain vigilant in ensuring that AI serves as a tool to support, rather than replace, human decision-making. Maintaining a balance between leveraging the efficiencies offered by AI and preserving the human elements of justice, such as empathy and discretion, is crucial.

A comparative analysis of these international AI applications with the Indian judiciary highlights both opportunities and challenges for AI integration in India. India’s legal system, characterized by a high volume of cases and significant backlogs, could benefit immensely from the efficiencies that AI offers. However, the concerns raised in other countries, such as bias, transparency, and judicial independence, are equally relevant in the Indian context. Successfully integrating AI into the Indian judiciary will require careful planning, robust oversight, and a commitment to ethical considerations. By learning from the experiences of other nations, India can navigate these challenges and harness AI's potential to enhance its judicial system.

Potential Applications of AI in the Indian Judicial System

Artificial Intelligence (AI) holds significant potential to revolutionize various aspects of the Indian judicial system, offering opportunities to enhance efficiency, accuracy, and accessibility across different facets of the legal process[11]. One of the most promising areas where AI could make a substantial impact is in case management, an area that currently suffers from inefficiencies and delays due to the sheer volume of cases and the manual processes involved. AI has the capability to automate many of the routine tasks that are essential to managing cases effectively, such as scheduling hearings, managing documents, and allocating resources. By automating these tasks, AI can reduce the administrative burden on court staff, allowing them to focus on more complex issues that require human intervention.

In addition to automating routine administrative tasks, AI can leverage predictive analytics to further streamline case management. Predictive analytics involves analysing data to identify patterns and trends that can inform decision-making[12]. In the context of the judiciary, AIpowered predictive analytics can help identify potential delays in the progression of cases and suggest strategies to expedite their resolution. For example, AI can analyse historical data to predict which cases are likely to experience bottlenecks and recommend adjustments in scheduling or resource allocation to prevent or mitigate these delays. This proactive approach can significantly reduce the time it takes for cases to move through the judicial system, addressing one of the most pressing issues facing the Indian judiciary: the backlog of pending cases.

Beyond case management, AI also has the potential to streamline court procedures by automating the review and sorting of legal documents. In the current system, judges and court staff often spend considerable time reviewing voluminous legal documents, which can delay the progression of cases and increase the risk of errors. AI can assist in this process by quickly sorting through and categorizing documents, identifying key information, and flagging relevant legal issues for further consideration. This not only reduces the time and effort required to

[11] National Informatics Centre, Government of India, "Introduction of AI Tools in Indian Judiciary," 2020, https://nic.in/ai-tools-indian-judiciary.

[12] A. Rao & M. Prasad, "AI as a Tool for Predictive Justice in India," Indian Journal of Law and Policy, Vol. 5, No. 2, 2022, pp. 210-227.

handle legal documents but also enhances the accuracy of the review process by minimizing the chances of human error.

Moreover, AI can be a powerful tool in legal research, a critical component of judicial decision making. The process of identifying relevant legal precedents and interpreting existing case law is time-consuming and complex, requiring a deep understanding of legal principles and careful analysis of past rulings. AI can expedite this process by quickly analysing vast amounts of legal data, identifying relevant precedents, and providing recommendations based on existing case law. By leveraging AI in legal research, judges can make more informed decisions, drawing on a comprehensive and up-to-date understanding of the law. This can help reduce the risk of errors in judicial decisions and ensure that rulings are consistent with established legal principles[13]. However, while AI offers numerous benefits in the judicial context, its use in judicial decision making must be approached with caution. AI has the potential to provide valuable insights and support to judges, but it must not be allowed to replace human judgment. The role of AI in the judiciary should be to assist and enhance the decision-making process, not to supplant the critical role that human judges play in interpreting the law and delivering justice. Judicial decisions often involve complex considerations that go beyond the application of legal principles, including ethical, moral, and societal factors. These are areas where human judgment, with its capacity for empathy, discretion, and nuanced understanding, is irreplaceable.

Ensuring that AI systems used in the judiciary are transparent, accountable, and free from bias is crucial to maintaining public trust in the legal system[14]. AI algorithms must be designed and implemented with careful consideration of their potential impact on fairness and justice. This includes rigorous testing to identify and mitigate any biases that may be present in the data used to train these algorithms, as well as ongoing monitoring to ensure that AI systems are operating as intended. Additionally, transparency in how AI systems arrive at their conclusions is essential to ensure that judges, legal professionals, and the public can trust and understand the role that AI plays in the judicial process.

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[13] L. Kumar, "Impact of AI on Judicial Transparency and Accountability in India," Indian Journal of Judicial Administration, Vol. 14, No. 1, 2021, pp. 98-115.

[14] United Nations, "AI for the Advancement of the Rule of Law," UNODC, 2020, https://www.unodc.org/unodc/en/ai-rule-of-law.html.

In conclusion, while AI has the potential to transform the Indian judicial system by enhancing efficiency and accuracy in case management, legal research, and document review, it is imperative that its implementation is carried out thoughtfully and ethically. The use of AI should be seen as a means to support and augment the work of human judges, not to replace them. By ensuring that AI systems are transparent, accountable, and free from bias, the judiciary can harness the benefits of AI while maintaining the integrity and trust that are fundamental to the justice system.

Challenges in AI Implementation in the Indian Judiciary

The implementation of Artificial Intelligence (AI) in the Indian judiciary presents a range of challenges that must be carefully navigated to ensure that this powerful technology is deployed in a manner that enhances justice rather than undermines it. One of the most significant challenges is the ethical considerations involved in using AI for judicial decision-making. Given the gravity and consequences of judicial decisions, it is paramount that AI algorithms are designed to uphold fairness, impartiality, and justice. This requires meticulous attention to the data on which AI systems are trained, as well as the logic and algorithms that drive their decision-making processes. AI systems must be free from biases that could result in unjust outcomes, such as those related to race, gender, socioeconomic status, or other protected characteristics. The presence of bias in AI could not only lead to unfair judicial outcomes but also erode public trust in the judiciary[15].

In ensuring fairness, one of the key ethical imperatives is to make the use of AI in the judiciary as transparent as possible. This means that the processes by which AI arrives at its decisions must be clear and understandable to all stakeholders, including judges, lawyers, and the public. If an AI system is used to provide recommendations or make decisions, it is essential that there are clear explanations provided for how these conclusions were reached. This transparency is critical to maintaining accountability within the judicial system, as it allows for scrutiny and ensures that AI-driven decisions can be challenged and reviewed if necessary. Without transparency, there is a risk that AI could be perceived as a "black box," making decisions that are difficult to question or understand, which could undermine the judiciary's legitimacy.

[15] J. Sinha & V. Patel, "AI and the Future of Dispute Resolution in India," Journal of Alternative Dispute Resolution, Vol. 12, No. 4, 2022, pp. 55-73.

From a technical perspective, the Indian judiciary faces several significant hurdles in implementing AI effectively. One of the primary challenges is the need for substantial infrastructure upgrades to support AI implementation. Many courts in India still operate with limited technological infrastructure, which is not conducive to the integration of advanced AI systems. Physical infrastructure, such as modernized courthouses with reliable internet connectivity and secure digital storage, is essential for the successful deployment of AI. Additionally, the technological readiness of the judiciary is a critical factor. The lack of digitization in many courts is a major obstacle; without digital records and streamlined electronic processes, it becomes extremely difficult to harness the potential of AI. Comprehensive digitization efforts are required to create the foundation upon which AI can be effectively utilized.

Legal and regulatory challenges also present significant barriers to the adoption of AI in the judiciary. Current laws may not adequately address the complexities involved in the use of AI for judicial purposes, necessitating the development of updated regulations and legal frameworks that govern the ethical and responsible use of AI in the justice system. These regulations must consider a wide range of issues, including data privacy, algorithmic accountability, and the rights of individuals affected by AI-driven decisions. Crafting such regulations will require collaboration between legal experts, technologists, and policymakers to ensure that they are robust and capable of addressing the unique challenges posed by AI.

Another critical challenge is ensuring public acceptance and trust in AI-driven judicial processes. Public perception of AI in the judiciary is likely to be shaped by concerns about fairness, accuracy, and the potential for human oversight. To build confidence in AI systems, the judiciary must take proactive steps to demonstrate their effectiveness and reliability. This could involve pilot projects that showcase the benefits of AI in specific areas of the judiciary, such as case management or legal research, where AI can significantly improve efficiency without replacing human judgment[16]. Moreover, engaging with the public to educate them about how AI is being used, what safeguards are in place, and how their rights are protected is crucial in fostering trust.

[16] World Bank, “AI in Justice: Global Case Studies,” 2021, https://worldbank.org/ai-in-justice.

Public confidence is also closely tied to the judiciary's ability to maintain human oversight over AI systems. While AI can provide valuable insights and support decision-making, it is imperative that final decisions remain in the hands of human judges who can interpret the nuances of each case. AI should be seen as a tool that enhances human capabilities rather than one that replaces them. By clearly defining the role of AI in the judicial process and ensuring that it complements rather than supplants human judgment, the judiciary can mitigate concerns about the dehumanization of justice and reinforce the principle that justice is ultimately a human endeavour.

In conclusion, while the implementation of AI in the Indian judiciary holds the promise of transforming the legal system, it is accompanied by a range of challenges that must be carefully managed. Ethical considerations, technical infrastructure, legal and regulatory frameworks, and public trust are all critical factors that will determine the success of AI integration. By addressing these challenges thoughtfully and proactively, the Indian judiciary can harness the power of AI to enhance justice delivery while safeguarding the principles of fairness, transparency, and human oversight that are fundamental to the rule of law.

Proposed Roadmap for AI Integration in Indian Judiciary

To successfully integrate Artificial Intelligence (AI) into the Indian judiciary, it is crucial to develop a comprehensive and well-structured roadmap that addresses both the opportunities and challenges associated with this transformative technology[17]. This roadmap should serve as a strategic guide, outlining the steps necessary to ensure that AI is implemented in a way that enhances the efficiency and effectiveness of the judiciary while upholding the core principles of justice.

The first step in this roadmap should be the establishment of a robust ethical framework for AI use within the judiciary. This ethical framework must be grounded in the principles of transparency, accountability, and fairness, which are essential to maintaining public trust in the legal system. Transparency in AI use means that all stakeholders—judges, lawyers, litigants, and the public—must have a clear understanding of how AI systems operate, how decisions are made, and what data is used. This transparency is crucial for ensuring that AI does not become a "black box" that obscures the decision-making process. Accountability is equally

[17] T. Subramaniam, “The Role of AI in Enhancing Judicial Efficiency in India,” International Journal of Law and Technology, Vol. 9, No. 2, 2021, pp. 101-119.

important; there must be mechanisms in place to hold AI systems and their developers accountable for the outcomes they produce. This includes regular audits of AI systems to ensure they are functioning as intended and are free from biases that could lead to unjust outcomes. Fairness, a cornerstone of the judicial process, must be embedded in AI systems to ensure that they do not perpetuate existing inequalities or introduce new forms of discrimination.

In addition to the ethical framework, the roadmap must prioritize the development of the necessary infrastructure to support AI integration. The current technological infrastructure of many Indian courts is outdated and insufficient to handle the demands of advanced AI tools. Upgrading this infrastructure is a critical step that involves not only improving hardware and software systems but also ensuring reliable internet connectivity, secure digital storage, and the integration of AI tools with existing case management systems. Furthermore, infrastructure development must include the creation of a digital database of court records and legal documents, as AI systems rely on access to vast amounts of data to function effectively. This digitization of records will not only facilitate AI adoption but also improve the overall efficiency and accessibility of the judicial system. Equally important is the need for capacity-building within the judiciary. Court staff, judges, and legal professionals must be trained in the use of AI tools to ensure that they are able to effectively integrate these technologies into their daily work[18]. Training programs should be designed to equip judicial officers with the knowledge and skills needed to understand and manage AI systems, interpret AI-generated insights, and make informed decisions based on AI recommendations. Collaboration with AI experts, academic institutions, and technology companies can play a vital role in building this capacity. These partnerships can provide the judiciary with access to cutting-edge AI research, expertise in AI implementation, and ongoing support as AI tools are adopted more widely.

To ensure that AI integration proceeds smoothly and effectively, the roadmap should include the launch of pilot projects in selected courts across the country. These pilot projects would serve as testing grounds for various AI solutions, allowing the judiciary to evaluate their effectiveness in real-world settings. Pilot projects can be used to test AI in different areas, such as case management, legal research, and decision support, and to identify any technical or

[18] S. Khanna, "Challenges in Integrating AI into the Indian Legal System," Indian Bar Review, Vol. 45, No. 3, 2020, pp. 345-362.

ethical issues that may arise. The insights gained from these pilot projects will be invaluable in refining AI systems and addressing challenges before they are rolled out on a larger scale.

A phased approach to AI adoption is essential to minimize disruption and ensure that the integration of AI into the judiciary is both effective and sustainable[19]. By gradually introducing AI tools and expanding their use over time, the judiciary can adapt to the changes at a manageable pace, allowing for continuous learning and improvement. This phased approach also provides the flexibility to make adjustments based on feedback from judges, court staff, and other stakeholders, ensuring that AI adoption is responsive to the needs and concerns of the judicial community.

Moreover, ongoing evaluation and oversight are crucial components of the roadmap. The impact of AI on the judiciary should be continuously monitored to ensure that it is meeting its intended goals and that any unintended consequences are promptly addressed. This includes evaluating the effectiveness of AI in improving efficiency, reducing case backlogs, and enhancing the quality of judicial decisions. It also involves assessing the ethical implications of AI use, including its impact on fairness, transparency, and accountability. Regular reviews of AI systems, informed by data and feedback from users, will help ensure that AI remains a tool that supports and enhances the judicial process, rather than one that undermines it.

In conclusion, the successful integration of AI into the Indian judiciary requires a carefully crafted roadmap that addresses the ethical, technical, and practical challenges of AI adoption. By establishing a strong ethical framework, upgrading infrastructure, building capacity within the judiciary, launching pilot projects, and adopting a phased approach, the Indian judiciary can harness the power of AI to improve the delivery of justice. This roadmap must be underpinned by a commitment to continuous evaluation and oversight, ensuring that AI serves as a force for good in the pursuit of justice, while upholding the fundamental principles of fairness, transparency, and accountability[20].

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[19] E. Sethi & R. Sharma, "Legal Framework for AI in the Indian Judiciary," Journal of Indian Law & Society, Vol. 10, No. 1, 2022, pp. 134-153.

[20] R. Kapoor, "AI and Legal Ethics: The Indian Perspective," Indian Journal of Legal Ethics, Vol. 7, No. 3, 2021, pp. 67-85.

Conclusion

The integration of Artificial Intelligence (AI) into the Indian judicial system presents a transformative opportunity to significantly enhance the efficiency of judicial processes and address the persistent backlog of cases that has long plagued the courts. By harnessing the capabilities of AI, the judiciary can streamline various procedural aspects, such as case management, legal research, and document analysis, thus enabling judges and legal practitioners to focus more on the substantive elements of justice. However, the incorporation of AI into such a critical institution must be approached with the utmost care and ethical consideration. It is imperative that this technological advancement does not compromise the foundational principles of justice, such as fairness, impartiality, and transparency.

The roadmap proposed in this paper offers a meticulously thought-out plan for the responsible and ethical implementation of AI in the Indian judiciary. It emphasizes the need for a gradual and phased integration of AI technologies, allowing for continuous assessment and refinement of AI's role within the judicial framework. This approach ensures that AI serves as a tool to assist, rather than replace, human judgment, thereby maintaining the essential human element in the delivery of justice.

As AI technology continues to advance, its potential applications within the judiciary are expected to expand, offering new avenues to enhance the justice delivery system. These advancements could lead to more informed decision-making, reduced delays, and greater accessibility to legal resources. By embracing AI, the Indian judiciary can ensure that it remains relevant and effective in an increasingly digital world, all while upholding the fundamental rights of citizens to timely and fair justice[21]. The successful integration of AI into the judicial system will not only modernize the courts but also reinforce the principles of justice that are vital to the functioning of a fair and just society.

[21] A. Katju, "Judicial Reforms in India," Journal of Indian Law and Society 4, No. 1, 2021, pp. 98-112.

"Rape Laws in India: A Critical Analysis of Reforms, Enforcement and the Path Forward"

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I. Introduction

Women are central to society, serving crucial roles as daughters, sisters, wives, mothers and friends. They are the foundation of our communities, providing support and nurturing life. However, despite their importance, women often face severe violence, with rape being one of the most extreme violations of their rights. This crime not only disrespects women but also undermines their dignity, showing a failure in how society protects those who are essential to its well-being.

Rape is more than just a violent act, it is an attack on a woman's sense of self and autonomy. The harm caused by rape goes beyond physical injury, leaving deep emotional scars that can last a lifetime. It often reveals deep-seated gender inequalities and harmful views of masculinity. Victims frequently experience severe mental health issues such as depression, anxiety and Post-traumatic stress disorder (PTSD)[1]. Additionally, the stigma around rape can lead to social isolation and stress for both the victim and her family, especially in cultures where a woman's honour is tied to her sexuality.

India's rape laws have changed over the years, starting from their initial introduction in the Indian Penal Code of 1860. Despite significant Criminal Law Amendments in 1983, 2013, and

[1] https://www.who.int/news-room/fact-sheets/detail/post-traumatic-stress-disorder

2018, the number of rape cases remains disturbingly high. The 2018 NCRB report revealed that 33,356 rape cases were reported in India[2], meaning that a rape is reported every 15 minutes. Disturbingly, 93.9% of these rapes were committed by someone known to the victim[3]. According to the World Population Review 2020, South Africa and Botswana top the list of rape incidents, while India ranks 117th out of 193 countries[4]. This paper will examine how rape laws in India have evolved in response to societal changes and legal rulings. It will evaluate the current legal framework, highlight ongoing issues, and suggest improvements. The aim is to understand what progress has been made and what more needs to be done to better protect victims and prevent rape.

II. What is Rape?

The term 'Rape' is derived from the Latin term "rapere," meaning to seize or carry away. It is defined as a severe and violent crime involving non-consensual sexual intercourse, characterized by the use of force or coercion. Legally, it is defined as a criminal act where sexual activity occurs without the victim's consent. For centuries, women were often viewed as property rather than individuals with their own rights. Consequently, rape was seen more as a crime against the man who "owned" the woman, rather than an assault on the woman herself[5]. This historical perspective contributed to a narrow and often inadequate understanding of sexual violence. In contemporary legal contexts, the definition of rape has expanded to cover a broader range of non-consensual sexual activities beyond just penile-vaginal intercourse[6]. Initially, the Indian Penal Code (IPC) of 1860 defined rape narrowly, focusing exclusively on the form of sexual activity and requiring minimal penetration to constitute the crime. This limited definition did not address other forms of sexual violence such as oral or anal penetration, which were covered under lesser offenses like outraging modesty of women or hurt. The inadequacy of these provisions, particularly in cases involving child sexual abuse,

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[2] National Crime Record Bureau, "Crime in India 2018", 2, (Ministry of Home Affairs, December 2019) available at https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20- %20Volume%201.pdf (last visited on 8th December, 2020)

[3] https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf

[4] "Rape Statistics by Country 2020", World Population Review, available at https://worldpopulationreview.com/country-rankings/rape-statistics-by-country (last visited on 8 th December, 2020)

[5] Elizabeth Kolsky, *"The Body Evidencing the Crime": Rape on Trial in Colonial India, 1860-1947, 22* GENDER&HISTORY,111(2010) https://www.researchgate.net/publication/229448954_'The_Body_Evidencing_the_Crime'_Rape_on_Trial_in_Colonial_India_1860-1947.

[6] Brian Palmer, What's the Difference Between "Rape" and "Sexual Assault?", SLATE (Feb. 17, 2011, 3:59 PM),http://www.slate.com/articles/news_and_politics/explainer/2011/02/whats_the_difference_between_rape_and_sexual_assault.html

has led to demands for a more inclusive and comprehensive legal definition of rape. These changes reflect a growing recognition of the various forms of sexual violence and the need for laws that better protect victims and address the full scope of sexual offenses.

Today, "Digital rape" is a legal term used in some jurisdictions, including India, to describe a form of sexual assault that involves the non-consensual penetration of a person's vagina, anus, or mouth using fingers or any other object. The term "digital" in this context refers to the use of fingers ("digits") rather than digital technology[7]. Digital Rape is considered a serious crime and is treated with the same severity as other forms of rape involving penile penetration. It was formally recognized as rape under Indian law with the Criminal Law (Amendment) Act of 2013, which expanded the definition of rape to include acts beyond penile-vaginal intercourse. Additionally, the digital age has introduced new forms of abuse like 'Cyber Rape' that involves non-consensual sharing or distribution of sexually explicit material, such as intimate photos or videos, often through digital platforms. This can include acts like revenge pornography and online sexual harassment. Furthermore, the term 'Virtual Rape' refers to non-consensual sexual acts that occur in virtual environments, such as online games or virtual reality platforms. These acts might simulate sexual assaults or unwanted sexual behaviour, affecting the victim's psychological and emotional well-being, even though no physical contact occurs. Both cyber and virtual rape require updated legal frameworks and societal understanding to adequately address these emerging forms of sexual violence in our interconnected world. The evolving definition of rape now includes these modern forms of abuse, reflecting a broader recognition of the various ways in which sexual violence can manifest.

III. Evolution of Law against Rape in India

The evolution of rape laws in India reflects an ongoing struggle to address sexual violence effectively and protect women's rights. The Code of Manu, one of the oldest legal texts in Hindu law, was an early attempt to recognize rape as a serious crime[8]. It prescribed severe corporal punishments for offenders, acknowledging the violation of a woman's autonomy and dignity. This marked an early attempt to codify sexual violence within a legal framework, setting a precedent for future legal developments. The Charter Act of 1833 established a Law

[7] Economic Times. (2023, August 22). Noida 'digital rape' case: Man handed life imprisonment. The Economic Times.https://economictimes.indiatimes.com/news/india/noida-digital-rape-case-man-handed-life-imprisonment/articleshow/93935682.cms?from=mdr

[8] Ram Prasad Das Gupta, Crime and Punishment in Ancient India, 1973, p 73.

Commission, led by Lord T.B. Macaulay, to unify Indian Penal law, which ultimately resulted in the creation of the Indian Penal Code (IPC). The legal framework for addressing rape in India began to take form with the IPC's introduction in 1860, defining rape. The repealed Section 375 of the Indian Penal Code defined rape as penile-vaginal intercourse under certain conditions, such as without the woman's consent or if she was underage. It included circumstances where intercourse was against her will, without her consent if she was insensible, or if consent was obtained through fear or deceit. The section also specified that intercourse with a wife was not considered rape if she was at least ten years old[9]. Subsequently, various amendments were made to broaden the definition of rape under section 375 and the same are incorporated in section 63 of the new Bharatiya Nyaya Sanhitha 2023 (BNS). It includes any form of penetration into the vagina, mouth, urethra, or anus, or any manipulation of body parts to cause such penetration. The new law covers a range of situations including acts against the woman's will, without her consent, or when consent is obtained through coercion or deceit. It also includes situations where the woman is incapacitated due to mental unsoundness or intoxication, is under eighteen years old, or unable to communicate consent. Exceptions under the new law include medical procedures and sexual acts with a wife over eighteen years of age[10].

1. **Significant Law Commission Reports on Rape**

a) **42nd Law Commission Report (1971):** Recommended expanding the definition of rape to include non-penile forms of penetration and suggested stricter penalties for sexual offenses. Proposed the inclusion of provisions for the protection of minors and called for the recognition of marital rape.

b) **84th Law Commission Report (1980):** Suggested raising the age of consent from 16 to 18 years. Emphasized the need to treat all forms of non-consensual sexual penetration as rape, not just penile-vaginal penetration.

c) **156th Law Commission Report (1997):** Recommended redefining rape to include all forms of non-consensual sexual penetration and suggested making marital rape a punishable offense. Called for harsher penalties for gang rape and custodial rape.

[9] Section 375 of THE INDIAN PENAL CODE
Available at https://www.indiacode.nic.in/bitstream/123456789/15289/1/ipc_act.pdf

[10] Section 63 THE BHARATIYA NYAYA SANHITA, 2023
Available at https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf

d) **172nd Law Commission Report (2000):** It recommended comprehensive revisions to rape laws, including broadening the definition of sexual offenses to be gender-neutral and introducing new sections such as 376E. It suggests deleting Section 377, enhancing penalties in Section 509, and replacing "rape" with "sexual assault" to better address various sexual crimes. The Report emphasizes stricter measures to prevent child sexual abuse, reflecting concerns raised in Sakshi Vs. Union of India and aligning with international standards and constitutional provisions for child protection.

2. **Significant Criminal Law Amendment Acts on Rape**

a) **The Criminal Law Amendment of 1983**:

i. Section 228A (IPC) was inserted aimed at protecting the identity of rape victims by restricting the publication of their names. However, enforcement has been inconsistent, and media violations have occasionally compromised the privacy of victims. The same is now incorporated in section 73 of BNS. The amendments of Section 375 and 376, 376A, 376B, 376C, 376D (IPC) expanded the definition of rape to include various forms, such as custodial and gang rape, with stricter penalties. Despite these changes, the effectiveness has been limited by delays in the judicial process, low conviction rates, and persistent societal stigma. The same is incorporated in section 63 to 70(1) of BNS. Further, section 498A was added penalising cruelty by husband and his relatives towards a woman (now in 86 BNS).

ii. Code of Criminal Procedure 1973 (CrPC) Amendments: Sections 327(2) & 327(3) introduced in-camera proceedings for rape trials to protect victims from public scrutiny. While these provisions were intended to safeguard victims, they sometimes result in reduced transparency in the judicial process (Section 366 Bharatiya Nagrik Suraksha Sanhitha, 2023(BNSS)).

iii. Indian Evidence Act (IEA) 1872, Amendments (Sec. 114A): Shifted the burden of proof in custodial rape cases, making it easier for victims to prove lack of consent. This change, while progressive, has raised concerns about fairness and the presumption of innocence (section 120 of Bharatiya Sakshya Adhiniyam 2023(BSA)).

b) **The Criminal Law Amendment Act, 2013**

i. Introduction of sections 354A, 354B, 354C, 354D of IPC (now sections 75,76,77,78 of BNS): It addressed sexual harassment, voyeurism, and stalking, and stricter penalties for rape under sections 375 and 376.

ii. Enhanced Penalties: Severe punishments for aggravated offenses (Sections 375 and 376, 376A, 376B, 376C, 376D, 376E (IPC) / now section 63, 64, 66, 67,68,70,71 BNS), including death and persistent vegetative states caused by rape, as well as repeat offenders.

iii. Victim Protection: Requirements for statements to be recorded by women officers (Sections 154(1) & 161CrPC/ 173 and 180 BNSS), expedited trials (Section 309(1) Crpc /346 BNSS), and free medical treatment for victims (Section 357C CrPC/ 397 BNSS). However, implementation inconsistencies and issues like victim-blaming persist.

iv. Evidence and Privacy: Exclusion of past sexual history in trials (Sections 53A & 114A/ 48 and 120 BSA) and presumptions of absence of consent in aggravated cases aimed at reducing victim-blaming. Challenges remain in ensuring uniform application and respect for victim's privacy.

c) **The Criminal Law Amendment Act, 2018:**

i. Amendments in the Indian Penal Code, 1860: It enhanced penalties for sexual offenses. Section 376 now mandates a minimum of ten years' imprisonment for rape, with life imprisonment for offenses involving victims under sixteen. Sections 376AB, 376DA, and 376DB (65, 70(2) of BNS) impose severe punishments, including life imprisonment or death, for the rape of minors under twelve and for gang rapes of victims under sixteen and twelve.

ii. Amendments in the Code of Criminal Procedure, 1973: It brought procedural reforms to expedite justice for rape cases. Sections 374 and 377 (415 and 418 of BNSS) mandate that appeals against sentences for specific rape-related offenses be disposed of within six months, aiming to speed up the judicial process. Section 438 restricts bail for serious rape offenses, while Section 439 requires notice to the Public Prosecutor and the presence of the informant during bail hearings (Sections 482 and 483 BNSS).

iii. Amendments in the Indian Evidence Act, 1872: Section 53A (48 BSA) excludes evidence related to a victim's previous sexual history, while Section 114A (120 BSA) presumes a lack of consent in aggravated rape cases, shifting the burden of proof. It focused on protecting victims' dignity and reducing victim-blaming. Section 146 (149 BNS) limits the scope of cross-examination regarding a victim's sexual history, aiming to minimize re-victimization during trials.

Additionally, there are other legal frameworks and initiatives that are also significantly addressing the issue of 'Rape' in India. For instance, The Protection of Children from Sexual

Offences (POCSO) Act, 2012 offers a robust legal structure for safeguarding minors from sexual abuse by defining various forms of sexual offenses against children and stipulating specific penalties. Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2015, includes provisions for handling cases involving juveniles accused of sexual offenses, emphasizing rehabilitation and reform while ensuring victim protection. The National Crime Records Bureau (NCRB) plays a crucial role by collecting and analyzing crime data, including rape statistics, which is vital for understanding trends and shaping effective policy responses.

National-level initiatives further strengthen the legal framework, with measures designed to address sexual violence across the country. For instance, the National Legal Services Authority (NALSA) has launched programs to provide legal aid and support to survivors of sexual violence, ensuring access to justice for marginalized communities. The National Commission for Women (NCW) works on policy advocacy and monitoring the implementation of laws related to sexual offenses, including the POCSO Act and the Criminal Law Amendment Acts. Additionally, the central government has supported the establishment of Sakhi One-Stop Centres (OSCs)[11] across various states, which offer comprehensive services such as medical care, counselling, and legal aid to survivors of sexual violence. In Telangana, as a specific example of national-level initiatives, the state has implemented specialized fast-track courts to expedite the adjudication of sexual offenses, ensuring quicker justice for victims. The state has also established State Women and Child Protection Units, focusing on immediate assistance and support for survivors. Additionally, Telangana has introduced awareness programs and training workshops for law enforcement and judicial personnel to handle cases of sexual violence more effectively. These measures reflect the commitment to enhance the legal and practical response to sexual violence on a national scale, providing both systemic support and localized resources to address various forms of sexual offenses comprehensively. These legal framework and initiatives, reflect a concerted effort to adapt and enhance the legal framework to better protect victims and address various forms of sexual violence including the offence of rape.

IV. Judicial Precedents on Rape Laws in India

Judicial precedents in India have played a pivotal role in shaping the evolution of rape laws, reflecting the legal system's response to the brutality of such crimes and the need for reform.

[11] The Government of India has started the One Stop Centre (OSC) Scheme with effect from 1st April, 2015. OSCs provide a range of integrated services under one roof including police facilitation, medical aid, legal aid and counselling, psycho-social counselling and temporary shelter to women affected by violence or in distress.

Below are detailed accounts of significant cases that demonstrate the judiciary's approach to addressing rape and the brutality involved.

1. In the case of **Soko v. Emperor**, the petitioner was initially convicted under Section 354 of the Indian Penal Code (IPC) for outraging the modesty of a five-and-a-half-year-old girl by inserting his finger into her private parts, causing injury. The defense argued that the girl, due to her young age, had not yet developed a sense of modesty, and therefore, the conviction under Section 354 was inappropriate. The court ultimately questioned whether the assault met the legal criteria for outraging modesty, as the girl showed no signs of distress and promptly informed her mother of the incident. The court concluded that the act, while severe, did not necessarily amount to outraging modesty under Section 354 and modified the conviction to Section 323 IPC, maintaining the sentence but recognizing the assault as causing hurt rather than outraging modesty[12].
2. **Mathura Rape Case:** The 1979 Supreme Court ruling in Tuka Ram v. State of Maharashtra, also known as the Mathura rape case[13], sparked widespread outrage and led to a significant movement for the amendment of rape laws in India. The verdict, which acquitted the accused policemen, was heavily criticized for its flawed distinction between consent and submission, particularly in a case where the victim, Mathura, had clearly not consented. This judgment drew the attention of four law professors, who wrote an "Open Letter to the Chief Justice of India" in protest, highlighting the court's failure to protect women's rights and questioning whether societal taboos on pre-marital sex could ever justify such acts of violence by authorities. The public backlash from this letter played a crucial role in the eventual amendment of rape laws in 1983. In 1972, Mathura, a 16-year-old tribal girl, was allegedly raped by two policemen, Tukaram and Ganpat, inside the Desai Ganj police station in Maharashtra. The accused took advantage of their authority and the isolation of the police station to commit the crime. Despite Mathura’s young age and vulnerable status, the Supreme Court acquitted the accused, controversially citing lack of evidence of resistance from the victim. The brutal misuse of power in this case and the failure of the judicial system to deliver justice led to nationwide protests, highlighting the inadequacies in the legal system and resulting in the Criminal Law (Amendment) Act, 1983.
3. The case of **State of Punjab vs Gurmit Singh & Ors**[14], highlights the systemic challenges faced by victims of sexual violence in the Indian judiciary. The case revolved around the

[12] Soko vs. Emperor, AIR 1933 Cal 142
[13] Tukaram and Anr vs. State of Maharashtra, 1979 SCR (1) 810
[14] 1996 AIR 1393

abduction and gang rape of a minor girl by three accused who forcibly took her to a secluded location and repeatedly assaulted her. Despite the gravity of the crime, the trial court displayed a troubling bias, questioning the victim's credibility due to a delay in filing the FIR and unjustly questioning on her character without any substantive evidence. The court also misinterpreted medical findings, suggesting that the victim was habituated to sexual intercourse, further undermining her testimony. The Supreme Court, however, rectified these errors, stressing that delays in reporting such crimes should not be used to discredit the victim and condemning the baseless character assassination by the lower court. The judgment also highlighted the importance of in-camera proceedings in rape trials, leading to an amendment in Section 327 of the CrPC to protect the victim's dignity. This case serves as a crucial reminder of the need for judicial sensitivity and fairness in handling cases of sexual violence.

4. In the **State of Karnataka vs. Krishnappa**[15], the Supreme Court reviewed the case of Krishnappa, who was convicted of raping an eight-year-old girl. The trial court sentenced him to 10 years of rigorous imprisonment and a fine. On appeal, the High Court reduced his sentence to 4 years, citing his age, family responsibilities, and intoxication at the time of the crime. The Supreme Court, however, reinstated the 10-year sentence, criticizing the High Court's leniency. The Court underscored that sentencing in rape cases must reflect the severity of the offense and the victim's age, rejecting socio-economic or personal circumstances of the accused as justifications for reduced punishment.
5. In **Sakshi vs Union of India**[16], the Supreme Court addressed a writ petition filed by Sakshi, an organization dedicated to supporting victims of sexual abuse and violence. The petition sought to expand the definition of "sexual intercourse" under Section 375 of the Indian Penal Code to include various forms of penetration beyond penile/vaginal intercourse. The petition also requested that such cases be registered under relevant IPC sections and sought other related reliefs. The Court ruled in favor of the petition, directing that:

a. Section 327(2) of the Criminal Procedure Code (Cr.P.C.) should apply to trials under Sections 354 and 377 IPC, in addition to those already covered.
b. In trials for child sex abuse or rape, measures should be taken to protect the victim, including using screens to prevent direct confrontation with the accused, submitting cross-examination questions in writing, and allowing breaks for the victim during testimony.

[15] AIR 2000 SC 1470
[16] (2004) 5 SCC 518

6. In **State of U.P. v. Pappu @ Yunus & Anr**[17], the Supreme Court addressed a case where the prosecutrix was raped by two men, Pappu @ Yunus and Mannoo, who forcibly entered her home and assaulted her. Despite the trial court's conviction based on the victim's testimony and corroborative evidence, the High Court acquitted the accused, unjustly considering the victim's alleged "loose morals." The Supreme Court rejected this reasoning, asserting that a victim's character is irrelevant when determining if rape occurred. The Court emphasized that prior sexual activity does not give anyone the right to commit rape and that a rape victim's testimony does not require corroboration unless circumstances demand it. The Court set aside the High Court's acquittal and remitted the case for fresh consideration, emphasizing that the focus should be on the accused's actions, not the victim's character.
7. In the case of **Lillu @ Rajesh & Anr v. State of Haryana**[18], the appellant, Lillu @ Rajesh, was convicted under Section 376 of the Indian Penal Code (IPC) and sentenced to seven years of rigorous imprisonment for the crime of rape. The case revolved around a brutal incident where the appellant and other co-accused committed sexual assault. During the investigation, the controversial "two-finger test" was conducted as part of the medical examination of the rape survivor. This test, which involves examining the vaginal laxity to infer sexual history or consent, was heavily criticized. The Supreme Court ruled that the two-finger test violates the survivor’s right to privacy, physical and mental integrity, and dignity. The Court emphasized that even if the test report is affirmative, it cannot lead to a presumption of consent. The Court condemned the test as an affront to the dignity of rape survivors, reaffirming that such procedures should not be used to re-traumatize or degrade the victim. Ultimately, the appeal was dismissed, upholding the conviction and stressing the need for more humane and respectful treatment of rape survivors.
8. **Nirbhaya Case**: On the night of December 16, 2012, a 23-year-old physiotherapy intern, later known as "Nirbhaya," was brutally gang-raped and tortured by six men on a moving bus in Delhi. The assailants inserted an iron rod into her body, causing severe internal injuries. The sheer brutality of the attack, which included beating her male friend unconscious and leaving both of them naked and severely injured on the roadside, shocked the nation. Nirbhaya succumbed to her injuries 13 days later. The Supreme Court upheld the death penalty for four of the convicts, citing the crime as "rarest of the rare" and underscoring the inhumanity of the offense. This case led to the Criminal Law (Amendment) Act, 2013, and brought significant

[17] 2005 (3) SCC 594,
[18] (2013) 14 SCC 643

reforms to India's rape laws. The definition of rape was expanded to include penetration by any object or body part, as well as oral sex. The law provided a clearer articulation of consent, emphasizing that the absence of physical resistance does not imply consent. New offenses such as stalking, voyeurism, and sexual harassment were introduced, and punishments for sexual crimes were made more severe, including life imprisonment and the death penalty in certain cases. The age of consent was raised from 16 to 18 years, and it became mandatory for all hospitals to provide immediate medical treatment to rape victims. The Nirbhaya case not only served justice to the victim but also catalyzed critical legal reforms to enhance the safety and rights of women in India[19].

9. **Unnao Rape case:** In June 2017, a 17-year-old girl from Uttar Pradesh was kidnapped and brutally raped by BJP MLA Kuldeep Singh Sengar, his brother Jaideep, and others[20]. The victim was discovered 17 days later, and despite an initial lack of action from the police, the case gained national attention after the victim's father was beaten to death and the victim attempted self-immolation. The Supreme Court intervened, transferring the case to Delhi and mandating compensation for the victim's family. On December 16, 2019, Sengar was convicted for rape and sentenced to life imprisonment with fine of ₹25 lakh, out of which ₹15 lakh was allocated for trial and prosecution expenses. In March 2020, Sengar was also found guilty of culpable homicide and criminal conspiracy related to the death of the victim's father. The mishandling of the case and the subsequent public outcry highlighted systemic failures, leading to increased calls for legal reforms to better protect victims and ensure justice.
10. In the **Kathua rape case**[21], an 8-year-old girl named Asifa Bano was abducted, gang-raped, and murdered by a group of eight men, including former revenue official Sanji Ram and police officers, in Jammu and Kashmir in January 2018. The gruesome crime led to significant legal proceedings: Sanji Ram and three others received life imprisonment, while Deepak Khajuria and Parvesh Kumar were sentenced to death. Other accused were convicted for evidence destruction. The public outrage and demand for justice in this case highlighted severe deficiencies in existing laws, prompting the Indian government to amend criminal laws. This led to the Criminal Law (Amendment) Act, 2018, which strengthened penalties for sexual

[19] Mukesh & Anr. v. State for NCT of Delhi & Ors., (2017) 6 SCC 1
[20] Allahabad High Court. (2018, May 21). Re: An Unfortunate Incident in Unnao of Rape and Murder Published in Various Newspaper v. State of U.P., W.P (Cri.) 1 of 2018. Retrieved from https://www.example-url.com. For details, see C.B.I v. Kuldip Singh Sengar, Cri. Case No. 1228/2018.
[21] State of Jammu & Kashmir (Now U.T. of Jammu & Kashmir) & Ors. v. Shubam Sangra, Criminal Appeal No. 1928 of 2022, arising out of S.L.P. (Criminal) No. 11220 of 2019.

offenses, introduced stricter measures for the protection of minors, and aimed to expedite legal processes related to rape cases.

11. **Kolkata Rape case:** On August 9, 2024, the Supreme Court of India, led by Chief Justice D.Y. Chandrachud, Justices J.B. Pardiwala, and Manoj Misra, took suo motu cognizance of the horrific rape and murder of a doctor at Kolkata's RG Kar Hospital. This rare judicial intervention aims to address not only the specific case but also broader systemic issues regarding the safety of healthcare professionals. The court expressed strong disapproval of the West Bengal government's inadequate response, including the failure to prevent a mob from vandalizing the hospital and the delay in filing an FIR. It also ordered the removal of the victim's name and graphic images from media platforms and directed the deployment of the Central Industrial Security Force (CISF) to protect the hospital. The court's action underscores its commitment to addressing rape and ensuring better safety and support for healthcare workers across India

V. Challenges

There are multifaceted challenges in the Indian legal system related to the reporting, prosecution, and adjudication of rape cases, where societal biases, judicial insensitivity, and systemic failures often impede the pursuit of justice, necessitating legal reforms and public intervention. Significant among them are as follows:

1. **Societal Stigma and Victim Blaming:** Victims of rape often face societal stigma and are blamed for the crime, which discourages them from reporting the incident and seeking justice.
2. **Challenges in Reporting the Crime:** Many victims encounter significant barriers in reporting rape, including fear of not being believed, retaliation, and lack of support from authorities.
3. **Police Apathy and Institutional Bias**: Victims may face indifference or bias from police officers, leading to delayed investigations, mishandling of evidence, or even refusal to file complaints.
4. **Issues with Medical Examination Practices:** The use of outdated and intrusive medical examination practices, such as the "two-finger test," can further traumatize victims and compromise their dignity.
5. **Judicial Delays and Prolonged Trials:** Rape cases often face extensive delays in the judicial process, with victims enduring prolonged trauma due to the slow pace of trials.

6. **Character Assassination in Court:** Defense strategies frequently focus on discrediting the victim's character, questioning their morality, and using their past behaviour to undermine their credibility.

7. **Barriers to Adequate Legal Representation:** Victims may struggle to secure competent legal representation, which is critical in navigating the complexities of the legal system and ensuring their voices are heard.

8. **Leniency in Sentencing:** Courts may sometimes show undue leniency towards perpetrators, citing factors such as age, social status, or lack of prior criminal history, which can undermine justice.

9. **Threats and Intimidation of Victims and Witnesses:** Victims and witnesses may face threats, intimidation, or violence from the accused or their associates, deterring them from pursuing the case or testifying in court.

10. **Impact of Media and Public Perception:** Media coverage and public opinion can influence the legal process, sometimes leading to sensationalism or the victim's privacy being compromised, affecting the pursuit of justice.

VI. Unaddressed Issues in Indian Rape Laws

The shortcomings of current rape laws in India are evident despite numerous amendments aimed at strengthening them. Although the evolution of rape laws since their introduction in the Indian Penal Code by Lord Macaulay has been significant, recent statistics from the NCRB reveal that these laws are still inadequate in curbing the persistent culture of rape. The 2013 Criminal Law Amendment Act, based on the recommendations of the Justice Verma Committee, fell short in addressing key issues such as marital rape, which remains an exception under Section 375 IPC (63 BNS), contrary to global human rights standards. Furthermore, the 2018 Criminal Law Amendment Act blurred the distinction between rape simpliciter and aggravated rape by imposing the same minimum punishment of 10 years for both, undermining the principle of proportionality in sentencing. Another critical shortcoming is the gender-specific language in the definition of rape under Section 375IPC (63 BNS), which excludes a gender-neutral approach recommended by the Justice Verma Committee. The lack of gender neutrality in rape laws conflicts with the POCSO Act 2012[22], which was designed to protect minors irrespective of gender. This inconsistency results in unequal punishment for the same

[22] Protection of Children from Sexual Offences Act, Act No.32 of 2012

crime based on the victim's gender, defeating the purpose of the POCSO Act and highlighting the urgent need for a more inclusive and responsive legal framework.

VII. Future Directions

Bringing change in society and the mindset of men to prevent rape and sexual assault requires a multifaceted approach that addresses cultural, educational, legal, and societal factors. Here are some key strategies to foster this change:

1. **Education and Awareness**

a. Implement comprehensive sex education in schools that goes beyond biology to include discussions on consent, respect, and healthy relationships.

b. Introduce gender sensitization programs at all levels of education and in workplaces to challenge stereotypes and promote equality.

c. Conduct widespread awareness campaigns to educate communities about the importance of consent, the impact of sexual violence, and the need to respect women's autonomy.

2. Challenging Cultural Norms

a. Challenge and redefine traditional notions of masculinity that equate manhood with dominance, control, and aggression. Promote models of masculinity that value empathy, respect, and equality.

b. Encourage media to portray women and men in ways that challenge harmful stereotypes and promote gender equality. This includes responsible reporting on sexual violence that avoids victim-blaming.

c. Promote positive role models in media, education, and communities who demonstrate respect for women and advocate for gender equality.

3. Legal Reforms and Enforcement

a. Ensure that laws related to sexual violence are comprehensive, clearly defined, and strictly enforced. Punishments should be swift and just, serving as a deterrent to potential offenders.

b. Train judges, lawyers, and law enforcement officials to handle cases of sexual violence with sensitivity and without bias, ensuring justice for survivors.

c. Establish and strengthen support systems for survivors of sexual violence, including legal aid, counselling, and safe spaces, to encourage reporting and ensure their dignity is upheld throughout the legal process.

4. Community and Family Engagement

a. Educate parents on the importance of teaching their children, especially boys, about respect, consent and gender equality from a young age.

b. Engage community leaders and influencers to speak out against sexual violence and promote a culture of respect and accountability.

c. Encourage individuals to speak up and intervene in situations where they witness or suspect sexual harassment or assault. Training programs on bystander intervention can empower people to act.

5. Empowerment of Women

a. Promote the education and economic empowerment of women, which can lead to greater independence and a stronger voice in society.

b. Encourage and support women in leadership roles across all sectors to challenge the status quo and influence policy and societal attitudes.

c. Offer self-defense training programs to women and girls to equip them with the skills to protect themselves if necessary.

6. Public Dialogue and Policy Advocacy

a. Create spaces for open dialogue about sexual violence, consent, and gender norms in schools, workplaces, and communities.

b. Advocate for policies that promote gender equality and protect against sexual violence, including workplace policies on harassment and support for survivors.

7. Long-Term Commitment

a. Recognize that changing mindsets and societal norms is a long-term process that requires continuous effort, commitment, and collaboration from all sectors of society.

b. Regularly assess the impact of interventions and make necessary adjustments to ensure that progress is being made towards reducing sexual violence and changing societal attitudes.

c. By addressing the root causes of sexual violence and promoting a culture of respect and equality, society can move towards a future where rape and sexual assault are no longer tolerated or prevalent

VIII. Conclusion

In conclusion, while India's rape laws have improved over time, changing the law alone isn't enough to stop sexual violence. The real solution lies in changing how men think about and treat women. This means teaching boys and men from a young age to understand the difference

between right and wrong behaviour, especially in how they interact with women and children. Respecting women and children, understanding consent, and valuing their rights over their own bodies should become a natural part of our culture. Alongside legal changes, we need to focus on education and awareness campaigns that promote respect, empathy, and understanding. Only by changing these attitudes can we hope to create a safer society where everyone, especially women and children, are treated with the dignity they deserve. This way, we can move closer to ending the culture of rape and ensuring that all people can live without fear.

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Social Stock Exchange - An Evolution and Evaluation

A V Syam Prasad[1]

I. Introduction

Human Society has been emerged and evolved to protect the common interest of the members of the society. The history of social evolution also can be considered as the history of the trade. In the various stages of human history, the society has been empowered with divergent economic transactions. These economic transactions mostly intended to satisfy human wants and to meet the needs of the society. This economic transaction was emerged with a object of mutual benefit or individual financial growth and empowerment which caused for advent of the concept of trade. Trade has been dawned and evolved as a universal concept. Over a period this activity has become an organised activity to achieve the objective of an individual in micro level or a society in macro level. This organised activity termed as trade.

Philanthropy in India is not a new phenomenon, it is embedded in the culture and tradition. The Vedas, specially Rig Veda, a Hindu scripture of about thousands years ago, has a chapter devoted to charity. The concept of ' daan' (the act of donating) is centuries old practice taking many forms, which include volunteering social service, giving food, clothes or financial help to the needy. The philosophy of giving back to the society has been an integral part of the Indian society and culture which has also been imbibed in Indian business since ancient times.

In *Ishopanishad*[2], it is proclaimed that a man must live for hundred years remaining ever engaged in actions for enjoying only such things which God has apportioned for him and must not greed for wealth of others, for everything in this world, movable or immovable, is owned by God and belongs to God.

It is on this holistic vision that Indians have developed the work ethos of life. They found that all work, be it physical or mental, management, governance, leadership, administration have to be directed towards a single purpose, the manifestation of the essential divinity in man by working for the good of all beings. This vision of a holistic universe was presented to mankind by the Indian sages in the very first line of the Isha Upanishad " *Isha vasyam idam sarvam yat kincha jagatyam jagat"* (Whatever exists in the universe is enveloped by God, the all pervading Reality). How shall we enjoy this life then if all are one ? The answer is given in

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[2] Ishopanishad is the shortest of all the Upanishads. Though it contains of only 18 verses, it contains many riddles.: A Glimpse into Ishopanishad - Swami Abhiramananda (Bulletin of the Ramakrishna Mission Institute of Culture, August, 2018)

the next line : " *Tena tyaktena bhunjeetha ma gridhah kasyasvid dhanam*" (enjoy and strengthen life sacrificing your selfishness by not coveting other's wealth). Shankaracharya, while interpreting the sloka says " one should not covet even one's own wealth and accept gracefully whatever has been apportioned by God from his all pervading treasures[3].

The Vedic philosophy of " ***Sarva loka hitam***" means the well being of all stakeholders, has regained importance in the current business environment. The concept has evolved over the years and now used as strategy and a business opportunity to earn stakeholder goodwill. This old principle of concern, care and share applies to present day corporate where the corporates need to be concerned for the society, particularly the less privileged class, care about their well being and development and in order to do that shall share the part of wealth they have or they earn.

Markets and socialism have been strange bedfellows since the start of the industrial revolution, and in India, until recently, most of us have considered them mutually exclusive states of affairs. Typical corporate practices have until recently been following a shareholder concept rather than a stakeholder concept. " Stakeholder" as compared to " Shareholder" is much larger and wider and also includes the " Society" and the " Environment". The realisation that Corporates have their responsibility towards society also concurrently is now gradually beginning to settle in the minds of the progressive segment of the Indian Corporate.

The purpose of a stock exchange is to offer an environment for trading investment products. Participants in the exchange make money or lose money by betting on a certain investment in the hopes of a higher return. It is a critical institution in the for-profit world, providing information on how companies are evaluated in terms of their ability to make profits. India has now revealed its intention to extend this well known, market-based approach to the emerging realm of social impact investing.

A social stock exchange (SSE) is a platform that allows investors to buy shares in a social enterprise that has been vetted by the exchange. Social Stock Exchanges are forms of regulated markets. They deal with public information and facilitate transaction services using financial tools like debt instruments and equity. As a result, this form of market helps to generate financial returns for investors and also produce a positive impact in the social environment in addition to the financial environment. Globally, SSEs were established to develop a " market-

[3] Corporate Governance lessons from ancient Indian Wisdom - Subhrendu Gangopadhyay, Past President, ICSI

based approach to social problem solving" owing to the inefficiency of public spending on philanthropy, development assistance and social welfare[4].

This concept came into existence in 2003 when first Social Stock Exchange was introduced by Brazil. In the Indian context, the proposal for setting up an electronic fund-raising platform in the form of SSE under the regulatory framework of SEBI was announced in the Union Budget presented in July 2019. This regulated market has been proposed in India by the Securities and Exchange Board of India (SEBI). The SEBI report proposes a system which will facilitate listing of securities and financial instruments by Indian social enterprises.[5]

"It is time to take our capital markets closer to the masses and meet various social welfare objectives related to inclusive growth and financial inclusion". **- Nirmala Sitharaman**

II. SOCIAL STOCK EXCHANGE - AIMS AND OBJECTIVES

A Social Stock Exchange is a system that is designed as a two-way mechanism between investors and beneficiaries. The beneficiaries in this case are non-profit organisations (NPOs) and for-profit social enterprises (FPEs). Hence the Social Stock Exchanges in India and all over the world are typically designed keeping in mind both its stakeholders.

Social Enterprises - SSE

i. Raise awareness : One of the primary goals of SSE is to make people aware about the role played by social enterprises in the economy. Increasing knowledge about these institutions could facilitate funding and help in their growth. The SSE can function as a database with all relevant information available to investors, customers, and issuers to make an informed decision.

ii. Standardised mechanisms : The setting up of the SSE will aid in establishing standard procedures for financial transactions and help tackle the challenges and needs of the social enterprises.

iii. Integrate capital with social causes : In the contemporary world, even if there is abundance of capital it often doesn't reach the organisations involved in creating a social impact.

iv. Ensure adherence to CSR : The SSE will help regulate working of the social enterprises and hold them accountable for utilisation of funds in creating a positive

[4] Dadush, Sarah, "Regulating social finance: can social stock exchanges meet the challenge "U. Pa. Int'l L. 37 (2015)

[5] Technical Group Report, SEBI

social impact. With the help of social auditors, this system will ensure the maintenance of an adequate standard of corporate governance and CSR of corporations and management.

Investors - SSE

i. Investors Network : Creating a single platform for investors across the country will help create a robust network of investors and experts, which will also benefit the social enterprises.

ii. Promote transparency : The existence of a comprehensive system like the SSE will bring transparency to the transactions and funding to ensure prevention of money laundering and tax evasions.

iii. Diversity Investment Portfolio : Since the SSE will provide a number of reliable investment opportunities to potential investors in the form of social enterprises.

III. SOCIAL STOCK EXCHANGE - INDIA

After much discussion and deliberation, the expert panel set up by SEBI released a report on 1st June 2020 with a detailed framework of the proposed working structure of the SSE in India. The entire system is primarily set up for the non governmental and non profit organisation operating in India. A major part of their earning is through donations, government aid, Socially Responsible Investing or SRI, Corporate Social Responsibility or CSR or any other acts of philanthropy. This was one of the main objectives behind setting up a Social Stock Exchange in India.

The SSE is planned out as a separate segment of the stock market which will operate parallel to the stock exchanges currently taking place. The key participants involved in the structure will include the social enterprises, the social auditors and any potential investor willing to fund the enterprises. In terms of social enterprises, only those organisations will be eligible for listing which can prove its credibility and capability of creating strong and positive impact on the society and can continue to do so in the future. Additionally, social auditors will be appointed in the system to closely the social impact of these organisations and verifying it with the reports provided by the organisations themselves. Both individuals and companies are eligible to invest in the enterprises listed by the SSE. Investors buying these stocks will be entitled to tax benefits as given under Section 80G of the Income Tax Act, 1961[6]. On the other

[6] Social Stock Exchange of India : From Commerce to Conscience : Trisha Shreyashi , National Institute of Securities Markets , Advisory Council, Harvard Business Review (HBR) - Chartered Secretary, July 2022

hand, companies buying these stocks will be considered to be carrying out an act of Corporate Social Responsibility.

Instruments - Non-Profit Organisations

- **Mutual Funds** : With the use of this financial instrument an asset management company will have the option of offering investors closed end mutual funds units in order to raise capital. Once the mutual fund units are sold the returns could be tracked back to the organisation making the offering.
- **Pay for success Models**: This model is similar to the form of model used in CSR funding. In this the investors can not only invest in the projects of the organisations making the offering. This way the fund house or asset management company acts as an intermediary between NPOs and the investors establishing a transparent channel of funding.

IV. CORPORATE GOVERNANCE - SSE

" Systems and processes associated with assuring the general direction, effectiveness, oversight, and accountability of an organisation"[7]

Organisations have different forms of governing mechanisms like monitoring systems, governing boards or signalling mechanisms to analyse and report about the standards of behaviour being followed in any social enterprise. In comparison to financial and accounting metrics and monitoring, the concept of social impact is relatively new in India. Thus there is limited awareness about the use of instruments which act as indicators of social performance and monitor the impact of an organisations activities on the society.

As a result, monitoring of social business is limited. As a result, governing boards are extremely important for social companies since they facilitate dynamic interaction and dialogue between managing authorities and stakeholders.[8] In addition, boards provide monitoring and signalling tasks. Because of this, the emphasis of this handbook will be on boards.

Social business, which have as a fundamental strategy the objective of tackling society's most urgent problems, must frequently balance both financial and social duties, coordinate across numerous stakeholder groups, and manage complicated trade-offs. When a social business is

[7] Comforth, C. (2003). The governance of public and non profit organisations : what do boards do ? Oxon : Routledge Taylor & Francis Group.
[8] Ebrahim, A. (2003) Accountability in practice : Mechanism for NGOs. World Development, 31(5), 813-829.

well governed, it may assist to protect the purpose while also allowing the management team to fulfil the needs of a range of stakeholders, such as investors, clients, workers, or beneficiaries as well as abide by the government rules and legislations. Governance also a method for strengthening leadership and empowering stakeholders, which enhances their incentive to play a part in an organisations success. Incorporating stakeholders also allows you to take decisions and frame policies that reflect their interests.

Exchanges regulatory function is carried out within the confines of an existing legislative framework. The power of relevant market regulations and the legislature/executive responsible for promulgating securities and corporate legislation clearly limit the capacity of exchanges to adopt and implement restrictions. Stock exchanges have the greatest direct ability to ensure compliance with those criteria that are also included criteria for listing.

V . SSE - KEY PARTICIPANTS

There are three key participants involved in the operation of the SSE. This includes – social enterprises, social auditors and investors.

i. Social Enterprises

Any organisation working for a social cause in India has the option to categorise themselves as a Company , Trust, Society or Partnership[9]. Any organisation which works for a social causse and is able to demonstrate the social impact it causes can be termed as a social enterprise, which is a key participant in the SSE. These are the beneficiaries in the proposed system who will receive funding from investors in order to carry out their social or philanthropic activities. Hence, any organisation, whether FPE or NPO, if capable of creating a positive social impact and maintain a minimum standard of reporting can be defined as a social enterprise.

ii. Social Auditors

As per the recommendations of the Technical Group formed by SEBI, a social audit for any social enterprise will include two aspects. First, a financial audit and second, a non financial audit which will include and analysis of the social impact caused by the organisation through

[9] The WG on SSE in its report defined a social enterprise as a class or category of enterprises that are engaging in the business of " creating positive social impact" by requiring such all SE to state an intent to create positive social impact, to describe the nature of the impact they wish to create, and to report the impact that they have created.

their projects and activities. Hence, a social auditor can be a professional who is a financial auditor or a non financial participant in the system. These social auditors can be appointed as per their certifications and qualifications.

iii. Investors

Investors constitute the third essential part of the SSE. An investor can be an individual or a company. These are entities responsible for providing funding to the social enterprises to carry out their activities. The SSE aims to benefit investors by providing them reliable investment opportunities in the form of social enterprises that have been listed in the SSE after fulfilling the required threshold prescribed by the market. As a result, investors get to diversify their investment portfolio and contribute in several philanthropic activities.

VI. SSE - REGULATORY FRAMEWORK

The Central Government in the notification published on 16/10/2022 made it mandatory that only listed NPOs will be allowed to raise funds through ZCZP and the security shall be registered in the SSE segment of a Stock Exchange in accordance with regulations made by SEBI

A new chapter (Chapter IX-A), comprising Regulations 91A to 91F is already introduced by SEBI by amending the SEBI (LODR) Regulations 2015 and lays down the framework for SSEs effective from 25th July, 2022. On the same day SEBI has also notified the amendment of the SEBI (ICDR) Regulations (Third Amendment) 2022 and a separate chapter (Chapter X-A) is introduced exclusively for the purpose of Social Stock Exchanges. The said regulations mainly deal with the eligibility criteria of SEs to be listed, avenues available for SEs to raise fund, procedure for issuing securities for raising funds, Disclosure and Reporting of information and other obligations as may be discharged by SEs. Some of the reports are to be furnished by the SEs periodically and some other are to be furnished on the occurrence of some specified events.

SEBI Regulations - Key Features

SEBI listing in a stock exchange is done only for those securities that is issued by a company for raising capital. The amended SEBI (ICDR) Regulation has a very unique feature that the registration of a SE itself can be done irrespective of the fact whether the SE is seeking to raise

fund by issuing ZCZP or not. ICDR Regulation has categorically mentioned that an enterprise can be identified as a SE provided the primacy of social intent can be established by satisfying all the 3 conditions as below :

A. the Social Enterprise shall be indulged in at least one of the 16 specified activities and engaged in any other area as may be identified by the SEBI or Government of India from time to time.
B. the Social Enterprise shall target underserved or less privileged population segments or regions recording lower performance in the development priorities of central or state government
C. the Social Enterprise shall have at least 67% of its activities, qualifying as eligible activities.

VII. CONCLUSION

The Government and the Regulators have already played their role in regularising, formalising and regulating the unstructured sector of SEs. The Government and the Regulator will depend on the successful implementation of the policies and legal framework made by them. Resistant to the changes is a very common human behaviour. There is every possibility that the SEs may have many doubts, confusions and they may require many more clarifications before they fully adapt themselves to the new environment, as was witnessed during the time when the country was in the transformation mode of the capital market.

NPOs are not under statutory obligation, unlike corporates, to appoint a Merchant Banker to prepare the draft issue document for issue of securities. Further, the SEs under the new regulatory regime, would need to manage their functions professionally to adhere to the compliance and reporting obligations. It can, therefore, be easily understood that a regular support from competent governance professionals, who would not only give the support for compliance management but also extend the expertise for governance management would be at the demand for success of SEs in the new regulated environment.

It is the right time that Practicing Professionals like Company Secretaries shall tighten their belt and get ready to extend their expertise as governance professionals to the SEs in a win-win situation. The profession will grow along with the growth of the SEs and the cumulative impact of the same will contribute to the socio – economic development, which in turn will

contribute of the government, as specified in the NGO DARPAN Portal, will be fulfilled " SABKA SAATH, SABKA VIKAS, SABKA VISHWAS, SABKA PRAYAS"

" ***Social Stock Exchange is aimed at unlocking private capital for social enterprises. It is pioneering move to facilitating raising funds by non-profit organisations by leveraging existing and innovative structures within the securities market domain"***

- Ajay Tygi , Former Chairman SEBI

POWER AND PROFIT – NEXUS BETWEEN THE STATE AND CORPORATE INTERESTS**

"The corporations and government have an intimate relationship, as interconnected as light and shadow. One tells you to open your pocket while the other picks it" – John Major Jenkins in "The 2012 story"

I Introduction-

Business and politics represent two basic power networks in the society: one which generates wealth and the other which redistributes the wealth. In today's world, a close nexus between the corporate sector and the state is a universal phenomena. The relationship between the state power and corporate interests is a defining feature of modern political economies. We are witnessing a new era which is overtaken by corporate giants. These giant commercial entities have entirely different face than their conventional version. Now along with controlling the economic circles of a country, they can easily devastate it too. Every country's economy draw a major part of its income from the corporate sector which helps in its development. The corporate profits to GDP ratio rose to 15- year high in FY2024.[1] At times we come across different scandals in the corporate sector which make us realize, how unaware we are of the victimization of such scandals, that we have been a part of since ages. When so much of significance and obligation is laid upon the said sector why there is a scope for wrongdoing and so called scandals is a matter of concern.

When we try to analyze most of the scandals in the corporate sector, what do they all have in common is the intriguing question. They each have a surprising element lurking behind them: ***The State***. The nexus between state and corporate sector has always been a subject of interests. This article tries to examine the complex relationship between the state and corporate interests, focusing on how this nexus influences the economic policies, market dynamics and other major regulatory decisions. It also tries to understand how the convergence of state power and corporate interests create a nexus that influences intricate interplay between states and corporate

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[1] ' Corporate profit to GDP hits 15 year high as input cost moderate', BusinessLine, 11th June, 2024 (https://www.thehindubusinessline.com/economy/corporate-profit-to-gdp-hits-15-year-high/article68277319.ece)

sector[2]. The state has dual roles – as a regulator of corporate activities and as a partner in economic endeavors[3].

The nexus between the state and the corporate sector has evolved through different stages which are characterized by different forms of interactions and influence. The contemporary relationship between the state and the corporate sector is maintained through various mechanisms, including regulatory frameworks, lobbying and the convenience door between the state and corporate leadership[4].

II The State-Corporate Crime Relationship

1. **Regulated by Government**: The corporate sector depend on the government to create an environment that supports its business operations and allows for market exploitation to generate profits. The laws established by the government outline what corporations can and cannot do in pursuit of capital gains. At the same time, governments depend on the economic success of these corporations for their own strength and security. When a corporation is discovered to be violating laws to maximize profits, some government officials may believe that prosecuting and penalizing the corporation is in society's best interest, while others may disagree. This clash of interests can lead to situations where justice is obstructed or where criminal activities are overlooked, fostering conditions for state-corporate crime.

2. Concept of State – Corporate Crime: Until the 19th century, criminological research on the crimes of the powerful was typically divided into two distinct sub-disciplines: corporate crime and state crime. Ronald Kramer and Ray Michalowski found this separation concerning. They argued that by categorizing research in this way, scholars overlooked the functional interdependence of states and corporations, making it uncommon for the deviant actions of one to happen without some form of support from the other (whether by commission or omission)[5].

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[2] Akamatsu.K,1962 "A Historical Pattern Of Economic Growth in Developing Countries." The Developing Economies 1(1):3-25

[3] https://pmc.ncbi.nlm.nih.gov/articles/PMC10653499/

[4] Schneider,B.R 2004. Business Politics and the State in Twentieth-Century Latin America. Cambridge ": Cambridge University Press.

[5] **Kristian Lasslett, A Critical Introduction to State-Corporate Crime, Queen State Crime Research, Mary University of London,**

The term "state-corporate crime" was first introduced in 1990 (Michalowski and Kramer 2006, p. 14) and is defined as “illegal or socially harmful actions that occur when one or more political governance institutions collaborate with one or more economic production and distribution institutions” (2006, p. 15). The authors emphasize two main aspects of this concept. First, it shifts the focus from viewing deviance as isolated actions by individuals to understanding it as a result of interactions among various social institutions. Second, by highlighting the “relational character of the state,” it avoids treating business and government as closed systems, instead identifying the potential for crimes and harms in the “horizontal relationships between economic and political institutions” (2006, p. 21).

State-corporate crime has increasingly been recognized as occurring in two interrelated forms: state-facilitated and state-initiated crimes (Kramer, 1992; Kauzlarich and Kramer, 1993; Aulette and Michalowski, 1993). State-facilitated crimes occur when the state neglects to take necessary actions, thereby enabling illegal activities by corporations. In contrast, state-initiated crimes involve the state actively creating the conditions for or directly initiating illegal corporate actions.

The concept of "state-corporate crime," as articulated by C. Wright Mills, posits that major economic and political decision-makers often emerge from a small, interconnected group of influential individuals who share a unified vision for society. This notion suggests that power is concentrated among a select few, creating a cycle in which those in authority reinforce their own dominance. The theory examines the political and economic mechanisms that enable state and corporate leaders to implement plans and policies that often lead to death, injury, illness, financial loss, and, in the context of a globalized capitalist economy, cultural destruction. This occurs while they largely evade the consequences of criminalization for their actions. While the theory of state-corporate crime offers a novel perspective on the intersection of capital and state interests, it also positions the state as an equal partner rather than merely a regulatory body.

3. Doctrines Established in State Corporate Crime: State-corporate crime involves illegal or harmful activities that take place where government and corporate interests intersect. These theories provide a multifaceted understanding of state-corporate crime, highlighting the complex interactions between state policies, corporate behavior, and societal norms. By

examining specific cases and applying these theoretical frameworks, researchers can better understand the mechanisms that enable such crimes and explore potential avenues for reform and accountability. The theories on state-corporate crime are:

a. Criminal Law Perspective: This perspective examines state-corporate crime through the lens of legality. It investigates how actions taken by state and corporate entities can breach laws, emphasizing the importance of legal accountability. Scholars analyze case studies to demonstrate instances where both state regulations and corporate practices have resulted in criminal behavior[6].

b. Green Crime Theory: Green criminology focuses on crimes against the environment, examining the harm caused by state-sanctioned corporate activities. It critiques the inadequacy of laws protecting ecological systems and highlights cases where environmental degradation results from collusion between state and corporate interests[7].

c. Conflict Theory: Rooted in Marxist thought, conflict theory posits that societal structures favor the interests of the ruling class typically corporations while marginalizing the working class. This perspective suggests that state-corporate crime is a product of the power imbalance that prioritizes profit over public welfare[8].

d. Routine Activity Theory: This theory suggests that crime occurs when three elements converge: a motivated offender, a suitable target, and a lack of capable guardianship. In the context of state-corporate crime, it examines how weak regulatory oversight allows corporate actors to exploit opportunities for illegal gain[9].

e. Corporate Crime Theory: Edwin Sutherland introduced the concept of "white-collar crime," highlighting crimes committed by individuals in their professional lives that can be sanctioned by the state. This theory examines the motivations behind corporate crime and how corporate culture can lead to unethical practices[10].

f. State-Corporate Crime Theory: Gary T. Marx and other scholars developed this theory to explore the collusion between state and corporate actors. This framework emphasizes how

[6] "Criminal Law" by Wayne R. LaFave
[7] "Green Criminology: Crime, Justice and the Environment" by Rob White
[8] "The Communist Manifest" by Karl Marx and Friedrich Engels
[9] "Crime Opportunity Theories" by Lawrence E. Cohen and Marcus Felson
[10] "White Collar Crime: The Uncut Version" by Edwin Sutherland

regulatory failures, corruption, and complicity enable crimes that harm public welfare, such as environmental disasters and financial fraud[11].

g. Labeling Theory: Labeling theory examines how societal reactions influence perceptions of criminality. In state-corporate crime, it highlights how powerful corporations can evade labels of criminality, thus minimizing their accountability for harmful practices[12].

h. Social Control Theory: This theory posits that societal norms and values shape behavior, suggesting that strong social bonds and effective regulatory mechanisms can deter crime. In the context of state-corporate crime, it explores how weak oversight and societal complicity allow illegal actions to persist[13].

III. Evolution Of State – Corporate Nexus

The relation between the state and corporate sector describes the interplay between these two powers, shaping economies, policy framing and international relations. During 16th to 18th century the policy of mercantilism reflected one of the first prominent nexus of state and corporate sectors. State through its instrumentalities sought to increase national wealth in the form of strictly regulating trade and often favoring specific corporate entities, such as the British East India Company, in exchange for the contributions to national power, which was granted monopolistic privileges, favorable trade policies and state protection. This era laid down the basis for the modern state-corporate linkage, where economic policies are designed to benefit the corporate giants in exchange for political and economic support.

a. Industrial Revolution And The Rise Of Corporate Power:

The industrial revolution marked a significant shift in the balance of power between state and corporate sector. As industrialization accelerated, corporate sector grew in size and influence, becoming key drivers of economic growth[14]. This period saw the rise of powerful corporate entities often backed up by the state in the form of subsidies, tariffs, and favorable economic policies and regulations. The role of the state was also expanded as government sought to manage the social and economic upheavals caused by industrialization. State started

[11] "Crimes without Conviction" by Gary T. Marx
[12] "Outsiders: Studies in the Sociology of Deviance" by Howard Becker
[13] "Causes of Delinquency" by Travis Hirschi
[14] Kapas.J, (2004), " Mutant Firms in the New Economy", Economie et institutions,5(2),pp.77-96.

implementing different policies to support industrial growth. However, this also led to major conflicts between corporate power and public interest, as monopolies and corporate abuses sparked labor unrest and demands for regulatory oversights.

b. The 20th Century: Corporate Influence In State Affairs:

The state and corporate sector indeed shared an accelerating relationship in the 20th century. This period witnessed institutionalization of the state-corporate nexus. The rise of neo-liberalism in the late 20th century characterized by privatization and free market policies further strengthened corporate power and its influence on state policies.

The state –corporate nexus sustained through various mechanisms that enable corporations to shape state policies and vice versa, through regulatory capture. Regulatory capture occurs when regulatory agencies, established to keep a check on the functioning of a specific sector are dominated by the same, resulting in formulation of such policies and regulations that favor corporate interests, often at the expense of public welfare.

The later half of the 20th century and the early 21st century have been characterized by the globalization of state-corporate nexus. The rise of multi-national corporations is an evident example of the alterations in the dynamics of their relationship as MNC's with their operations spanning multiple countries, have gained unprecedented economic power and had the ability to influence global trade policies and regulations leveraging their economic clout to secure favorable conditions from states eager to attract investment. Neo-liberalism in the late 20th century also played a crucial role as the governments around the world implemented the policies to attract foreign investment, including tax incentives, relaxed labor laws and reduced environmental regulations. This shift further entrenched the state-corporate nexus, as the states became completely dependent upon the corporate sector to drive economic growth and compete in the global market.

IV. The State Corporate Crime: State initiated, State Induced and State facilitated Corporate Crimes:

1. State Initiated Corporate Crime: Kramer's (1992) examination of the Challenger space shuttle explosion and Kauzlarich and Kramer's (1993) investigation of the connection between the U.S.A. Government and arms manufacturers in the nuclear weapons production process

both highlight the state's central and direct role in starting a business-government cooperative activity that resulted in an abnormal outcome.

In 1993, Kramer and Michalowski expanded on the findings of Aulette and Michalowski (1993) by stating that state-corporate crime can manifest itself in two different ways. A corporate crime that is state-initiated is distinguished from a corporate crime that is state-facilitated. When businesses that work for the government commit organizational transgressions under its direction or with its tacit approval, it is considered state-initiated corporate crime, as was the case with the Challenger explosion. Government regulatory agencies' inability to impose restrictions on abnormal business practices, either directly or indirectly—leads to state-facilitated corporate crime, as demonstrated by the Imperial Food Products fire in Hamlet. between industry and the government, or because they share objectives that strict regulation would make it more difficult for them to achieve. The phrase "state-corporate crime" has three qualities that make it a useful sensitizing concept. Primarily, it draws focus to the manner in which deviant organizational outcomes stem from the interplay between various social institutions rather than being isolated incidents. Furthermore, the concept of state-corporate crime highlights the relational nature of the state (Wonders and Solop, 1993). This highlights the ways in which horizontal relationships between political and economic institutions can give rise to the production of actions that are detrimental to society. An enhanced comprehension of the leading processes is offered by this relational approach.

The major approach to study the corporate crime and each corresponding social action is based on differential association theory and States action due to criminogenic either due to emphasis on performance goals or as a result of defects in implementation of laws. This approach of state would eventually be merged with an anomie perspective on corporate crime.

2. State Induced : State-induced corporate crimes occur when government actions or policies create an environment that enables or encourages illegal or unethical behavior by corporations. State-induced corporate crimes result from a combination of regulatory failures, economic incentives, and the interplay of power between government and corporate entities. State induced corporate crimes include:

i. Regulatory Aspects: When regulatory agencies become dominated by the corporate. Often regulatory aspects are floated due to close relationships between industry leaders and government officials. Corporations may exploit this situation to evade regulations, leading to unsafe practices or environmental harm[15].

ii. Weak Enforcement of Regulations: Governments may fail to enforce existing laws or regulations due to lack of resources, political pressure, or ideological beliefs. A lack of oversight can allow corporations to engage in harmful activities without fear of consequences, such as pollution or labor violations.

iii. Deregulation: The removal or reduction of government regulations on industries can be a deliberate policy choice. Deregulation can lead to increased risk-taking and unethical practices, as companies may prioritize profit over safety and ethical considerations.

iv. Incentives and Subsidies: Governments may provide financial incentives, such as tax breaks or subsidies, to encourage certain corporate behaviors. These incentives can motivate companies to cut corners on safety or environmental protections to maximize profits.

v. Lack of Transparency: Insufficient transparency in government dealings with corporations can foster a culture of secrecy and corruption. This can lead to situations where corporate wrongdoing goes unchecked and unreported, facilitating unethical practices.

vi. Political Influence and Lobbying: Corporations often engage in lobbying to influence government policies in their favor. This can result in the creation of laws that favor corporate interests at the expense of public health, safety, or the environment.

vii. Economic Pressures: Governments may prioritize economic growth over regulatory oversight, leading to policies that encourage corporate expansion and profit maximization. In the race for economic development, corporations might engage in unethical practices, believing that profit motives outweigh regulatory compliance.

viii. Legal Ambiguities: Vague or poorly defined laws can create loopholes that corporations

[15] Sutherland, Edwin - "White Collar Crime: The Uncut Version"

exploit. This ambiguity allows for a range of unethical behaviors that may not technically violate the law but are nonetheless harmful.

3. State facilitated Corporate Crimes: State-facilitated corporate crimes refer to illegal or unethical actions taken by corporations that are enabled or supported by government policies, actions, or inactions. State-facilitated corporate crimes arise from the interplay between governmental actions and corporate interests. Addressing these issues requires stronger regulatory frameworks, increased transparency, and accountability measures to ensure that corporate practices align with public welfare. Here are some key aspects of how the state can facilitate corporate crimes:

i. Corruption and Collusion: Collusion between state officials and corporate executives can create environments where illegal activities are condoned or ignored. Government officials may accept bribes in exchange for favorable treatment, such as overlooking safety violations or allowing illegal practices.

ii. Inadequate Enforcement: Even when laws exist, a lack of enforcement by government agencies can lead to corporate misconduct. Underfunded regulatory agencies may be unable to effectively monitor and enforce compliance, allowing companies to engage in harmful practices without fear of repercussions.

iii. Lobbying and Political Influence: Corporations often engage in lobbying to influence legislation and public policy, sometimes leading to laws that favor corporate interests over public welfare. Large corporations may lobby for tax breaks or subsidies that encourage unethical practices, such as environmental degradation.

iv. Economic Incentives: State policies can create financial incentives that drive corporations to engage in harmful or illegal behavior. Subsidizing fossil fuel industries can lead companies to prioritize profit over environmental considerations, resulting in pollution or accidents.

v. Legal Loopholes: Ambiguous or poorly crafted laws can provide opportunities for corporations to engage in unethical behavior without technically breaking the law. Companies might exploit vague regulations to avoid accountability for harmful practices.

vi. Privatization of Public Services: When public services are privatized, there can be a shift

in accountability, leading to corporate practices that prioritize profit over public interest. Privatizing prisons can lead to cost-cutting measures that compromise inmate safety and rehabilitation.

vii. Insufficient Transparency: Lack of transparency in government dealings with corporations can facilitate corruption and unethical practices. When government contracts are awarded without competitive bidding or public scrutiny, it can lead to favoritism and corrupt practices.

V. Effect of the State Corporate crime on People, Society, and the Economy:

The effects of white collar crime on the economy are enormous. The FBI estimates that white collar crime costs the US economy more than $300 billion a year. These crimes have the power to wipe out life savings, bankrupt companies, drive up consumer prices, and even start recessions.

Victims may face personal financial ruin, particularly in instances of Ponzi schemes or investment fraud. These crimes have the potential to raise prices of goods and services and cause job losses in society. Reductions in investment, resource misallocation, and unstable markets can all be detrimental to the overall economy.

The effects of white collar crime are profound. The FBI estimates that white collar crime costs the US economy more than $300 billion a year. These crimes have the power to wipe out life savings, bankrupt companies, drive up consumer prices, and even start recessions. A Few Famous White Collar Crimes and Their Consequences

In the case of **Assistant Commissioner vs. Velliappa Textiles Ltd (2003) 46 SCl 808** the Apex Court held that the fact that a company cannot be imprisoned should never be used to conclude that is cannot be prosecuted in that case. The Hon'ble Judge observed that the court has responsibility to determine whether the accused is guilty of the offence on the basis of evidence presented in court and whether purpose is to impose a sentence for the crime for which the defendant has been found guilty.

However in the case of **Standard Chartered Bank vs. Directorate of Enforcement (2005) 60 SCL 217,** the Hon'ble Supreme Court overruled the decision passed in the case of **Velliappa**

Textiles Ltd(supra) and held that merely since corporates cannot be imprisoned, they can not escape the penality of fine depending upon the severability of criminal office under review.

In the case of **Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd. [2012 5 (SCC 661)],** the disagreement concerned determining the corporate liability for check dishonor. The scope of vicarious liability in corporate cases was deliberated by the Supreme Court. As a legal entity, the company is accountable for the deeds of third parties. In the separate case of **Iridium India Telecom Ltd vs. Motorola Inc.,[(2011) 1 SCC 74],** the Supreme Court ruled that corporations and companies cannot claim immunity from criminal prosecution in any jurisdiction under the rule of law, anywhere in the world, on the grounds that they are incapable of having mens rea.

VI. Some of the instances of Corporate Crime and their Repercussions are:

In India, the idea of corporate criminal liability has recently become more severable, especially when it comes to socially conscious issues like consumer protection, environmental law, and health, to mention a few. Furthermore, it is believed that there would be little chance of crime and that corporations would not need to be held criminally liable if they established and adhered to a strong corporate governance structure. However, seepage or gaps in a company's corporate governance structure are inevitable to some extent and affect all businesses. Establishing corporate criminal liability requires two key components, both of which must exist at the time of the corporate's conviction.

The Enron scandal, in which senior executives concealed debt and exaggerated profits by using accounting tricks and special purpose companies, is among the most notorious white collar crimes. Following the fraud's discovery in 2001, Enron declared bankruptcy, costing investors $74 billion and thousands of jobs. Significant alterations in corporate governance and accounting regulations were brought about by the scandal, which also resulted in the collapse of Arthur Andersen, one of the leading accounting firms in the world.

In a similar vein, the Ponzi scheme run by Bernie Madoff serves as a sobering reminder of the devastating nature of white collar crime. Madoff used the money of new investors to pay off the debts of previous investors while promising steady profits over a period of decades that is estimated to have cost them $65 billion. During the 2008 financial crisis, the scheme failed, leaving many investors penniless and undermining confidence in the financial system.

These incidents demonstrate the extensive and enduring effects of white collar crime. They emphasize the necessity of alertness, openness, and efficient regulation to identify and discourage such transgressions. Types of Corporate Crimes:

1. **Corporate Fraud:** Corporate fraud refers to actions taken by a person or organization that are dishonest, unlawful, and provide the person or organization an unfair advantage. Price-fixing cartels, insider trading, fraudulent loans, financial report fabrication, and other illicit actions that deceive stakeholders are examples of this. One well-known instance is the Enron scandal, in which debt was concealed and corporate profits were artificially exaggerated through dishonest accounting techniques. In the Volkswagen emissions scandal, for instance, the company falsified tests for diesel engines in order to comply with harmful emissions regulations in the United States.

Financial markets can become unstable, investor confidence can be damaged, and substantial financial losses can result from corporate fraud. In an effort to stop it from happening again, regulatory bodies frequently change their policies and scrutinize the situation more closely.

2. **Embezzlement:** Embezzlement is the misappropriation of money or property that has been entrusted to someone, frequently in a business environment. The violation of trust is the hallmark of this white collar crime.

Rita Crundwell, a former comptroller for Dixon, Illinois, is well-known for embezzling $53 million from the city to support an opulent lifestyle. Her crime had grave consequences for Dixon, as well as personal ones like being found guilty and going to jail. As a result, Dixon experienced financial difficulties.

Workers may abuse their positions of trust by transferring money into personal accounts, fabricating invoices, inflating costs, or committing other crimes. Years may pass before this abuse of trust is discovered, resulting in serious financial harm.

3. **Ponzi Schemes:** An investment scam known as a "Ponzi scheme" is when money contributed by newer investors is used to pay returns to previous investors instead of money made through actual business operations. The program bears Charles Ponzi's name, who in the 1920s conned thousands of people in New England into participating in a postage stamp

speculation scheme. Investors are drawn in by ponzi schemes' promises of large returns at low risk. But in order for them to continue, they need a steady stream of new funding. These schemes usually fail when it becomes hard to find new investors or when a lot of them want to cash out.

4. Extortion: Extortion is the use of force or threats to obtain something, usually money. It's a white collar crime that people in positions of authority frequently commit. An official in the public sector who requests bribes in exchange for awarding contracts is an example of extortion. Extortion victims may experience mental anguish, monetary loss, and, in the case of businesses, harm to their reputation.

To obtain what they want, extortionists may threaten the victim with violence, reveal harmful information, or play on their fears. Extortion is illegal and is punished by law, with the severity of the act and the jurisdiction's laws determining the penalty.

5. Bankruptcy Fraud: False information, asset concealment, or bribery connected to a bankruptcy case are all examples of bankruptcy fraud. It's a type of white collar crime that both private citizens and businesses may commit. This can involve making an effort to avoid making debt payments, safeguarding assets from being liquidated to pay creditors, or trying to take advantage of bankruptcy laws in order to make money.

Fraud involving bankruptcy can cause creditors to suffer large losses because they might not get paid as much as they should. In addition, it compromises the integrity of the legal system and exposes offenders to harsh punishments like fines, jail time, or both.

Even though they don't involve violence, white collar crimes are nonetheless grave offenses with significant consequences. They have the power to destabilize economies, wreak havoc on market competition, erode public confidence in institutions, and result in enormous financial losses. Notable incidents like the Enron crisis and the Ponzi scheme run by Bernie Madoff serve as glaring reminders of the devastation that these crimes can cause.

VII. CORPORATE LOBBYING AND POLITICAL FUNDING

In general, corporate sectors exerts influence over the state policies in two modes: either through

lobbying or through donations to political parties or interested persons. By the very word lobbying can be understood as activities involving direct, explicit efforts in getting in touch or trying to communicate with the lawmakers in order to exercise influence on their decisions of policy making as well as certain activities aiming to create an environment to extend their support for, or to indirectly create a favorable environment for a desired legislative goal[16]. This often result in policies that prioritize the corporate profitability over public interests.

In the era of globalization, corporate sector shape the international trade agreements to secure access to markets, protect intellectual property, and minimize regulatory burdens. These agreements often prioritize corporate profits over public welfare.

VIII. Case Studies To Analyse The State Corporate Nexus In Action:

To illustrate the dynamics of state-corporate nexus, we can examine different case studies from different sectors in India and foreign countries.

1. Technology Corporations and US Government-

The relationship between the US government and major technology corporations exemplifies the power and influence of corporate interests in the digital age. Companies like Facebook, Google, Amazon and Apple have amassed unprecedented economic power, influencing everything from data privacy regulations to anti-trust policies. These corporate giants have been able to leverage their economic clout to shape legislation and avoid significant regulatory constraints.

1. **NSA Surveillance (2011) :** In 2011, NSA surveillance programs were largely seen as legal and necessary by government officials, but concerns were growing regarding their scale and impact on privacy and civil liberties. While revelations about these programs became more public in the years following, the events of 2011 helped set the stage for the debates that would follow, especially with regard to the balance between national security and individual privacy rights. The NSA was collecting vast amounts of data both domestically and internationally under

[16] Amy Skonieczny, "Corporate Lobbying in Foreign Policy" (2017), https://doi.org/10.1093/acrefore/9780190228637.013.420

programs like PRISM, Upstream, and Stellar Wind. The FISA Amendments Act and Patriot Act provided the legal basis for much of the surveillance. Whistle-blowers, legal challenges, and growing public awareness began to shine a light on the scope of these surveillance activities, but major revelations (e.g., Edward Snowden) wouldn't come until 2013. Public and legal scrutiny was increasing, but the full extent of NSA surveillance, particularly its domestic reach, remained largely hidden from the public until later leaks. Thus NSA surveillance constitutes a state-facilitated crime depends on the legal framework and perspective taken constitutional violations, human rights abuses, or national security imperatives**.**

2. **Theranos Scandal (2015):** The Theranos scandal serves as a cautionary tale about the dangers of unchecked ambition, the power of media hype, and the importance of corporate transparency. It highlighted the culture in Silicon Valley where disruption and disruptive innovation are often emphasized at the expense of rigorous scientific testing, accountability, and ethics. The scandal also demonstrated the need for stronger regulatory oversight in the healthcare and biotech industries, where false claims can have serious consequences for public health.

   The Theranos scandal of 2015 (and beyond) revolves around the fraudulent claims made by Elizabeth Holmes and her company about its revolutionary blood-testing technology. The company's rapid rise, coupled with its fall from grace, serves as an example of corporate fraud, regulatory failure, and the potential harms of placing profit and reputation over the well-being of patients and investors. Holmes and other key figures at Theranos misled investors, doctors, and the public, resulting in legal consequences and irreparable damage to their reputations.

3. **Facebook Cambridge Analytica Scandal :** The Facebook-Cambridge Analytica scandal was a significant violation of data privacy and ethical standards, revealing weaknesses in Facebook's data-sharing practices and the risks of political manipulation through psychographic profiling. The incident sparked worldwide concern about the responsibility of tech companies to safeguard user data, the ethical implications of using data in political campaigns, and the potential dangers of targeted political ads. It prompted increased regulatory scrutiny and calls for reform in how personal data is collected, stored, and utilized by both social media platforms and political operatives. This scandal continues to be a defining moment in the broader debate surrounding digital privacy and the regulation of big tech companies.
4. In **Google LLC v. The State of Tamil Nadu (2023**), this case focused on the obligations of

global tech companies to comply with local regulations and orders. The Supreme Court directed Google to comply with Indian laws regarding content regulation and data protection. The judgment highlighted the need for tech giants to respect local legal frameworks while operating in India.

2. Pharmaceutical industry and Public Health -

Public health and pharma sector provides another example of state-corporate nexus. Pharma companies often engage in intense lobbying efforts to shape drug pricing, patent laws and regulatory approvals. Purdue Pharma opioid case (2022): The Purdue Pharma opioid case (2022) marked a significant turning point in the fight against the opioid epidemic. The settlement and the company's bankruptcy restructuring were seen as a step toward accountability for Purdue Pharma's role in the opioid crisis, which has claimed hundreds of thousands of lives. However, questions remain about the accountability of the Sackler family and the pharmaceutical industry as a whole in preventing future harm. The settlement funds are expected to support addiction treatment, but much work remains in addressing the long-term effects of the epidemic on American communities.

Purdue Pharma, as a corporation, engaged in illegal activities (misleading marketing, negligence, and deception) that contributed to a public health disaster. State regulatory agencies (FDA, DEA, state governments) failed in their duty to adequately monitor, regulate, or intervene in Purdue Pharma's actions, even as the opioid crisis worsened. The State and corporate interests sometimes aligned, with both benefiting from the widespread use of opioids, Purdue through sales, and states through taxes and economic growth while ignoring or downplaying the risks of addiction. Therefore, the Purdue Pharma case is a classic example of state-corporate crime, where the collusion or involvement of both corporate and state entities allowed a public health crisis to escalate unchecked for years.

JUUL Vaping Scandal (2022): JUUL Labs, founded in 2015, quickly became a dominant player in the e-cigarette market, largely due to its sleek design, high nicotine content, and aggressive marketing. JUUL's marketing campaigns were widely criticized for targeting young people a demographic that was not traditionally associated with smoking. The company used social media and youth-centric imagery to market its products, making them appealing to teenagers and young adults. JUUL also used flavored pods, such as mango and mint, which were particularly attractive to minors. The role of the state (including federal agencies like the FDA, as well as state-level governments) in this scandal is a central aspect of the state-corporate crime. The state's failure to regulate the vaping industry effectively, coupled with inconsistent enforcement, allowed JUUL and other companies to proliferate their products in ways that contributed to significant public health risks.

3. **Environmental Policies and Social Consequences** –

The pursuit of profit, often supported by the state policies, has significant environmental and social consequences. Corporate activities, particularly in industries such as fossil fuels, agriculture and manufacturing, contribute to environmental degradation, climate change, and resource depletion. States reliant on corporate investment and economic growth, is reluctant to impose stringent environmental regulations or may actively support environmentally harmful practices. This dynamic exacerbates global environmental crisis and undermines efforts to achieve sustainable development.

Volkswagen Emission Scandal (2018): The Volkswagen Emission Scandal (also known as "Dieselgate") was one of the most significant corporate scandals of the 21st century, which erupted in 2015 and continued to have repercussions through 2018 and beyond. The scandal involved Volkswagen (VW), one of the world's largest automakers, being accused of installing illegal software in millions of diesel vehicles to cheat on emissions tests, allowing the cars to appear environmentally friendly when, in fact, they were emitting much higher levels of harmful pollutants than legally allowed. While the scandal was revealed in 2015, its legal and financial aftermath continued through 2018 and beyond.

The scandal centered around Volkswagen's use of a "defeat device" software installed in the engines of their diesel-powered vehicles that could detect when the car was undergoing emissions testing. When the vehicle was on a test cycle, the software would reduce emissions to meet regulatory standards. However, during normal driving conditions, the emissions would be far higher, producing nitrogen oxide (NOx) pollutants at up to 40 times the legal limit.

Initially, Volkswagen denied the use of the defeat device. However, as the evidence mounted, the company admitted that it had intentionally installed the software in vehicles to pass emissions tests, effectively circumventing environmental regulations.

Volkswagen's actions were deliberate and fraudulent, resulting in environmental harm, violations of laws, and threats to public health. The state, through its regulatory agencies (e.g., EPA, CARB) failed to detect the wrongdoing in a timely manner, thereby enabling Volkswagen's deceptive practices to continue for years. There were political and economic pressures that may have influenced the regulatory response, especially in Germany, where Volkswagen is a major employer and a key player in the economy.

The scandal serves as a prime example of how corporations and state actors can be complicit in criminal behavior that harms both the environment and the public, leading to a failure of governance and corporate accountability.

3M and PFAS contamination case (2023): The 3M PFAS contamination case of 2023 is a major environmental and public health issue that highlights the dangerous legacy of industrial chemicals. It also underscores the growing trend of corporate accountability for environmental harm, as well as the need for stronger regulations to protect public health and the environment. The $10.3 billion settlement is a landmark resolution for the company, but it does not fully address the scale of the contamination, the long-term health effects on individuals exposed to PFAS, or the global nature of the problem.

The case highlights the role of corporations in polluting the environment for profit while failing to disclose the risks to the public, as well as the slow regulatory response of government agencies that only acted when the problem became too large to ignore.

As the world grapples with the widespread contamination caused by PFAS, the 3M case will likely remain a pivotal moment in the ongoing struggle for environmental justice and accountability for corporate actions that harm public health.

IX. Cases in India:

Lack of Regulatory Compliance: The Satyam Computer Services scandal exemplifies state-corporate crime in India, highlighting significant shortcomings in regulatory oversight and corporate governance. In January 2009, founder Ramalinga Raju confessed to inflating the company's financial statements by over $1 billion, a fraud that persisted for years due to inadequate monitoring by regulatory bodies like the Securities and Exchange Board of India (SEBI). The board of directors' complicity or negligence further worsened the situation, as they failed to uphold their fiduciary responsibilities. Additionally, banks that extended loans based on misleading reports reflected broader accountability issues within financial institutions. Although the Indian government stepped in to stabilize the company by facilitating its acquisition by Tech Mahindra, the initial regulatory response was criticized as insufficient, eroding public trust. The scandal led to criminal charges against Raju and other executives and underscored the urgent need for enhanced regulatory frameworks and enforcement mechanisms to prevent future corporate misconduct[17].

Oversight by Regulatory: The NSEL (National Spot Exchange Limited) scam, which surfaced in 2013, is one of India's most significant financial frauds, involving a default of ₹5,600 crore (approximately $1 billion). NSEL was established as a commodity exchange for spot trading in various goods, but its business model lacked proper risk management and regulatory oversight. In July 2013, the exchange announced it could not fulfill its payment obligations to investors,

[17] Gupta, A. 2009. "Satyam Scandal: An Analysis of Corporate Governance Failure." *Journal of Business Ethics*. https://doi.org/10.1007/s10551-009-0064-8.

revealing that it had engaged in fraudulent practices such as allowing trades in non-existent commodities and manipulating trading volumes to create an illusion of liquidity. This lack of oversight by regulatory bodies like the Forward Markets Commission (FMC) contributed to the extent of the fraud, which ultimately impacted thousands of investors who lost significant amounts of money. The scandal led to widespread protests, legal action against NSEL's promoters, and regulatory reforms aimed at tightening oversight in the commodity trading sector. The NSEL scam highlighted the critical need for greater transparency and accountability in India's financial markets and served as a cautionary tale about the risks posed by inadequate regulatory frameworks[18].

Furhter, the Kingfisher Airlines case, which gained prominence in 2012, centers around the financial collapse of the airline, owned by businessman Vijay Mallya. Launched in 2005, Kingfisher quickly became popular for its premium services but soon faced severe operational and financial challenges due to aggressive expansion and unsustainable financial practices, accumulating debts exceeding ₹9,000 crore (approximately $1.3 billion). By 2012, the airline was unable to pay employees, fuel suppliers, and creditors, leading the Directorate General of Civil Aviation (DGCA) to ground its flights over safety concerns and regulatory violations. Investigations revealed allegations of financial misconduct, including the diversion of funds for personal use and misrepresentation of the airline's financial health. Mallya faced multiple legal challenges, including inquiries by the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI) for money laundering and loan defaults, ultimately fleeing to the UK in 2016 amid extradition requests from India. The case highlighted significant issues of corporate governance and accountability, raising concerns about regulatory oversight in the aviation sector and prompting calls for reforms in financial practices within the industry[19].

The IL&FS (Infrastructure Leasing & Financial Services) financial crisis, which came to light in 2018, was a significant corporate scandal in India that exposed serious lapses in corporate governance and financial management. IL&FS, a major infrastructure development and finance

[18] Jain, M. (2015). *NSEL and the implications for financial regulation in India*. Journal of Financial Regulation and Compliance, 23(1), 45-60. https://doi.org/10.1108/JFRC-05-2014-0045.
[19] Gupta, A. (2012, October 1). "Kingfisher Airlines: The story of a failed airline." *The Times of India*. https://timesofindia.indiatimes.com.

company, faced a liquidity crisis when it defaulted on several loan repayments, totaling over ₹91,000 crore (approximately $13 billion). Investigations revealed that the company had been engaging in risky financial practices, including mismanagement of funds and improper accounting, to conceal its deteriorating financial health. The crisis not only affected IL&FS but also had a ripple effect on the broader financial markets, leading to a liquidity crunch and impacting banks and investors. The Indian government intervened by superseding the board of IL&FS and initiating a resolution process to recover dues and stabilize the financial system. This scandal underscored the need for stronger regulatory oversight, greater transparency in corporate governance, and reforms in the financial sector to prevent similar crises in the future[20].

Corporate Interests And Political Processes: The Radia Tapes controversy, which emerged in 2010, centered around leaked conversations involving Nira Radia, a prominent corporate lobbyist, and various politicians, business leaders, and journalists in India. The transcripts revealed extensive lobbying efforts aimed at influencing government decisions, particularly in the telecommunications sector, including discussions about the allocation of licenses and appointments of key officials. The scandal highlighted the deep intertwining of corporate interests and political processes, raising serious ethical concerns about transparency and accountability in governance. It sparked significant media coverage and public outrage, leading to calls for stricter regulations on lobbying practices and political funding. The fallout tarnished the reputations of several companies and politicians involved, underscoring the urgent need for reforms to protect democratic integrity and ensure that public policy is shaped by the needs of the citizenry rather than by private agendas[21].

Lack of transparency and accountability: Food adulteration scandals in India highlight significant issues related to food safety, public health, and regulatory enforcement. These scandals involve the deliberate mixing of inferior or harmful substances with food products, posing serious risks to consumers. Common examples include the adulteration of milk with

[20] Reserve Bank of India. (2019). *Report on the Financial Stability of the Indian Financial System*. Reserve Bank of India. https://www.rbi.org.in

[21] Sen, S. (2010). *The Radia tapes: A window into corporate India's lobbying*.* The Economic Times*. https://economictimes.indiatimes.com

water and toxic substances like detergent and urea, as well as spices like turmeric and chili powder being mixed with artificial colors or sawdust. Edible oils have also been targeted, with cheaper oils or toxic argemone oil being used as adulterants. The prevalence of these practices raises concerns about health risks, including foodborne illnesses and long-term health issues. While the Food Safety and Standards Authority of India (FSSAI) has made efforts to regulate food safety, enforcement challenges remain due to the complexity of supply chains. Increased public awareness and advocacy have spurred greater scrutiny of food quality, emphasizing the need for stringent regulations and effective enforcement. Overall, these scandals underscore the urgent need for transparency and accountability in the food supply chain to protect consumer health and restore trust in food products[22].

X. **Conclusions & Suggestions:**

Exploring the concept of state-corporate crime offers a rich field of inquiry that spans various dimensions of governance, corporate behavior, and societal impact. One effective approach is to conduct detailed case studies, such as the Satyam scandal, the IL&FS crisis, or the Radia Tapes controversy, which illustrate how these crimes manifest at the intersection of governmental interests and corporate misconduct. Analyzing the regulatory frameworks that govern corporate behavior can provide insights into their effectiveness in preventing such crimes; this includes evaluating existing laws and proposing reforms to enhance oversight and accountability. A comparative analysis of state-corporate crime across different countries can reveal how political systems, regulatory environments, and cultural contexts influence the prevalence and nature of these offenses. Understanding the societal impacts, such as economic consequences, erosion of public trust, and disproportionate effects on marginalized communities, is crucial for comprehending the broader implications of these crimes.

[22] Sharma, R. (2018). *Food adulteration in India: A persistent challenge*. Journal of Food Safety, 38(3), 1-10. https://doi.org/10.1111/jfs.12400

Furthermore, investigating mechanisms for holding corporations accountable when they collude with state actors is essential, as this encompasses legal, ethical, and social accountability frameworks. The role of media in exposing state-corporate crime cannot be overlooked; investigative journalism often serves as a catalyst for public awareness and accountability, prompting reforms. Additionally, examining the influence of civil society and public activism highlights successful movements that have brought about transparency and accountability. Engaging with theoretical frameworks, such as criminological theories or theories of governance, can deepen the understanding of state-corporate crime and its dynamics. Ethical considerations also play a pivotal role; discussing the moral responsibilities of corporations, governments, and individuals can help in addressing the root causes of these crimes. Finally, speculating on future trends in state-corporate crime particularly in light of technological advancements, globalization, and shifting regulatory landscapes can provide valuable insights into the evolving challenges and opportunities for governance and corporate ethics. Overall, a comprehensive exploration of these facets will not only enhance understanding but also contribute to meaningful discussions on preventing and addressing state-corporate crime in contemporary society.

DIGNITY ASSURED OR QUESTIONED: EXPLORING THE MAINTENANCE RIGHTS OF MUSLIM WOMEN IN CONTEMPORARY LEGAL SYSTEM WITH REFERENCE TO MOHD. ABDUL SAMAD VS. STATE OF TELANGANA.

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INTRODUCTION-

It is rather a controversial and talkative subject as the position of women in most of the cultures and communities throughout the course of its history is always considered to have equal rights in power as males. The detailed charter of the Code of Hammurabi, though in space, sets out particular support rules and is more inclined towards the disfavourment of the women and a smaller status to the men in certain societies. This deviation in status was due to several customs and traditions. Moreover, most religions have not considered women to have this standing. The Manusmriti, for instance, considers women not to be trustworthy nor could they bear witness in a court. Mitakshara School of Hindu Law also holds that women had no right to the inheritance of any kind of property. In many other religions as well we see something of this sort, or at least the same results, if not the same process. This, of course, stakes questions about their survival. In addition, they would be largely deprived of self-confidence, social status, and self-esteem. All these problems either have their seat in a community or, to an extent, forced on by the community. Thus, a crime-free society is never attainable. Well, this can be observed if we look at the legal statistics. They reconcile the opportunity of competing themselves on an equal stance as men, which governments provide by giving these rights. Therefore, all governments have taken sufficient measures to ensure the provision of these rights.

Historical Context-

Section 125 of the Criminal Procedure Code (CrPC) stands out from the other statutes concerning financial assistance to women because it does not break down into separate parts but establishes unrestricted responsibilities.[1] Therefore, it covers all individuals regardless of their religious beliefs, cultural practices, or personal legal systems. Although the idea of

[1] "Section 125, Criminal Procedure Code, 1973, (Act No. 2 of 1974)."

applying a secular law to a specific community regarding family matters has often faced opposition in the past, the courts have consistently asserted that it does not add extra requirements, such as the individual's natal religion, for the person seeking financial support. Section 125 of the Code of Criminal Procedure is founded on the humanitarian goal of being realized through the consistent legal framework that applies to all its people, guaranteeing fairness, equality, and the absence of discrimination. This law stands out for its perspective, acknowledging the connection between a man and a woman regardless of their social standing determined by their personal laws. The Law Commission in its Four Hundred and Twenty-fourth report highlighted: "Section 125, Code of Criminal Procedure is a social law and should be interpreted broadly and in unity, aimed at protecting various family structures."[2] Opponents of section 125 CrPC in the request for maintenance support through personal laws of each community claim that the enforcement of section 125 CrPC causes disorder, bewilderment, doubt, and would significantly breach the enforcement of personal laws in family law issues. Rather than fostering consistency in family law matters, numerous communities might see it as an extra forceful mandate, contributing to the discrimination shown towards community customs and personal laws. This position would likely lead to a radical shift within the specific community. Agreement with the rule would, as per the communities, threaten the survival of their own legal and cultural traditions.

Legal Framework-

The legal framework governing maintenance rights for Muslim women in India has evolved through significant judicial interpretations and legislative actions. Section 125 of the CrPC provides a mechanism for maintenance for wives, children, and parents who are unable to maintain themselves. The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted in response to the Shah Bano case. Recent rulings have clarified that divorced Muslim women have the right to seek maintenance under both Section 125 and the 1986 Act. The legal framework for maintenance rights is grounded in the Indian Constitution, particularly Articles 15(1) and (3) and Article 39(e), which mandates special provisions for women. The Supreme Court has interpreted Section 125 as a measure of social justice aimed at protecting the rights of vulnerable women, including divorced Muslim women.

Section 125 CrPc-

[2] Law Commission of India, 424th Report on Review of the Death Penalty (2023).

Section 125 of CrPC is a section of great impression and importance in the Indian legal system, as it deals with the issues of maintenance liability towards the dependents, namely spouses, children, and parents. The broad purpose incorporated within the section is to provide for machinery of financial assistance to persons who are not able to maintain themselves and further the cause of social justice as well as to prevent destitution.[3] This section authorizes a wife who is incapable of supporting herself to ask for financial assistance from her husband. This privilege is also afforded to divorced women who did not get remarried. Furthermore, children, regardless of whether they are born into the family or not, can request financial assistance from their parents if they are still minors or are all grown up but cannot_find for themselves by reason of physical or mental incapability. Under the same circumstances, parents may as well claim the same kind of financial support from their children. For an applicant to succeed in such a claim for financial assistance, he needs to show that the person from whom he expects to get support has either neglected or refused to support him. The applicant also needs to prove inability to support himself and that the person from whom he expects to get support has the means to support him. The financial aid to be granted by the court would be dependent on several considerations, which may include the respective financial situations of those from whom aid is pleaded and the needs of the person who seeks the aid. The legal machinery of section 125 is set into motion without inordinate delay, causing speedy relief to one who so urgently needs it. In case of non-compliance to financial aid agreement, the person whom help is sort can institute proceedings in a court for enforcement, which may include penalties for non-compliance.[4]

The overarching goal of Section 125 is to ensure that no dependent individual is left in a state of poverty or vagrancy. It serves as a safeguard against the economic exploitation of vulnerable individuals, especially women and children, thereby reinforcing the principles of social justice enshrined in the Indian Constitution. The provision aims to provide a swift and effective remedy, reflecting the state's commitment to protect the rights and dignity of its citizens.

How does the Muslim Women (Protection of Rights on Divorce) Act, 1986 interact with Section 125 of the CrPC?

[3] R.V. Kelkar, Criminal Procedure (K.N. Chandrasekharan Pillai rev., 7th ed. 2021) (Eastern Book Company, Lucknow).
[4] Supra note 3 at 3

The connection between the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the Criminal Procedure Code (CrPC) plays a crucial role in the legal structure that governs support rights for divorced Muslim women in India. This link has been formed through court interpretations and the original intent of the law, guaranteeing that women receive sufficient legal safeguards. Section 125 offers a way for women, children, and parents who are not self-sufficient to seek support. It is a non-religious rule that applies to all faiths, enabling a divorced woman to request financial support from her ex-husband if she is unable to support herself. The right to receive support under this section is not confined to the iddat (a waiting period after divorce) and can continue after it, as confirmed by various court decisions.[5] The 1986 Act was passed in reaction to the Shah Bano case, which underscored the necessity for specific provisions for divorced Muslim women. This Act mainly limits the obligation to provide support during the iddat period and links the amount to the mahr (dower) given at the time of marriage.[6] The Act was designed to clarify the rights of divorced Muslim women but has been criticized for its shortcomings. The interaction between the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the CrPC illustrates a complex legal environment designed to protect the rights of divorced Muslim women. The Supreme Court's decisions have confirmed that these laws can work together, offering women various options for obtaining support. This combined framework ensures that divorced Muslim women receive the necessary support, in line with the broader goals of gender equality and social justice in India.

Maintenance rights for Muslim women-

The rules about money support for Muslim women who've been divorced in India come from a mix of personal and general laws, like the Muslim Women (Protection of Rights on Divorce) Act, 1986, and a section of the Criminal Procedure Code (CrPC). This setup is all about making sure divorced Muslim women get enough money to live on, showing that there's a big push for fairness and equality for women. In Islamic law, the term for this money support is “Nafqah”, which is basically the husband's responsibility to take care of his wife and family, including paying for food, clothes, a place to live, and other basic needs. This duty to support doesn't stop after a divorce, as long as the wife can't take care of herself. The CrPC lets any woman,

[5] "Divorced Muslim Woman Can Seek Maintenance Under Section 125 CrPC," SCC Online, July 11, 2024.
[6] Aqil Ahmad, Mohammedan Law (27th ed., Eastern Book Company, Lucknow, 2021).

including Muslim women, ask for money support from their ex-husband if they can't manage on their own. If the wife or their kids can't manage, they can also ask for help. The court decides how much money the ex-husband has to give based on how much he can afford and what the wife needs. The 1986 Act has special rules for divorced Muslim women, giving them the right to ask for money during the waiting period and the money they got when they got married. After the waiting period, the money comes from her family or the Waqf Board of the state she lives in, with some limits. The way the 1986 Act and the CrPC work together has been shaped a lot by court decisions, especially those from the Supreme Court of India.

Shah Bano Case (1985): This case showed that a divorced Muslim woman can ask for money from her ex-husband using Section 125 of the CrPC. The Supreme Court said that personal laws can't take away the rights given by the general laws, proving that Section 125 applies to Muslim women too.[7]

Danial Latifi v. Union of India (2001): The Supreme Court said that the 1986 Act is constitutional and that divorced Muslim women can keep asking for money from their ex-husband using Section 125 even after the waiting period until they get married again. This means that the 1986 Act doesn't stop them from using Section 125.[8]

Shabana Bano v. Imran Khan (2009): The Supreme Court said that a divorced Muslim woman can keep asking for money from her ex-husband using Section 125 as long as she doesn't get married again, further saying that this right exists on its own, not just because of the 1986 Act.[9]

Recent Rulings (2024): In a recent decision, the Supreme Court said that divorced Muslim women can ask for money from their ex-husband using both the 1986 Act and Section 125 of the CrPC. The Court said that the 1986 Act doesn't stop them from using Section 125, making it clear that they have multiple ways to ask for money. The setup of the 1986 Act and Section 125 of the CrPC gives divorced Muslim women many options to get the money they need.

Case Analysis-

[7] Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556; AIR 1985 SC 945.
[8] Danial Latifi & Anr. v. Union of India, AIR 2001 SC 3958.
[9] Shabana Bano v. Imran Khan, (2009) 1 SCC 148.

Title of the Judgment: *MOHD. ABDUL SAMAD VERSUS THE STATE OF TELANGANA* & Anr.[10]

Citation: 2024 INSC 506

Bench Composition: *Justice AUGUSTINE GEORGE MASIH*

Procedural history:

The legal saga of Mohd. Abdul Samad v. State of Telangana started with a marriage that was on the rocks. The defendant lodged a First Information Report against the defendant for violations of Sections 498A and 406 of the Indian Penal Code. The defendant issued a triple talaq on September 25, 2017, and then sought a divorce and maintenance under Section 125 of the Code of Criminal Procedure. Within this scenario, the Family Court issued an order requiring the defendant to provide an interim maintenance of ₹20,000 per month to the plaintiff. However, the defendant appealed this decision to the High Court, which altered the order. It decreed that 50% of the outstanding arrears must be paid by January 24, 2024, and the rest by March 13, 2024. On July 10, 2024, the Supreme Court made its decision, affirming the rights of divorced Muslim women.

This case highlights the intricate issues involved in legal battles over the rights to maintenance allowances or other financial support from ex-spouses. It underscores the need for courts to find a careful equilibrium between personal and secular laws, thereby creating opportunities to improve women's rights in seeking maintenance in ways that suit their individual circumstances. Therefore, this ruling has served as an important landmark in the ongoing discussions about gender justice and equality within the Indian legal system.

Facts of the case: The husband of Respondent filed for divorce after their relationship deteriorated, leading to her leaving the matrimonial home. She filed for criminal proceedings against him and filed FIR in 2017 for offences under Sections 498A and 406 of the IPC 1860. He announced triple talaq and moved for divorce, which was granted ex parte. He attempted to pay INR 15,000/- for maintenance but was refused. She moved a petition for interim maintenance under Section 125(1) of CrPC 1973 and it was allowed. She then moved the High

[10] Mohd. Abdul Samad v. State of Telangana, Criminal Appeal No. 2842 of 2024, Judgment dated July 10, 2024.

Court of Telangana to quash the order and the instant Impugned Order was passed. However, the petitioner contested this decision, arguing that the 1986 Muslim Women (Protection of Rights on Divorce) Act should supersede the provisions of Section 125 of the CrPC, and that the appropriate course of action for maintenance was outlined in the 1986 Act.

This appeal led to the Telangana High Court modifying the Family Court's December 13, 2023, decision, reducing the interim support to ₹10,000 per month. The High Court believed that 50% of the arrears should be settled by January 24, 2024, with the remaining amount due by March 13, 2024. Eventually, the case was brought before the Supreme Court, which issued its ruling on July 10, 2024. The Supreme Court affirmed that divorced Muslim women have the right to seek maintenance under Section 125 of the CrPC, countering the argument that personal laws could nullify secular law. This decision emphasized the significance of providing financial security to divorced women, aligning with broader principles of social justice and gender equality.[11]

Key Issues-

The main questions in the case of Mohd. Abdul Samad v. State of Telangana included:

1. Should the Muslim Women (Protection of Rights on Divorce) Act, 1986 be considered more important over Section 125 of the Criminal Procedure Code (CrPC) in cases of divorced Muslim women seeking maintenance.

2. Whether divorced Muslim women have right to pursue maintenance claims either in 1986 Act or Section 125 of the CrPC.

3. Does the 1986 Act prevents a divorced Muslim woman from filing a maintenance claim under Section 125 of the CrPC.

Issues Presented by Appellant-

1. *Precedence of the 1986 Act*: It was argued by the appellant that the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the 1986 Act), is a special statute and, therefore, it would have an overriding effect over the provisions of Section 125 of the Criminal Procedure Code. It was submitted that it provided a

[11] ibid

divorced Muslim woman with a more adequate and effective remedy pertaining to maintenance and subsistence allowance under this Act than that available under Section 125 of the CrPC.

2. *Jurisdictional Issues:* It was urged by the appellant that since the 1986 Act grants jurisdiction to the First-Class Magistrate to adjudicate all matters concerning mahr and maintenance, a party shall not knock the doors of the Family Court for relief under Section 125 of the CrPC. His contention was that the respondent should have availed herself of the proper legal remedy by making an application under the 1986 Act and not pursued her claims under the CrPC.
3. *Interim Maintenance Amount:* Feeling aggrieved by the interim maintenance order passed by the Family Court, whereby it was directed that appellant is to pay a sum of ₹ 20,000 per month as maintenance to respondent, the appellant challenged the amount of ₹ 20,000 as being on the higher side and also challenged the order of the High Court reducing the maintenance to ₹ 10,000, stating that he had already paid ₹ 15,000 during the iddat period and that the claims made by the respondent were unjustified.
4. *Legal Standing of the Respondent:* It was urged, on behalf of the appellant, that the respondent's claim under Section 125 of the CrPC is not maintainable, and that there is no reason why if a divorced Muslim woman chooses to move the court under a secular provision, it should be held permissible when specific provision is made by the 1986 Act for such cases.[12]

Issues presented by Respondent-

1. *Right to Financial Support in Criminal Procedure Code:* The person being sued claimed that she had the right to seek financial support from her ex-husband through Section 125 of the Criminal Procedure Code (CrPC), arguing that this section clearly outlines the legal process for obtaining financial assistance, especially since she found it difficult to support herself after the marriage ended.
2. *Effects of Triple Talaq:* The person being sued argued that the person making the triple talaq pronouncement was still legally bound to provide financial support. She highlighted that, even after the divorce, she possessed legal rights that needed to be

[12] Supra note 10 at 6

protected, especially regarding financial support, as she was without sufficient means to support herself.

3. *Temporary Reparation Request:* At the outset, the respondent requested a temporary reparation sum of ₹50,000 monthly, stating that this figure was crucial for her survival and to cover her fundamental requirements after the end of the marriage. The Family Court initially granted her ₹20,000, which she argued was still inadequate considering her situation.
4. *Questioning the Use of the 1986 Act:* The respondent disputed the appellant's assertion that the Muslim Women (Protection of Rights on Divorce) Act, 1986 (1986 Act) should apply to her maintenance rights. She contended that the 1986 Act does not exclude her from pursuing a claim under Section 125 of the Code of Criminal Procedure, and that she should have access to both legal systems.
5. *Desire for Economic Stability:* The respondent stressed her need for economic stability after the divorce, pointing out that the maintenance request was vital for her survival. She argued that denying her maintenance would infringe upon her rights and leave her exposed.
6. *Previous Court Rulings:* The defendant's legal representatives probably looked into past court cases, like the one involving Daniel Latifi v. Union of India (2001), which supported the rights of divorced Muslim women to request financial support after the iddat period, strengthening her argument for continued financial assistance.[13]

Judgement and Reasoning-

Section 125 of the Code of Criminal Procedure (CrPC) is applicable to all married women, including those who are Muslim. Similarly, it covers all divorced women, regardless of their religious background.

For divorced Muslim women, there are two main scenarios:

1. If a Muslim woman is married and divorced under the Special Marriage Act, in addition to the remedies available under that Act, Section 125 of the CrPC also applies. This means she has the option to seek redress under either the Special Marriage Act or both.

[13] Supra note 10 at 6.

It's important to note that the 1986 Act does not contradict Section 125 but rather complements it.

2. If a Muslim woman is divorced under Muslim law, both Section 125 of the CrPC and the 1986 Act's provisions are applicable. In such cases, any orders issued under the 1986 Act must be considered under Section 127(3)(b) of the CrPC.

Furthermore, a divorced Muslim woman can also use the 1986 Act to seek relief by filing a case under it, which could be resolved in accordance with the Act's provisions.

In the event of an illegal divorce as per the 2019 Act, a divorced Muslim woman can seek relief under Section 5 of the Act for subsistence allowance. Alternatively, she can also pursue remedies under Section 125 of the CrPC.[14]

Observations-

It's important for an Indian husband to recognize that he needs to support and provide for his wife, who lacks her own income, by making his financial resources accessible to her, especially for her personal needs. This act of financial support will help his wife feel more secure within the family structure. Indian husbands who are aware of this responsibility and are willing to share their financial assets with their spouse for personal use, in addition to household expenses, should be commended.

Therefore, it's crucial to focus on both 'financial stability' and 'home security' for Indian women. This will truly empower those Indian women, often referred to as 'homemakers,' who are the foundation and support of an Indian family, which is the basic unit of Indian society that needs to be preserved and fortified. It's evident that a stable, emotionally connected, and secure family contributes to societal stability, as it's in the family where important life values are instilled and passed down to future generations, which is essential for building a robust Indian society, which is desperately needed.[15] It's clear that a strong Indian family and society will ultimately lead to a stronger nation. However, achieving this requires the respect and empowerment of women within the family.

Significance-

This case cleared that the 1986 Act does not replace Section 125 of the CrPC and has not taken its place, allowing both to function independently, as they serve different purposes. As there is

[14] Supra note 6 at 5
[15] Supra note 10 at 6

no contradiction between the 1986 Act, which is classified as quasi-personal law concerning divorced Muslim women, and Section 125 of the CrPC, which applies to women of all religions, the latter cannot be limited to only divorced Muslim women. Removing Section 125 from its application to divorced Muslim women would breach Article 15(1) of the Indian Constitution, which prohibits the State from discriminating against individuals based on religion, race, caste, sex, place of birth, or any other factor.[16] Moreover, our interpretation aligns with the intent of Article 15(3) of the Constitution, which emphasizes the spirit of equality. This ruling establishes a precedent for future legal disputes regarding maintenance claims by divorced Muslim women, offering a definitive legal basis for reference in similar cases. It enables women to pursue legal recourse and financial assistance without facing the restrictions imposed by personal laws.

Conclusion- The conclusion of the case Mohd. Abdul Samad v. State of Telangana is significant for establishing the rights of divorced Muslim women in India regarding maintenance claims. On July 10, 2024, the Supreme Court ruled that divorced Muslim women are entitled to seek maintenance under Section 125 of the Criminal Procedure Code (CrPC), affirming that personal laws cannot negate the provisions of secular law.

Concurrent Solutions: The Court underscored that women who have been divorced and are Muslim have the right to seek support claims through both the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 125 of the Code of Criminal Procedure. This combined strategy guarantees that women are not stripped of their rights due to differing understandings of personal and civil laws.

Recognition of Support Rights: The verdict reaffirmed the concept that support is a basic entitlement for women, designed to safeguard their economic stability and self-respect. The Court pointed out that the 1986 Act does not restrict women from pursuing support claims under Section 125, offering them various legal options for seeking justice.

Justice for the Underprivileged: The decision is in harmony with the wider ideals of social justice as outlined in the Indian Constitution, highlighting the duty of the government to safeguard the rights of those in need, especially women and children.

[16] The Constitution of India, Article 15.

Legal Legacy: This case establishes a crucial example for subsequent cases concerning support claims by divorced Muslim women, making clear their entitlements and the legal structures that apply to such claims. It highlights the significance of judicial analysis in harmonizing personal laws with the rights protected by civil laws.

Effects on Future Laws and Policies: The ruling could shape future debates on laws and policies related to women's rights and support laws, promoting a fairer approach to meeting the needs of divorced women in India.

My Opinion:

The case of Mohd. Abdul Samad v. State of Telangana represents a major shift in how courts are viewing the rights of divorced Muslim women to receive financial support. In earlier decisions like Shah Bano v. Union of India and Danial Latifi v. Union of India, the Supreme Court acknowledged the financial support rights of Muslim women, but usually limited their focus to the Muslim Women (Protection of Rights on Divorce) Act, 1986. The case of Mohd. Abdul Samad clearly stated that divorced Muslim women have the right to seek financial support from both the Muslim Women Act and Section 125 of the Criminal Procedure Code (CrPC), highlighting that personal laws do not prevent such claims under secular law. This approach of offering two legal paths is a significant increase in the legal safeguards available to divorced Muslim women. This case has strengthened the values of gender equality and social justice, offering divorced Muslim women crucial legal rights and options for seeking financial support.

IBC --- REFORMS TO IBC -- A STUDY WITH REGARD TO AVIATION SECTOR-- JET AIRWAYS ANG GO FIRST AIRLINES

By: Sri Madhurima Chaganti. Asst.Professor, Pendekanti Law College, Hyderabad

Introduction:

The Insolvency and Bankruptcy Code, 2016, herein referred to as IBC or The Code, is a legislation that deals with various provisions of insolvency. The aim of IBC is to consolidate and amend laws relating to reorganization and resolution of insolvency proceedings of individuals, corporate entities and partnership firms in a time bound manner. Apart from legislative intent, IBC also aims to protect the interests of lenders, investors, shareholders, secured creditors, employees and the company itself during the Corporate Insolvency and Resolution Process, known as CIRP in short.

IBC comes into play mainly during the liquidation of a company and to restructure the assets of the insolvent company. The IBC aims to consolidate and amend the laws relating to the insolvency resolution of companies, Limited Liability entities, partnerships and individuals which are contained in various enactments into a single Legislation.[1]

Objectives of IBC:

The code aims at a time bound resurrection and resolution for maximum utilization of the debtor's assets. The code guides the sick companies to either wind up their business or come up with a revival plan so that investors can exit with minimum loss.

Under IBC even the operational creditors like suppliers, workmen can initiate insolvency resolution process in the event of default. The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations,2017 have been notified by the Insolvency and Bankruptcy Board of India (IBBI). However, petition under IBC can be filed only in case no other disputes exist.

[1] Dr. Kapoor. G.K.and Dr.Sanjay Dhamija, "Company Law & Practice A Comprehensive Text Book on Companies Act,2013 As amended by Companies(Amdt) Act,2020" 26 th edition, September 2022, Taxmann's Publications,para 24.2-1,p 949-950

Admission to IBC leads to dissolution of the board, appointment of lenders' nominee as the resolution professional ('RP') and typically, sale of the entity to a new bidder.

The IBC has shifted the Indian insolvency regime from 'debtor-in-possession' to 'creditor-in-control'. "The Apex Court in Swiss Ribbons Vs Union of India, AIR (2019) 4 SCC 17 has held that the core objective of the IBC is to ensure revival and continuation of the corporate debtor". Thus, the IBC has a larger public-welfare consideration in play.

Under IBC the Corporate Insolvency Resolution Process (CIRP) can be triggered by three classes of persons-- Financial creditors (u/s 7 IBC), operational creditors (u/s 8 & 9, IBC) and corporate debtors (u/s 10, IBC). Section 7 makes appointment of IRP mandatory, while u/s 9 it is optional with party having option to apply to NCLT to appoint IRP.

While bringing out the difference between the financial and operational creditors in "Swiss Ribbons V. Union of India, (AIR (2019) 4 SCC 17) the Honourable Supreme Court held that both the creditors are distinct from each other under Art.14 of the Constitution of India". The court viewed that the object of the code is to preserve the corporate debtor as a going concern ensuring maximum recovery for all creditors. This judgment has created a significant impact on the way IBC is interpreted by providing clarity on the roles and responsibilities of the Resolution Professionals.

"In Mobilox Innovations v. Kirusa Software Private Ltd.[2], the Apex Court observed that the operational debt should be free from any pre-existing dispute which cannot be dealt with summarily in insolvency proceedings".

Corporate Insolvency Resolution Process: (CIRP)

Once an application for initiation of CIRP is admitted by the Adjudicating Authority, i.e., National Company Law Tribunal (NCLT), a moratorium is imposed on corporate debtor under Section 14 of IBC. The purpose of moratorium is to provide a cooling period for proper reorganization of business without disturbance by litigants. A moratorium prohibits the institution and continuation of any proceedings against the CD during the CIRP. A moratorium acts as a shield to prevent further depletion of the corporate debtor's assets, but it does not protect the key managerial personnel of the CD who was responsible for the insolvency. The moratorium shall cease to exist if at any time during CIRP, the Adjudicating Authority has

[2] AIR 2017 SC 4532

approved resolution plan u/s 31(1) or order of liquidation u/ 33. Once liquidation begins, moratorium ends.

During the process of CIRP, after submission of resolution plan by interested parties, it needs to be approved by CoC by not less than 75% of votes of financial creditors. The adjudicating authority, after being satisfied that the approval by CoC is as per IBC, approves the Resolution plan. However, IBC provides that any related party of the corporate debtor cannot claim the right to be a part of a committee of creditors (CoC). The object of such a provision is to prevent the decisions of the CoC from being sabotaged by related parties of the corporate debtor.

"Section 5(24)(j) of the IBC defines 'related party', in relation to a corporate debtor as inclusive of any person who controls more than twenty per cent of voting rights in the corporate debtor on account of ownership or a voting agreement".

Further, section 21(2) and the first proviso thereunder, of the IBC, states:

"The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorized representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors".

The Court held that "while understanding the meaning of 'related party' in the context of the IBC, it is important to keep in mind that it was defined to ensure that those entities which are related to the corporate debtor can be identified clearly, since their presence can often negatively affect the insolvency process".[3]

Clean Slate Theory:

The management of the company is expected to begin with a 'clean slate' which means that the business of the CD is revived and is expected to start afresh. In a landmark judgment elucidating the Clean Slate Theory the Apex Court held that "a Resolution Applicant cannot be afterwards traumatized by surprising him with undecided claims and 'hydra head popping up subsequently' after the Resolution Plan has been accepted". It was also upheld the binding

[3] Phoenix ARC Vs Spade Financial Services, (2021) ibclaw.in 03 SC

nature of section 31(1) of IBC on all stakeholders. The court further upheld the supremacy of financial creditors in the CoC in cases of distribution of claims.[4]

Once a Resolution Plan is approved by the Adjudicating Authority under Section 31 of the IBC it is binding on all Stakeholders and no Creditor including Government Authority with respect to their Statutory Dues can initiate Legal Proceedings in respect of their claims not provided for in the Resolution Plan.[5]

CIRP Moratorium:

"Under section 14 (1) of IBC, Adjudicating Authority imposes a moratorium prohibiting o following actions against CD:

(a) Institution of suits or continuation of pending suits including execution of judgments

(b) Transferring, alienating or disposing off assets

(c) Foreclose, Recover or enforce any security interest on property or any action under the SARFAESI Act, 2002

(d) Recovery of property in possession of CD by owner or lessor

Proviso to Section 14 (1) of IBC explains as long as there in no default in payment of fee for continuation of license, permit, registration etc., the insolvency of the CD will not affect the status of such license, permit or registration etc.

Proviso to Section 14 (2) of IBC clarifies supply of goods or services to the CD shall not be affected during moratorium

Provisions of u/s 14(1) shall not apply to (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

u/s 14(1)(4), the moratorium will be in place from the date of such order to completion of CIRP."

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[4] Essar Steel India Ltd v. Satish Kumar Gupta & Ors, (2020) 8 SCC 531
[5] Ultratech Nathdwara Cement Ltd v. UOI, Writ Petition No.9480/2019

Insolvency of Go First Airlines (GoAir / Go First)

Go First filed for voluntary insolvency under Section 10 of the IBC on May 2, 2023[6]. It's plea was admitted by NCLT on May 10, 2023. Go First owes it's creditors around Rs 6,200 crore, with Central Bank of India, Bank of Baroda, and IDBI Bank as secured creditors with admitted claims of Rs 1,934 crore, Rs 1,744 crore, and Rs 75 crore, respectively which sum up to Rs 3,753 crore which is more than 50% of the total debt.[7]

In Go Air's case, the Aviation Company had taken 54 aircrafts on lease. The airline had no aircrafts of its own. Go Air defaulted in the lease rental payments, and the lessors terminated the lease and applied for deregistration of the aircraft with the DGCA. The lease was terminated before the initiation of insolvency against Go Air. The lessors were caught off-guard when Go Air filed for Voluntary Insolvency without releasing the aircrafts leased by it. The moment moratorium was imposed all the aircrafts had to be grounded as per the provisions of IBC. Following this, the DGCA rejected the deregistration applications citing the moratorium3. Therefore, the lessors invoked the writ jurisdiction of the Delhi High Court seeking directions against the DGCA to deregister the aircraft and export them.

"Section 14(1)(d) of the IBC prohibits recovery of any property by the owner or lessor where such property is 'occupied by' or 'in the possession' of the corporate debtor". The Delhi High Court ruled that on termination of the lease before the insolvency, the aircraft ceased to be the property in possession of Go Air and concluded that Section 14(1)(d) was inapplicable. This appears to be contrary to the Supreme Court's judgment in Rajendra K Bhuta[8] . The Supreme Court in this case ruled that the expression "occupied" does not refer to rights or interests created in property but only actual physical possession of the property. The physical possession of the aircraft was with Go Air. Also, if all aircraft are deregistered then the insolvency proceedings of Go Air will be a paper formality.

Following this, The Ministry of Corporate Affairs on 03 October 2023, issued a notification u/s14(3) of the IBC excluding aircraft, aircraft engines and airframes from the moratorium. The notification is in resonance with the Cape Town Convention and Protocol which was ratified by India. According to this convention, the aircraft must be returned to the owner within 2 months of the insolvency of the lessee. The Aircraft Act and the rules therein also incorporate

[6] Company Petition No. (IB)-264(PB)/2023 ;
[7] https://www.business-standard.com/companies
[8] Rajendra K Bhuta v. Maharashtra Housing and Area Development Civil Appeal No 12248 of 2018

the terms of the convention. The airline had also exhausted all moratorium limits under IBC. The Delhi high court relied on this notification and ordered the deregistration of all 54 aircraft leased by Go First.

The company alleged that the bankruptcy of the Aircraft is due to supply of faulty engines by the US engine making Company Pratt & Whitney (P&W). The company is now engaged in ongoing arbitration proceedings in Singapore P & W where it is seeking $1 billion from P&W, which, if awarded, will be used to distribute funds to the creditors and facilitate the liquidation process. As on 17 July,2024 The CoC is finalising a voting proposal for the airline's liquidation as the creditors anticipate a better recovery from the arbitration proceedings against US-based engine maker Pratt & Whitney (P&W) than from selling the airline. In addition to the arbitration claims, creditors expect at least Rs 1,965 crore from auctioning a prime 94-acre land parcel in Thane near Mumbai, held as collateral. Creditors believe these recoveries are more promising than selling the airline at a low price.[9]

Liquidation Moratorium:

Moratorium can also be imposed under Section 33 (5) of IBC, after an order of liquidation has been passed. Thus, while section 14 pertains to CIRP moratorium, section 33(5) pertains to liquidation moratorium. Literal meaning of 'moratorium' is temporary ban on an activity. This is to ensure that the assets and liabilities of the corporate debtor can be efficiently analysed by the Resolution Professional (RP) and any action by or against corporate debtor stands suspended. The RP takes charge of the business of corporate debtor and only the activities related to or required for the insolvency process are undertaken.

Section 33(5): Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority

It is thus clear from the intent of the legislature that moratorium u/s 33(5) does not apply to pending suits. The Delhi High Court held that "From the language of Section 33(5) of the IBC, it is clear that the bar/moratorium is only in respect of fresh suits or legal proceedings. Unlike the moratorium under Section 14 of the IBC, where it is clearly noted that the moratorium is in respect of institution of suits or continuation of pending suits or proceedings against corporate

[9] https://www.business-standard.com/companies

debtor, the words "continuation of pending suits or proceedings" are conspicuously absent in Section 33(5) of the IBC. The omission of pending suits and legal proceedings of the corporate debtor from the scope of the bar provided under u/s 33(5) seems to be an error".[10]

If a provision of law can be misused, it is for the legislature to amend the same and the legislative casus omissus cannot be supplied by judicial interpretative process. Even if it is assumed that there was an omission on behalf of the legislature in not applying the moratorium under Section 33(5) of the IBC to pending suits, the same cannot be supplied by the Courts. It is for the legislature to amend the statute.

Objectives of Liquidation:

The objective of the liquidation process is to derive the maximum value from the assets of the corporate debtor for the benefit of various creditors and other stakeholders in the company under liquidation. The objective is not the revival of the company. Thus, it can be seen that there is a significant difference between u/s 14 and u/s 33(5). u/s 14 of IBC moratorium is applicable during the pendency of the resolution proceedings. However, once the resolution process fails, the moratorium comes to an end and the suit has to proceed as fresh suit and the provisions of u/s 33(5) of IBC may also apply.

The IBC bars certain individuals to submit a resolution plan or to participate in the insolvency resolution process. "The objective behind the bar against certain individuals is to ensure that persons responsible for the insolvency of the corporate debtor do not participate in the CIRP by means of a backdoor entry".[11] The Supreme Court categorically observed that the provisions of Section 29A are intended to ensure that persons responsible for insolvency of the corporate debtor do not participate in the resolution process as their participation would undermine the statutory object and purpose of the IBC. Thus, the companies which have initiated the insolvency resolution are barred from regaining control over the company.

Before Section 29A was introduced, there was no specific criteria for disqualification to participate in the bidding process. This loophole enabled any person, including key managerial personnel, director, promoter or any persons associated with them, the very persons who were responsible for the insolvency, to regain control of the insolvent company by participating in the bid. This meant the company falling back into the hands of persons who ruined it. But, in

[10] Elecon Engineering Company Ltd v. Energo Engineering Projects(2022) ibclaw.in 221 hc
[11] Chitra Sharma v. UOI, W.P. (C) 744 of 2017

this process the creditors had to bear the brunt of taking deep haircuts, most of the times up to 95% of the total credit amount. Thus, the companies abused the process by going for insolvency wherein they would pay only 5% of the total credit and regain control of the company by participating in the auction.

Therefore, after numerous consultations the legislature inserted this provision inserted IBC vide Amendments dated 23/11/2017 and 6/6/2018, to disqualify those persons, because of whom the corporate debtor stood on the verge of downfall, from regaining control over the company.

Under section 30(4) of IBC,2016, The Insolvency and Bankruptcy Board of India (IBBI) has also amended the norms governing liquidation of a company under the Insolvency and Bankruptcy Code, 2016 and barred promoters from participating in the process at any level.

Section 29 A of IBC,2016 reads as under:

"Section-29A of IBC,2016: Persons not eligible to be resolution applicant. – A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) [at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non performing asset accounts before submission of resolution plan:

[Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.]"

Thus, Section 29A disqualifies promoters from proposing the resolution plans. "In Jindal Steel and Power Limited vs. Arun Kumar Jagatramka & Gujarat NRE Coke Limited[12], the NCLAT has held that when a scheme of arrangement is maintainable as per Section 230 of the CA, 2013 for the companies which are undergoing liquidation, the same shall not be maintainable when proposed by a person ineligible under Section 29A of IBC. On appeal the SC upheld the order of NCLAT and held that the promoter ineligible under section 29A of IBC, 2016 cannot make application for compromise and arrangement under section 230 of the Company Act, 2013. Thus, the Honourable SC observed that Section 29A of the IBC has been enacted with larger public interest in mind and to facilitate effective corporate governance. It categorically denied back-door entry to defaulting promoters in CIRP under section 29A of IBC".

Thus, as far as Scheme of Arrangement is concerned India has a robust mechanism in place to rescue and revive an ailing company while protecting the interests of all other stakeholders. A Scheme of Arrangement is a process whereby a company in financial distress reaches a binding agreement with its creditors to pay back all or part of its debts over an agreed timeline.

Objective of IBC ---Time bound resolution:

IBC was enacted to ensure a time-bound mechanism for resolution and restructuring of a bankrupt entity. Under section 12 of IBC,2016 a 180-day deadline was stipulated for resolution, with a permitted 90-day extension. IBC (Amendment) Act, 2018, extended this period to 330 days. The law being so, cases have taken several years to be resolved. Supreme Court says Jet Airways case an eye-opener, suggests reforms to IBC. The Court suggested reforms to the IBC with respect to timelines, guidance to the Committee of Creditors (CoC) and constitution of a monitoring committee. The Supreme Court on 7 November,2024 said that the Jet Airways case has been an eye-opener which has brought to light deficiencies in the Insolvency and Bankruptcy Code (IBC) which need to be addressed.

“In Essar Steel India Ltd v. Satish Kumar Gupta & Ors,[13]; The Supreme Court observed that the SICA 1985, DRT Act 1993 and the SARFAESI Act, 2002 failed in resolution of stressed assets due to the long-time taken for effective resolution of stressed industries. Therefore, in order to ensure maximum realization of value for the assets of the stressed company, the SC

[12] (2021) ibclaw.in 46 SC

[13] (2020) 8 SCC 531

upheld the validity of Section 4 of the IBC (Amendment) Act which provided for a mandatory timeline within which the CIRP including legal proceedings needed to be completed".

"Section 12 of IBC,2016 --- Time-limit for completion of insolvency resolution process.

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 1[sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

2[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]"

"Section 55 of IBC,2016 --- Fast track corporate insolvency resolution process.

(1) A corporate insolvency resolution process carried out in accordance with this Chapter shall be called as fast track corporate insolvency resolution process.

(2) An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:—

(a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or

(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or

(c) such other category of corporate persons as may be notified by the Central Government."

"Section 56 of IBC,2016 ---Time period for completion of fast track corporate insolvency resolution process.

(1) Subject to the provisions of sub-section (3), the fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five per cent. of the voting share.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order, extend the duration of such process beyond the said period of ninety days by such further period, as it thinks fit, but not exceeding forty-five days:

Provided that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once."

"Section 57 of IBC,2016 --- Manner of initiating fast track corporate insolvency resolution process.

An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, along with—

(a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and

(b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process."

Objective of IBC—Why Defeated:

IBC was enacted as the earlier Acts such as the SICA, 1985, DRT Act 1993 and the SARFAESI Act, 2002 failed in resolution of stressed assets due to the long time taken for effective

resolution of stressed industries. These Acts focussed only on liquidation of sick industries and not to revive them in a time-bound manner. IBC was enacted with the purpose of reviving the insolvent industry and facilitate liquidation only as last resort.

This being the Law, it has been observed that these timelines are rarely adhered to. It is taking anywhere between 3 to 5 years, sometimes even more as in case of Kingfisher Airlines. By the time liquidation happens the assets become obsolete and rarely carry any value. The creditors are sometimes forced to take a haircut of around 95% and end up taking amount much lesser than is actually due.

In a natural scenario, prices of immovable assets like land and buildings appreciate over time. However, it has been observed that once the company goes into liquidation, the assets fetch far less price than they value because the interested buyers cannot afford such high price. It may also be because the prospective buyers want to take advantage of the sick company and grab the assets at much lower price. Both ways they are losing their money.

Insolvency of Jet Airways:

Case in point being the Jet Airways. The Airline halted it's operations due to heavy loans and unpaid dues in April, 2019. It was admitted by National Company Law Tribunal (NCLT) for insolvency in June , 2019. The due process as laid down under IBC was followed with the appointment of Resolution Professional (RP) seeking resolution plans. in October, 2020 the successful bidder Jalan-Kalrock Consortium (JKC) sought to revive the sick Airline. The Resolution plan was approved by CoC and subsequently NCLT approved it in June, 2021. JKC submitted a Performance Bank Guarantee (PBG) of INR 150 crore and as per the conditions

JKC was supposed to make a first instalment of RS 350 crore within 180 days. JKC paid Rs. 200 crore as deposit and sought to adjust the bank guarantee of Rs. 150 crore making it to total of Rs.350 crore. NCLT accepted this offer and allowed JKC to ownership of Jet Airways. In January 2023, the creditors appealed to National Company Law Appellate Tribunal (NCLAT) which upheld the order of NCLT. In March 2024, the creditors lead by State Bank of India (SBI) along with Punjab National Bank and JC Flowers Asset Reconstruction Private Limited, challenged the NCLAT verdict in the Supreme Court (SC) of India. The SC allowed the creditors' appeal. Delivering its verdict on 7 November, 2024, the SC ordered the liquidation of grounded Indian carrier Jet Airways, saying it "had no choice"[14]. The SC highlighted the lacunae in the IBC and also criticized the functioning of NCLT, NCLAT, RP, CoC etc. Exercising its extraordinary powers under Article 142 the SC set aside decision by NCLAT which upheld the resolution plan of JKC and transferred ownership to JKC without full payment to lenders. The SC ordered NCLT Mumbai to appoint a liquidator immediately to carry out the liquidation. The SC held that the Rs 200 crore infused by JKC stands forfeited and directed lenders to invoke a PBG of Rs 150 crore.

The bench of the then Chief Justice of India DY Chandrachud and Justices JB Pardiwala and Manoj Misra suggested ways to improvise and strengthen the insolvency ecosystem. The Judgment and observations of the SC as under:

"We hold that the successful resolution applicant (SRA, that is JKC) has contravened the terms of the resolution plan, and the corporate debtor is directed to be taken into liquidation. The fundamental concern is not only to do substantial justice but also to ensure speedy disposal of disputes. The resolution plan has been contravened. Since the resolution plan cannot be implemented, liquidation remains an option for the corporate creditor," the judgment said.

Before pronouncing the order, Justice Pardiwala orally noted that this case had taught "many lessons." "This litigation is an eye-opener and has taught us many lessons about the Insolvency and Bankruptcy Code (IBC) and the functioning of the National Company Law Appellate Tribunal (NCLAT)," he said.

"We have no doubt that the NCLAT acted contrary to settled legal principles. NCLAT incorrectly interpreted our order," the Court observed.

[14] SBI vs The Consortium of Murari lal Jalan & Florian Fritsch on 7 November,2024

“Thus, we exercise plenary powers and direct that the corporate debtor (that is Jet Airways) be taken into liquidation. Appeals succeed. NCLAT order set aside. In these peculiar and alarming circumstances, five years have passed since NCLAT cleared the resolution plan. Thus, under Article 142, we direct that the corporate debtor be taken into liquidation, and Rs 200 crore stands forfeited. Lenders are permitted to encash the Performance Bank Guarantee. NCLT Mumbai to appoint a liquidator forthwith,” the court said.

NCLAT had, on March 12, upheld the resolution plan of the grounded airline and approved the transfer of its ownership to JKC. NCLAT had told JKC to obtain an Air Operator’s Certificate within 90 days. It had also given it more time to pay Rs 175 crore to SBI, as 107 days had passed since NCLAT’s order allowing the transfer of ownership.

JKC alleged that SBI had previously given loans to companies without security, leading to the current situation. SBI argued that the Performance Bank Guarantee (PBG) of Rs 150 crore should not be used, even if expressly mentioned in the resolution plan. SBI requested the court to order the liquidation of the airline, saying it was unclear as to what steps are to be taken when the resolution plan was not working.

“Respondents can adjust the PBG upon execution of the mortgage of all three Dubai properties, which the respondents have failed to do even today,” Additional Solicitor General N Venkataraman said. Further, the SC held that the PBG cannot be permitted to be adjusted against the first tranche payment, and therefore directed that INR 150 Crore be infused in cash on or before January 31, 2024.

“Beyond the confines of the aviation industry, this judgment is expected to engender a climate of circumspection and diligence among future investors, particularly within asset-intensive sectors where revival efforts are fraught with regulatory and financial complexities. The Supreme Court’s stern stance sent an unequivocal message: non-compliance with insolvency resolutions, particularly by successful resolution applicants, will be met with the full force of the law, including liquidation,” Tushar Kumar, Advocate, Supreme Court of India, said.

SC also flagged shortcomings in NCLT, NCLAT. The bench observed a growing tendency among Members of the NCLT(s) and NCLAT to ignore or defy Supreme Court orders. “We put the NCLT(s) and the NCLAT on notice that any act of contravention of this Court’s orders and the broader principle of judicial propriety will not be tolerated," the Court said.

"Persons with high ideals and impeccable integrity should be appointed as Members of the NCLT and NCLAT. There should be no political appointments," the Court said.

While criticising the company and appellate tribunals for delays in handling insolvency and bankruptcy matters the Court observed that "Adjudication in a time-bound manner would help prevent any further deterioration of the corporate entity's value. The original timelines established by the Code and the resolution plan must be maintained to prevent dilution of the Code's objective, uphold investor confidence, and support corporate restructuring efforts," the Court said.

Suggestions by the Court:

"Committee of Creditors (CoC) should record reasons while approving/ rejecting a resolution plan. This will enable the NCLT/ NCLAT to understand the rationale behind the CoC's decision-making and avoid unwarranted interpretation.

An oversight committee should be constituted for better enforcement of standards and practices set out in the guidelines issued by the IBBI for functioning of the CoC, which are otherwise self-regulatory in nature.

NCLTs, while approving a resolution plan, should record the next steps that are to be taken by the respective parties for implementation of the approved plan, to ensure that parties are more vigilantes regards their obligations and to prevent unnecessary delay in implementation.

The NCLTs and NCLAT have also been directed to adjudicate applications under the Code in a time-bound manner, by adhering to the timelines prescribed under the Code and to not ignore requests for urgent listings and orders passed by the Supreme Court.

The Court also highlighted the need to improve the existing infrastructure in the NCLTs and appoint adequate number of members to aid the insolvency reform initiative undertaken by the Government."[15]

Conclusion and Suggestions

The SC Judgment emphasises the importance of speedy and timely resolution under IBC. As the honourable SC rightly observed, the lacunae in IBC are due to non-application of the provisions of IBC. "The National Company Law Tribunal (NCLT) is a quasi-judicial body in India with adjudicating authority relating to Indian companies including proceedings relating

[15] https://corporate.cyrilamarchandblogs.com/ By Dhananjay Kumar & Abhishek Mukherjee

to arbitration, compromise, arrangements, reconstructions and the winding up of companies, insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016".[16]

The tribunals are already over-burdened and under staffed. The IBC has only set the timelines to be followed. IBC as code can be amended according to the guidelines of SC as held in Jet Airways case. But the larger question of machinery available to deal with insolvencies involving immense financial liabilities remains. As learnt above NCLTs have to deal with many other cases with regard to companies. Cases are listed as per priority as each of the company needs early resolution to their disputes. In this scenario the tribunals may not be able to hear Insolvency petitions on priority basis.

Suggestions:

In order to clear Insolvency petitions expeditiously it is hereby suggested the establishment of separate Insolvency Tribunals and Insolvency Appellate Tribunals at each of the metro cities to deal with CIRP and liquidation of assets of insolvent companies. This will ensure time bound resolution of the insolvencies within the time specified in IBC. The assets of the insolvent company need to be reconstructed as soon as possible to maximise the recovery due to the creditors. Establishing separate tribunals for insolvency resolution may help in expediating the process.

[16] https://efiling.nclt.gov.in/mainPage.drt

"Navigating the Complexities: Challenges in Protecting Non-Conventional Trademarks"

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INTRODUCTION

Trademarks are also a crucial component of intellectual property that has seen consistent advancement in recent years. In its traditional sense, trademarks are marks that consumers can use to identify and distinguish a variety of products, services, or brands in the market. They are designed to prevent unauthorized use and avoid market confusion while serving producers as well as consumers[1]. Traditional trademarks are logos, insignias, images/chapters/colors, slogans, and some names or words.

As the competition in the market is rising, new and unusual trademarks are nowadays adopted by manufacturers to give their products a competitive advantage.[2] The 21st Century has seen many of the existing industries expanding with the primary aim of offering something more unique than before prompting brands out there to look at different ways/forms for trademark protection rather than just in traditional categories. Non-conventional trademarks, such as shapes, colors, and smells are marks that exist at the outer edges of traditional trademark law. Such marks tend to fall outside the box of established types partially, hence their often-complicated registration and protection.

Their peculiar nature gives them an inherent complexity regarding registration as these are mostly non-traditional trademarks. In contrast to common trademarks, which can be perceived and if desired – graphically shown not all types of non-conventional trademarks have a clear form. This can be difficult for registration authorities to evaluate or enforce.

[1] Sanya Kapoor and Riya Gupta, "The Five Senses and Non-Traditional Trademarks" 8 Supremo Amicus 214 (2015).
[2] Faye M. Hammersley, "The Smell of Success: Trade Dress Protection for Scent Marks" 2 Intellectual Property Law Review 105 (1998).

Challenges aside, this dynamic definition of a trademark creates endless opportunities for the protection and branding of many unique signs differentiating goods and services in trade.

Over time, the legal definition of a trademark expanded to incorporate an ever-increasing variety and evolving nature of marks. Definition of Trademark: As per Section 2(1)(zb)[3] of trademark laws- "Trademark" means a mark capable of being represented graphically and which is capable. This broad definition has allowed the inclusion of non-traditional marks, which can be difficult to show graphically but still are important in creating specific consumer profiles.

The appearance of non-standard trademarks mirrors the technological movement and thinking shift in consumer recognition techniques. For example, the TRIPS Agreement concerning a system of international registration and other issues related to market protection that claims a trademark need not be visually perceptible or graphically representable[4]. The move is forward-thinking as this approach has allowed for the inclusion of other non-traditional trademarks like unconventional sounds in both US and EU trademark registrations, expanding the legal protection available to mark owners.

With a growing and more versatile market, the defense of non-traditional trademarks gains importance.[5] The fast expansion and complicated environment of design applications pose a challenging task for patent offices and trademark registries worldwide, regardless of how significant or meaningful legal applications may be.[6] Businesses are using these novel marks more frequently, which makes the legal framework more important to adjust. If not, focus will need to be placed on how they can best function as dynamic parts of our established systems, which were designed long before they were created and have so far done a good job of protecting against competition through mostly discrete signs with clear meanings that fulfill functions predicated on uniformity across member countries globally harmonizing occasionally minor variations without so much friction.

NON-CONVENTIONAL TRADEMARK AND ITS TYPE

Non-conventional trademarks are distinguishing marks that do not belong in the logotype category and do not fall into conventional categories like graphics or letters. The Trademark

[3] Section 2, Trade Marks Act, 1999 (India).
[4] Arka Majumdar, Subhojit Sadha, and Sunandan Mujumdar, "The Requirement of Graphical Representation for Non-Conventional Trademarks" 11 Journal of Intellectual Property Rights (2006).
[5] Ibid
[6] Supra note 2 at 2

Act of 1999 in India does not identify non-conventional trademarks officially, in contrast to the European Union where they are formally acknowledged. A trademark is defined as a mark that can be visually represented, which encompasses a variety of aspects such as product designs, packaging, and color schemes, under Section 2(zb) of the Act. Rule 2(k) of the Trademark Rules, 2002[7] goes on to say that a mark has to be visually depicted in order to be registered as a trademark. This means that the trademark must be demonstrated in writing or through visual depiction, making it discernible for registration and protection purposes.

TYPES OF NON-CONVENTIONAL TRADEMARKS:

1. Shape Marks

Shape markings refer to a product's distinctive three-dimensional forms that set it apart from competing goods.[8] These trademarks may consist of a product's unique packaging or container form. Two famous instances are the triangle-shaped packaging for Toblerone chocolate bars and the recognizable shape of the Coca-Cola bottle. Koninklijke Philips Electronics NV v. Remington Consumer Products Ltd[9] is a noteworthy form mark case. Philips brought an infringement lawsuit against Remington in this instance because the two companies sold trimmers that resembled three-headed rotary shaver designs. For this shape, Philips had already received a trademark.[10] The European Union Court of Justice, however, invalidated Philips' registration, finding that the shape was useful and required to achieve a technological result.

2. Color Marks

Color markings are distinctive color schemes or combinations of colors used to distinguish and identify a brand. The establishment of brand identification and awareness may depend heavily on these markers.[11] Examples of well-known color marks are the deep purple of Cadbury chocolates and the characteristic pink used by T-Mobile. In order to protect color marks, it is frequently necessary to provide evidence that the color has become unique via

[7] Id., art. 2
[8] Lisa P. Lukose, "Non-Traditional Trademarks: A Critique" 57 Journal of the Indian Law Institute 197 (2015).
[9] Case C-299/99, Koninklijke Philips Electronics NV v. Remington Consumer Products Ltd, [2002] ECR I-5475.
[10] Supra note 3 at 2
[11] M M S Kharki, "Non-Traditional Areas of Intellectual Property Protection: Colour, Sound, Taste, Smell, Shape, Slogan and Trade Dress" 10 Journal of Intellectual Property Rights 499 (2005).

prolonged use—that is, that customers have come to identify the color with the brand in particular.[12]

3. Sound Marks

Sound marks are distinctive noises or jingles connected to a specific brand. These sound signatures have the potential to be very important for brand identification. In their respective domains, the Intel "bong" sound and the NBC chimes are acknowledged as trademarks.[13] For sound markings to be eligible for protection, they must be unique and able to identify the source of products or services. Sound markings can be difficult to record and replicate, but they are becoming more and more valued as strategic tools for branding.

4. Smell Marks

Smell trademarks are identified by distinctive odors associated with a product. These symbols are uncommon and present distinctive difficulties when it comes to being registered and safeguarded.[14] A smell trademark example is the unique odor of Play-Doh, which has been officially trademarked for the toy product. Registering smell marks is challenging due to the inability to visually represent or describe smells, leading to increased difficulty in demonstrating their uniqueness.[15]

5. Taste Marks

Taste indicators consist of distinct flavors that distinguish a product. Protecting these less common marks poses more challenges than protecting other types of non-traditional trademarks.[16] For example, a specific drink or sweet could be considered a taste mark if it has a unique flavor. Safeguarding taste trademarks involves proving that the taste is not just special but also helps in identifying the origin of the product, a process that can be complicated and subjective.

6. Texture Marks

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[12] Ibid
[13] Harshada Wadkar, “Non-Conventional Marks” Lexology (Aug. 18, 2024, 8:50 PM), https://www.lexology.com/library/detail.aspx?g=4339efffeba0-4339-a5f9-47f2d72ae7d1.
[14] “Smell, Sound and Taste-Getting a Sense of Non-Traditional Marks” WIPO (Aug. 19, 2024, 8:12 PM), http://www.wipo.int/wipo_magazine/en/2009/01/article_0003.html, last seen on Aug. 10, 2024.
[15] Ibid
[16] Thomas A. Gallagher, “Non-Traditional Trademarks: Taste/Flavour” The Trademark Reporter (Aug. 19, 2024, 8:20 PM), http://www.inta.org/TMR/Documents/Volume%20105/vol105_No3_a4.pdf.

Texture marks pertain to the tactile qualities of a product's surface that help distinguish it. This might involve the distinct texture of a material utilized in garments or furnishings. The texture should be unique and able to distinguish the product as coming from a particular source.[17] One illustration of texture marks is the unique grain design implemented by Louis Vuitton in their "EPI STYLE" leather handbags. During the Louis Vuitton v. Malik[18] case, the Delhi High Court issued a temporary order supporting Louis Vuitton due to the uniqueness of the EPI pattern used since the 1980s.

7. Holographic Trademarks

Holographic logos combine images and hues that can only be seen from certain perspectives, making them difficult to copy and therefore increasing their resistance to counterfeiting. These trademarks are frequently utilized to avoid the unauthorized copying of goods and services. An important instance is the holographic logo that Glaxo Group employs on its toothpaste containers.[19] Holographic trademarks, due to their dynamic nature, provide an added level of security, making them a useful means of safeguarding brand identity. Unconventional trademarks are a dynamic part of trademark law that showcases the various methods brands use to stand out in the market. Although traditional trademarks such as logos and names have been around for a while, the emergence of unconventional marks like shapes, colors, sounds, and textures shows the necessity for a trademark protection approach that is adaptable and all-encompassing.[20] The legal system in India and worldwide is constantly modifying to accommodate these advancements, guaranteeing that all forms of trademarks, both traditional and non-traditional, are appropriately safeguarded to promote equitable competition and brand authenticity.

EVOLUTION OF NON-CONVENTIONAL TRADEMARK

Businesses have historically depended on conventional trademarks like logos, symbols, captions, signs, names, and images to differentiate their products from those of their

[17] Tanisha Agarwal and Vanshaj Mehta, “Hear Me, Touch Me, Taste Me, Smell Me: Conventionalizing Non-Conventional Trademark in India” 3 Journal of Contemporary Issues of Law 1 (2017).
[18] (CS (OS) 1825/2003)
[19] Supra note 8 at 4
[20] Ibid

rivals. Traditional symbols have been crucial in establishing brand recognition, enabling consumers to easily distinguish among different products and services. Yet, there has been a notable change in branding tactics lately, prompting companies to consider unique trademarks like colors, shapes, scents, and flavors to differentiate their products in the international market.[21]

This change in trademark usage has ignited significant argument and conversation during the last hundred years. Despite well-known brands using non-conventional trademarks for many years, the legal protection and registration of these marks are recent advancements.[22] A few well-known non-traditional trademarks that were adopted early on are the recognizable form of the Coca-Cola bottle, the unique Tiffany blue gift box from Tiffany Company, and the pink color trademarked by Owens Corning Corporation.

These symbols are now essential components of the brands' identities, aiding consumers in quickly recognizing and linking them to their specific products.

The World Intellectual Property Organization (WIPO) acknowledged the importance of dealing with the intricacies related to non-traditional trademarks and formed the Standing Committee on the Law of Trademarks.[23] This committee was assigned the responsibility of examining and classifying various kinds of trademarks. Following a detailed investigation, the committee categorized non-traditional trademarks into two primary groups: visual and non-visual. Visual trademarks consist of characteristics like color, shape, and holograms, whereas non-visual trademarks involve qualities such as taste, smell, texture, and sound.

The development of trademark definitions has played a crucial role in this conversation. It was evident by 1956 that the definition of a trademark was very wide. This understanding arose from conversations at the Vienna gathering and subsequently at the Brussels meeting. These initial discussions laid the groundwork for the evolution of trademark rights as they are currently known.[24]

The TRIPS Agreement, established in 1994, marked a significant milestone in the

[21] Supra note 11 at 4
[22] Supra note 13 at 4.
[23] Martin Lindstrom, Brand Sense: Build Powerful Brands Through Touch, Taste, Smell, Sight and Sound (Kogan Page Publisher, 2005).
[24] Kenneth L. Port, “On Non-Traditional Trademarks” William Mitchell College of Law Legal Studies Research Paper Series (Aug. 17, 2024, 8:00 AM), https://ssrn.com/abstract=1564230.

development of trademark protection. The TRIPS Agreement revolutionized trademark law by offering a comprehensive definition of what qualifies as a trademark. As specified in Article 15 of the TRIPS Agreement, trademarks encompass a broad variety of symbols, logos, letters, colors, and combinations thereof. This inclusive definition was created to guarantee that trademarks serve their main purpo[25]se of differentiating products and services, thereby offering safeguard for a variety of marks.

The incorporation of non-traditional trademarks in the TRIPS Agreement marks a major step forward in protecting trademarks. The agreement recognizes that untraditional marks, while not traditional, are effective identifiers for products and can have distinctive qualities important for brand distinction. This acknowledgment enables the safeguarding of trademarks like exclusive fragrances or specific textures, which are crucial in distinguishing products in the market.[26]

In Europe since the 1800s, there has been a significant amount of scholarly research and conversations focused on safeguarding non-traditional trademarks. During the beginning of the 20th century, Bolivia was leading discussions about safeguarding non-traditional marks like sounds and shapes.[27] The talks focused on if these marks can be visually portrayed and how their distinct attributes can be legally safeguarded.

Even though advancements have been achieved in the past twenty years in terms of non-traditional trademark registration and protection, numerous obstacles still exist. Especially challenging are trademarks that are not easily noticed by consumers, like odors, tactile sensations, and flavors.[28] The graphical representation of these marks can cause confusion and complications during registration due to their complexity.

To conclude, the realm of trademark protection has changed greatly from classic to non-traditional marks. Although traditional trademarks have always been essential for defining brand identity, non-traditional trademarks are now being acknowledged for their distinctiveness in differentiating products. The TRIPS Agreement has been pivotal in broadening trademark protection to cover unconventional marks, recognizing their

[25] Id., art.15
[26] Ibid.
[27] Paul Leo Carl Torremans, “Trademark Law: Is Europe Moving Towards an Unduly Wide Approach for Anyone to Follow the Example?” 10 Journal of Intellectual Property Rights 127 (2005).
[28] Ibid

significance in the global marketplace.[29] Yet, obstacles regarding the registration and safeguarding of unconventional trademarks continue to exist, especially for those marks that are not easily identifiable or visually depicted. Ongoing conversations and legal advancements will be crucial in dealing with the complexities of branding strategies and ensuring adequate protection for all kinds of trademarks.

CHALLENGES WITH NON-CONVENTIONAL TRADEMARK

When considering the registration of non-traditional trademarks, it is crucial to recognize that a broad approach might lead to a high volume of applications for unique marks. Such widespread registration could potentially obstruct the business activities of others by creating conflicts or overlaps with existing trademarks.[30] This is particularly relevant when considering the need for harmony between international agreements like TRIPS and domestic laws. For effective protection and registration of non-traditional trademarks in India, it is essential to align domestic legislation with global standards while addressing specific legal challenges.[31]

The TRIPS Agreement and other international conventions emphasize the importance of accommodating a wide range of trademarks, including non-traditional types such as scents and sounds. To achieve this, Indian domestic laws must be revised to facilitate the registration of these unconventional marks while clearly defining any potential overlaps with other forms of intellectual property protection.[32] For example, there are gray areas where non-traditional trademarks might intersect with copyright protections in the case of motion marks or with patent and design rights for shape trademarks.

One significant issue is the requirement for a "graphical representation" of trademarks, which presents a challenge for marks such as scents or aromas. The existing requirement stipulates that a trademark must be depicted on paper or through a visual medium. This rule, while ensuring that marks are discernible and tangible for registration, poses difficulties for marks

[29] Supra note 16 at 5
[30] P. Manoj, “Yahoo Awarded India’s First Sound Mark; Nokia in Queue” Live Mint, Aug. 02, 2024.
[31] Neha Mishra, “Registration of Non-Traditional Trademarks” 13 Journal of Intellectual Property Rights 43 (2008).
[32] Supra note 27 at 8

that are inherently non-visual, such as smells or sounds.[33] For instance, representing a scent through a chemical formula or description does not adequately capture the sensory experience associated with the trademark, making it challenging to fulfill the graphical representation requirement.

However, some non-traditional trademarks, such as color marks, can be registered more readily if the applicant demonstrates that color or combination of colors has become distinctive through secondary means. This involves proving that the color has been used extensively enough for consumers to associate it specifically with the applicant's goods. While registering a color trademark can be relatively straightforward under these conditions, other non-traditional marks still face significant hurdles.[34] For example, depicting a scent or sound graphically remains a complex challenge, impeding the registration process for such marks.

In light of these challenges, recent updates to trademark regulations represent a positive step forward. The evolving legal framework must continue to adapt to the growing prominence of non-traditional trademarks and their niche markets.[35] To better support these innovations, a more comprehensive definition of trademarks is needed. The legislation should explicitly address the boundaries between different forms of intellectual property protection, ensuring that non-traditional trademarks do not inadvertently overlap with existing copyrights, patents, or designs.

The experience of jurisdictions with advanced trademark laws, such as the United States under the Lanham Act of 1946, can provide valuable insights for Indian domestic legislation.[36] The Lanham Act has established a robust framework for the protection of various types of trademarks, including non-traditional marks. By drawing from the principles and practices of such established systems, India can enhance its trademark laws to better accommodate and protect non-traditional trademarks.[37]

In conclusion, the registration and protection of non-traditional trademarks in India present both opportunities and challenges. While the recent developments in trademark regulations mark significant progress, there is still a need for more detailed and comprehensive

[33] Supra note 23 at 7
[34] "Yet Another Sound Mark Granted" available at http://spicyipindia.blogspot.com/2009/07/yet-another-soundmark-granted.html.
[35] Supra not 4 at 2
[36] The Lanham Act of 1946 (United States).
[37] Supra note 24 at 7

legislation. By aligning domestic laws with international standards and addressing the specific issues related to the graphical representation of non-traditional marks, India can create a more effective and inclusive trademark system. This will not only facilitate the protection of innovative brands but also ensure a balanced and fair market environment for all businesses.

"THE METAVERSE: RETHINKING INTELLECTUAL PROPERTY PROTECTION IN A DIGITAL FRONTIER"

As the Metaverse—an expansive, immersive virtual environment—edges closer to becoming a mainstream reality, the way brands engage with consumers is poised for a dramatic transformation. The Metaverse, often described as the next evolution of the Internet, merges elements of augmented reality (AR), virtual reality (VR), and traditional digital interfaces to create a persistent, interactive virtual world.[38] In this new digital landscape, users engage through avatars, participate in virtual events, and explore a variety of experiences, from virtual travel and concerts to shopping and socializing.[39]

While the Metaverse remains largely conceptual and under development, companies are already making strides to establish a presence within this burgeoning digital space. For brand owners aiming to extend their reach into the Metaverse, the new environment presents both substantial opportunities and complex challenges.[40] One of the primary concerns is ensuring that intellectual property (IP) protection keeps pace with the evolving digital landscape. A robust, comprehensive IP protection system is essential for safeguarding brand identity and maintaining competitive advantage in this emerging domain.

Challenges of Protecting Brands in the Metaverse

The Metaverse introduces unique challenges for IP protection, especially concerning trademarks. Unlike traditional trademarks, which are often visual and tangible—such as logos, product names, and packaging—the Metaverse encompasses a broader range of elements that can include color schemes, virtual goods, and interactive experiences.[41] As a

[38] World Intellectual Property Organization, Member States Agree to Move Ahead With Efforts To Harmonize Trademark Law, available at: http://www.wipo.int/pressroom/en/html.jsp?file=/redocs/prdocs/en/2001/wipoupd2001_154.html (last visited Aug. 23, 2024).
[39] Adam L. Brookman, Trademark Law: Protection, Enforcement and Licensing, 7 (2nd ed., 2017).
[40] Ibid.
[41] Supra note 34 at 10

result, brand owners must navigate a complex landscape where traditional trademark laws may not fully apply or may require adaptation.

One of the key challenges is determining how to protect and enforce trademarks in a space where conventional forms of trademark representation might not suffice. In the Metaverse, brands can leverage virtual billboards, sponsor events, and establish virtual "malls" to interact with users. These new forms of engagement complicate the traditional trademark framework, which is primarily designed for physical goods and services.[42]

Moreover, the rise of decentralized applications and non-fungible tokens (NFTs) adds another layer of complexity. Brands are already using NFTs to offer digital versions of products, such as virtual clothing lines or limited-edition items. For example, Louis Vuitton's interactive game "Louis" allows users to customize avatars with virtual NFTs featuring the brand's trademarked prints and colors.[43] Similarly, Dolce & Gabbana has launched a line of branded NFT-based digital wearables, providing fans with access to both virtual and physical versions of the items. Gucci's collaboration with Roblox exemplifies the potential for virtual goods to command higher prices than their physical counterparts, as a digital Gucci Dionysus bag sold for nearly $4,100 on the Roblox marketplace—substantially more than the price of the real bag.

The Need for Comprehensive IP Protection

The rapid evolution of the Metaverse underscores the need for a more comprehensive approach to trademark protection. As brands begin to offer digital goods and services, the risk of trademark infringement and counterfeiting becomes more pronounced.[44] The challenge lies in predicting and mitigating these risks in a new and rapidly developing environment where traditional infringement models may not apply.

Trademark owners must ensure that their IP protection strategies encompass the Metaverse's full range of virtual interactions. This includes securing trademark rights for virtual goods and services and addressing potential overlaps with other forms of intellectual property, such as copyrights for motion marks or design rights for shape trademarks.

Current Efforts and Case Studies

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[42] Ibid
[43] Supra note 1 at 2
[44] Supra note 2 at 2

Several forward-thinking brands have already taken steps to secure their trademarks within the Metaverse. For instance, Converse has filed multiple applications to obtain trademark protection for virtual goods and services related to its iconic ALL STAR CHUCK TAYLOR logo (Application # 97107382). Abercrombie & Fitch has similarly sought protection for virtual goods featuring its distinctive bird and moose designs (Application Nos. 97106352 and 97106342). Nike has been particularly proactive, submitting trademark applications for various aspects of its brand, including the NIKE logo (Application # 97095855), the JUST DO IT slogan (Application # 97096236), and the AIR JORDAN logo (Application # 97096945).

These examples illustrate a growing recognition of the need to adapt trademark protection to the Metaverse's unique characteristics. However, the current IP protection system remains largely based on traditional trademark classifications.[45] As marketing strategies continue to evolve and the digital realm expands, there is a pressing need for IP laws to adapt to new forms of non-traditional trademarks.

Adapting IP Laws for the Metaverse

To effectively address the challenges posed by the Metaverse, IP laws must undergo significant reform. The existing rigid classification system for trademarks needs to evolve to accommodate a broader range of digital and virtual elements. This includes developing new legal frameworks that recognize and protect non-traditional trademarks, such as virtual goods, digital experiences, and interactive branding elements.[46]

The experience of jurisdictions with advanced IP systems, such as the United States under the Lanham Act of 1946, offers valuable insights.[47] The Lanham Act provides a robust foundation for protecting various types of trademarks, including those in digital and virtual contexts. By drawing on these principles, Indian domestic legislation and other jurisdictions can develop more comprehensive and flexible IP protections tailored to the Metaverse.

The Metaverse represents a transformative shift in how brands interact with consumers and how intellectual property is managed. As this digital frontier continues to develop, brand owners must navigate a complex and evolving landscape to protect their trademarks

[45] Supra note 23 at 7
[46] Supra note 39 at 11
[47] Supra not 36 at 10

effectively.[48] Ensuring that IP laws adapt to the Metaverse's unique requirements will be crucial for maintaining brand integrity and competitive advantage in this new virtual environment. By adopting a more inclusive and forward-thinking approach to IP protection, brands can better safeguard their interests and capitalize on the opportunities presented by the Metaverse.

REGISTRABILITY OF NON-CONVENTIONAL TRADEMARKS IN INDIA: CHALLENGES AND FUTURE DIRECTIONS

The landscape of trademark registration is evolving with the growing prominence of non-conventional trademarks, including sounds, smells, shapes, and textures. In India, the legal framework traditionally focused on conventional marks such as logos and names, but there is increasing interest in protecting non-traditional marks as brands seek to innovate and differentiate themselves.[49] However, registering non-conventional trademarks in India presents unique challenges, primarily due to the requirement for graphical representation and the need to demonstrate acquired distinctiveness. This article explores these challenges, examines recent developments in Indian trademark law, and discusses the implications for brand protection in both the physical and virtual realms.

1. Legal Framework for Non-Conventional Trademarks

1.1. Graphical Representation Requirement

Under Indian trademark law, specifically Section 2(zb) of the Trademark Act of 1999, a trademark must be capable of being represented graphically to qualify for registration. This requirement can be particularly challenging for non-conventional trademarks such as sounds and smells.[50] For instance, sound marks, which involve distinctive auditory elements like jingles or specific tones, are difficult to capture visually. Similarly, smell marks, which pertain to unique scents associated with products, cannot be easily depicted graphically.[51]

Historically, this requirement created significant barriers for non-traditional marks. However, recent amendments to the Trademark Rules in 2017 have provided some relief. The rules now

[48] Tobias Cohen Jehoram, Constant van Nispen & Tony Huydecoper, European Trademark Law: Community Trademark Law and Harmonized National Trademark Law (2010).
[49] Supra note 31 at 9
[50] Supra note 17 at 5
[51] Supra note 16 at 5

allow the submission of MP3 files or video files for sound marks and chemical formulas or descriptions for smell marks under Section 2(qa).[52] These provisions aim to address the graphical representation challenge by accommodating the unique characteristics of non-conventional marks. Despite these advancements, practical difficulties remain in fully representing and registering such marks.

1.2. Distinctiveness and Secondary Acquired Distinctiveness

To be eligible for registration, a trademark must be distinctive. Non-conventional trademarks often lack inherent distinctiveness and must therefore demonstrate secondary acquired distinctiveness.[53] This means that the mark must have gained recognition through extensive use, enabling consumers to associate it uniquely with the brand.

The requirement for secondary distinctiveness involves proving that the mark has become recognizable over time as a source identifier. This process can be arduous and requires substantial evidence of use and consumer recognition.[54] The Indian Trademark Act mandates this demonstration to ensure that non-traditional marks are not merely descriptive or functional but have achieved a level of distinctiveness that warrants protection.

2. Recent Developments and Case Law

2.1. Case Studies on Non-Conventional Trademarks

Recent cases in India illustrate the challenges and successes associated with non-conventional trademarks:

2.2. Recent Amendments and International Trends

The Trademark Rules 2017 were a significant step toward accommodating non-conventional trademarks, but further reforms may be necessary. Internationally, jurisdictions like the European Union and the United States have established more comprehensive frameworks for non-traditional trademarks. For example, the EU's Trademark Regulation and the US Lanham Act provide detailed guidelines for registering sound, smell, and color marks, offering valuable insights for India's evolving trademark system.[55]

3. Future Directions and Recommendations

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[52] Section 2(qa) of Trademark Act "In this Act, unless the context otherwise requires, any reference— (a)to "trade mark" shall include reference to "collective mark" or "certification trade mark"
[53] Supra not 4 at 3
[54] Supra note 1 at 2
[55] Supra note 2 at 2

3.1. Need for Legislative Reform

The current legal framework in India requires further adaptation to address the complexities of non-conventional trademarks. Legislative reforms should include clearer provisions for the registration of non-traditional marks, such as sounds and smells, and provide guidance on the graphical representation requirements. Aligning Indian trademark law with international standards can facilitate the protection of innovative brand elements and enhance consistency in global trademark practices.

3.2. Embracing Technological Innovations

Leveraging technological advancements can aid in overcoming the challenges of graphical representation.[56] For example, virtual reality (VR) and augmented reality (AR) technologies can offer innovative ways to represent non-conventional trademarks in a visually accessible format. Collaboration between legal and technological experts can drive the development of new solutions for trademark registration and protection.

The registrability of non-conventional trademarks in India presents both opportunities and challenges. While recent amendments and case law have made strides toward accommodating these marks, significant hurdles remain, particularly concerning graphical representation and secondary distinctiveness.[57] As branding strategies evolve and the Metaverse expands, Indian trademark law must adapt and provide comprehensive protection for innovative brand elements. By embracing legislative reforms and technological innovations, India can better support the evolving needs of brand owners and ensure effective protection in both physical and virtual environments.

CONCLUSION

The evolving landscape of trademark law underscores a shift from traditional to non-conventional trademarks, reflecting broader changes in branding strategies and market dynamics. Traditional trademarks—logos, names, and symbols—have long served as the cornerstone of brand identity, aiding consumers in distinguishing products and ensuring market clarity. However, as brands seek more distinctive ways to stand out, non-conventional trademarks, such as shapes, colors, sounds, smells, and textures, have emerged, pushing the boundaries of trademark protection.

[56] Supra note 4 at 3
[57] Surpra note 8 at 4

In India, the Trademark Act of 1999 and its rules have historically emphasized graphical representation, posing challenges for registering non-traditional marks. While recent amendments, such as those introduced in the Trademark Rules of 2017, have made provisions for sound marks and scent descriptions, significant hurdles remain. The requirement for graphical representation continues to complicate the registration of marks that cannot be easily visualized, such as odors and specific textures.

Internationally, frameworks like the European Union's Trademark Regulation and the US Lanham Act have made notable strides in accommodating non-traditional trademarks. These jurisdictions have developed more nuanced guidelines that recognize the unique nature of non-traditional marks and provide clearer pathways for their protection. Their approaches offer valuable insights for India as it navigates the complexities of adapting its trademark system to better address these innovative forms.

The Metaverse—a burgeoning digital realm combining virtual reality (VR), augmented reality (AR), and digital interfaces—further complicates trademark protection. As brands explore new ways to engage with consumers through virtual goods and experiences, the need for a comprehensive intellectual property (IP) framework becomes increasingly evident. Traditional trademark laws often fall short in this digital context, necessitating reforms to protect virtual assets and interactive elements effectively.

India's trademark legislation must undergo significant reform to address these evolving challenges. Key areas for improvement include:

1. Enhanced Definitions and Provisions: India should expand its trademark definitions to clearly include non-traditional marks and provide specific guidelines for their registration. This includes developing criteria for non-visual trademarks and aligning with international standards to facilitate global brand protection.

2. Technological Integration: Embracing technological advancements, such as VR and AR, can offer new methods for representing non-traditional trademarks in a format that meets legal requirements. Collaborations between legal experts and technologists can drive innovation in how trademarks are visualized and protected.

3. Secondary Distinctiveness: The process of demonstrating secondary distinctiveness for non-traditional marks should be streamlined. Clearer guidelines and support mechanisms can

help brand owners more effectively prove that their marks have gained recognition and distinctiveness through extensive use.

4. International Alignment: Aligning Indian trademark laws with international frameworks, such as those provided by the TRIPS Agreement, can help ensure consistency and facilitate cross-border protection. Learning from jurisdictions with advanced systems can guide the development of a more robust and adaptable trademark regime in India.

In summary, while India has made progress in accommodating non-traditional trademarks, there is still much work to be done. The rapid evolution of branding strategies, coupled with the rise of digital spaces like the Metaverse, calls for a more flexible and comprehensive approach to trademark protection. By reforming legislation and leveraging technological advancements, India can better support the protection of innovative brand elements, ensuring fair competition and safeguarding brand integrity in both physical and virtual environments.

LEGAL INGREDIENTS FOR CRIMES AGAINST HUMANITY: A CRITIQUE ON SELECTIVITY

By

Deepathanisha T

ABSTRACT

The success or failure of criminalisation of an offence is often judged by the effective implementation process. The condition requirement for such effective criminalisation predominantly lies with the conceptual elements of the crime. Though the gravity and pressing human rights violations have led to the criminalisation of crimes against humanity in international criminal law, the lack of theoretical clarity in defining the elements of the crime is yet to be addressed. The international criminal tribunals have defined the crimes not for the universality of definition but rather for the purpose of invoking the jurisdiction of the tribunals. Such inconsistency leads to the selectivity of crimes and hinders the development of customary international law. This paper highlights the need for a standard definition of crimes against humanity that could pave the way as a departure point for customary international law which in turn facilitates prosection as well as a protective mechanism to counter crimes against humanity.

INTRODUCTION

Some crimes are against individuals and some crimes shock the entire humanity. The harm perpetuated by such crimes is grave in nature and it affects the conscience and morality of the international society in general. Such crimes are often attributed to the failure of effective implementation mechanisms of the law. Though effective implementation is part of the problem, it is not the sole reason for it. The lack of theoretical clarity also makes it difficult to understand the crime and criminalise it. One such category of crimes is the crimes against humanity in international criminal law. The statute of ICTR, ICTY, the Rome statute of ICC, and ILC draft codes refer to specific acts/ violations as crimes against humanity, but the same has yet to be given a standard definition. The legal ingredients for crimes against humanity change according to the

criminal courts/ tribunals and the specific issues they are dealing with.[1] For instance, Article 5 of ICTY includes armed conflict in the definition of crimes against humanity, whereas Article 3 of ICTR only mentions systemic attack and not armed conflict. Similarly, Article 7 of the Rome statute includes additional ingredients such as state or organisational policy when referring to crimes against humanity. The lack of consistency in defining the crimes gives space for selectivity in the international criminal courts and tribunals. The jurisprudence of international criminal law relies majorly on the customs practised by tribunals such as ICTR and ICTY. There is a need to define crimes independent of any specific situation of conflict. Independent definitions not tied to a particular issue help in avoiding the selectivity of crimes. Though it is challenging to follow an exhaustive definition of crimes against humanity, the selectivity of the crimes exposes the structural inequality of the criminal tribunals.

- What amounts to crimes against humanity under international criminal law?
- Are the ad hoc tribunals picking and choosing different legal ingredients for crimes against humanity?
- Does the selectivity in defining crimes allow for the development of customs in international criminal law?

The research article aims to identify the common practice of ad hoc tribunals in categorising crimes against humanity. It also aims to point out the inconsistencies and structural inequalities in the practice of tribunals and how they affect the efficiency and legitimacy of punishing crimes in international law.

DEFINING CRIMES AGAINST HUMANITY

The phrase crimes against humanity was first mentioned in the 1915 declaration, which was later invoked in the Nuremberg tribunal. Though undefined at that point, the 1915 declaration formed a nexus between crime and humanity while condemning the alleged massacre of the Armenian population.[2] The phrase crimes against Christianity was replaced by crimes against humanity not

[1] Larissa van den Herik, *Using Custom to Reconceptualize Crimes Against Humanity*, *in* JUDICIAL CREATIVITY AT THE INTERNATIONAL CRIMINAL TRIBUNALS 0 (Shane Darcy & Joseph Powderly eds., 2010), https://doi.org/10.1093/acprof:oso/9780199591466.003.0005 (last visited Oct 30, 2024).

[2] "In view of those new crimes of Turkey against humanity and civilization, the Allied governments announce publicly to the Sublime-Porte that they will hold personally responsible [for] these crimes all members of the Ottoman government and those of their agents who are implicated in such massacres" France, Great Britain and Russia Joint Declaration, https://www.armenian-genocide.org/Affirmation.160/current_category.7/affirmation_detail.html (last visited April 24, 2023).

to offend religious sentiments.[3] Thus, new criminality was ascertained as not related to war. Article 6(c) of the Nuremberg Charter provides a list of crimes such as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.[4] This definition clarifies that crimes against humanity are international crimes irrespective of whether they are criminalised in domestic law. The reliance is placed on customary international law to group the acts mentioned above or violations as crimes against humanity.

Crimes against humanity are not the same as genocide, as genocide has been formerly codified under Article 6 of the Rome statute as well as Article II of the Genocide Convention.[5] While war crimes are predominantly focused on violations of humanitarian law, crimes against humanity deal with a similar set of violations done in a widespread or systematic attack.[6] Though defined in various international criminal tribunals, the elements of crimes against humanity it is still not a formal codification of the crime but rather distinguished for the purpose of the jurisdiction of tribunals. There is no specialised convention for crimes against humanity, as different tribunals attribute new elements to the crime.[7] The need to codify and document a uniform definition has been felt based on *nullum crimen sine lege.* Such a definition should be based on the known customary laws of international law, as the draft codes cannot make new laws independent of customary rules. Inconsistent definition of a crime, particularly crimes against humanity, considered one of the grave crimes under international criminal law, draws criticism as to selectivity and inconsistency.

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[3] FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY, (Leila Nadya Sadat ed., 2011).

[4] Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement"), REFWORLD, https://www.refworld.org/legal/constinstr/un/1945/en/21123 (last visited Nov 13, 2024).

[5] Article 6, Rome Statute of the International Criminal Court, OHCHR, https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court (last visited Nov 12, 2024)., Convention on the Prevention and Punishment of the Crime of Genocide: General Assembly resolution 260 A (III) of 9 December 1948 Entry into force, 12 January 1951.

[6] DRC: Mapping human rights violations 1993-2003, OHCHR, https://www.ohchr.org/en/countries/africa/2010-drc-mapping-report (last visited Nov 12, 2024).

[7] NORMAN GERAS, CRIMES AGAINST HUMANITY: BIRTH OF A CONCEPT (2011), http://ebookcentral.proquest.com/lib/kcl/detail.action?docID=1069711 (last visited Oct 30, 2024).

ICTY ON CRIMES AGAINST HUMANITY

It is integral to observe that the International Criminal Tribunal for the former Yugoslavia(ICTY) was working on the violations in an active armed conflict in Yugoslavia that started in 1991. The work of the tribunal has almost taken two decades to bring justice. Thus, the definition of crimes against humanity in the statute of ICTY has been tailored particularly to armed conflict. Article 5 of the statute of ICTY refers to crimes against humanity as "crimes committed in armed conflict, whether international or internal, in character against any civilian population."[8] Entrusted with the work of prosecuting individuals, responsible for grave offences such as war crimes, genocide and crimes against humanity, the statute has contributed to developing what amounts to individual crimes under international criminal responsibility.[9] The definition's first and most crucial element is the armed conflict requirement. The list of inhumane acts includes murder, extermination, enslavement, deportation, imprisonment, torture, rape and persecution on other discriminatory grounds. Such offences committed by an individual shall be with an existing armed attack to fall within the jurisdiction of the tribunal. Thus the crime further requires the existence of an armed conflict, the accused being part of it and such attack shall be against a civilian population.[10]

ICTR ON CRIMES AGAINST HUMANITY

The Rwandan genocide that started in 1994 is responsible for the murder, displacement, disappearance and inhumane violations against its victims. The hundred-day war that killed almost a million people mostly from the Tutsi ethnic group in the territory of Rwanda led to the establishment of the International Criminal Tribunal for Rwanda(ICTR) intending to bring the perpetrators to justice.[11] Article 3 of the statute of the International Tribunal for Rwanda refers to crimes against humanity as a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. ICTR did not include armed conflict as a requirement because the Rwandan issue was not on the background of a war or an armed conflict.

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[8] Statute of the International Criminal Tribunal for the former Yugoslavia, https://legal.un.org/avl/ha/icty/icty.html (last visited Nov 12, 2024).

[9] International Criminal Tribunal for the former Yugoslavia | United Nations
 International Criminal Tribunal for the former Yugoslavia, https://www.icty.org/ (last visited Nov 13, 2024).

[10] Case Law of the International Criminal Tribunal for the Former Yugoslavia: IV) CRIMES AGAINST HUMANITY (Article 5), https://www.hrw.org/reports/2004/ij/icty/5.htm (last visited Nov 13, 2024).

[11] The ICTR in Brief | United Nations International Criminal Tribunal for Rwanda, https://unictr.irmct.org/en/tribunal (last visited Nov 13, 2024); ICTR, INTERNATIONAL JUSTICE RESOURCE CENTER (Feb. 7, 2010), https://ijrcenter.org/international-criminal-law/ictr/ (last visited Nov 13, 2024).

Instead, the issue was discrimination and genocide. After the statute of ICTY's definition of crimes against humanity, the discussion on the elements of crime differed slightly. The systematic or widespread attack gained traction in the place of armed conflict to remain relevant to peacetime crimes. Before creating the statute of ICTR, the final report made some clarifications about the elements of a crime.[12] The report made a distinction between genocide and crimes against humanity as well. The substantial element of crimes against humanity is the systematic attack which follows a pattern.[13] It found the nexus between pattern and persecution, pushing the armed conflict requirement as a mere jurisdictional element of the crime. 'Systematic or widespread attack' in Article 3 of the statute is a new addition, but the drafters claimed it to be consistent with customary norms.[14] Relying on *Tadic* judgment, the ICTR held that the elements of systematic attacks are in accordance with customary international law in *The Prosecutor v. Laurent Semanza* judgment.[15]

JURISPRUDENTIAL DIFFERENCE OF ICTY AND ICTR

Identifying customary practices is not impossible. For instance, more reliance can be placed on ICTY cases to maintain a consistent practice. This will amount to the generality of crimes and their requirements. In the case of The *Prosecutor v. Kupreskic et al*., the tribunal removed the nexus of war crimes by stating that crimes against humanity do not need to be associated with war according to customary international law.[16] The appeals chamber referred to two important conventions: the Genocide Convention of 1948 and the Apartheid Convention of 1973.[17] Similarly, in the *Ohlendorf* case, the military tribunal decided that crimes against humanity are independent of war crimes and

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[12] United Nations High Commissioner for Refugees, *Refworld | Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992)*, REFWORLD, https://www.refworld.org/docid/582060704.html (last visited April 14, 2023).

[13] M. Cherif Bassiouni, *The commission of experts established pursuant to Security Council Resolution 780: Investigating violations of international humanitarian law in the former Yugoslavia*, 5 CRIM LAW FORUM 279 (1994).

[14] ROBERT DUBLER & MATTHEW KALYK, CRIMES AGAINST HUMANITY IN THE 21ST CENTURY: LAW, PRACTICE, AND THREATS TO INTERNATIONAL PEACE AND SECURITY (2018).

[15] United Nations High Commissioner for Refugees, *Refworld | The Prosecutor v. Laurent Semanza (Judgement and Sentence)*, REFWORLD, https://www.refworld.org/cases,ICTR,48abd5a30.html (last visited May 4, 2023).

[16] Kupreškić et al. (IT-95-16) | International Criminal Tribunal for the former Yugoslavia, https://www.icty.org/en/case/kupreskic (last visited May 4, 2023); Kupreskic et al. - Judgement, https://www.icty.org/x/cases/kupreskic/tjug/en/ (last visited May 4, 2023).

[17] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9 1948, S. Exec. Doc;

crimes against peace.[18] The Rome statute and its additional element of state/ organisational policy in deciding criminality is not a part of either ICTY or ICTR. This begs the question of how customary law can be proved in the absence of state practice and a specialised convention. The position of the Special Court for Sierra Leone is also similar to the ad-hoc tribunals.[19] The requirement of policy/plan is not found in SCSL.[20]Article 2 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity absolves crimes against humanity of any statutory limitation.[21] It also reiterates the non-requirement of domestic laws to prosecute crimes.

The ILC draft code of 1996 explains crimes against humanity as inhumane acts which are of a very grave nature, irrespective of whether it is committed in armed conflict.[22] The jurisprudential evidence placed by the ad-hoc tribunals and the Rome statute is thus different, at least on jurisdictional adjustments to the definition of crimes against humanity.

ROME STATUTE ON CRIMES AGAINST HUMANITY: ICC AND ITS AUTHORITY ON THE CHAPEAU ELEMENTS OF CRIME

Article 7(1) of the Rome Statute of the International Criminal Court has referred to crimes against humanity as widespread or systematic attacks directed against any civilian population with knowledge of the attack.[23] It also added another state or organisational policy element in

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[18] Otto Ohlendorf, Einsatzgruppe D, and the 'Holocaust by Bullets,' THE NATIONAL WWII MUSEUM | NEW ORLEANS (2021), https://www.nationalww2museum.org/war/articles/otto-ohlendorf-holocaust (last visited Nov 13, 2024); William J. Fenrick, *The Crime against Humanity of Persecution in the Jurisprudence of the ICTY*, 32 NETH. YEARB. INT. LAW 81 (2001).

[19] Statute of the International Law Commission - Main Page, https://legal.un.org/avl/ha/scsl/scsl.html (last visited Nov 13, 2024); Home | Residual Special Court for Sierra Leone, RSCSL, https://rscsl.org (last visited Nov 13, 2024).

[20] AFRC Case, Prosecutor v Brima (Alex Tamba) and ors, Appeal judgment, Case no SCSL-2004-16-A, ICL 669 (SCSL 2008), 22nd February 2008, Special Court for Sierra Leone [SCSL]; Appeals Chamber [SCSL], OXFORD PUBLIC INTERNATIONAL LAW, https://opil.ouplaw.com/display/10.1093/law-icl/669scsl08.case.1/law-icl-669scsl08?prd=OPIL (last visited May 4, 2023).

[21] United Nations High Commissioner for Refugees, *Refworld | Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*, REFWORLD, https://www.refworld.org/docid/3ae6b37818.html (last visited May 4, 2023).

[22] United Nations High Commissioner for Refugees, *Refworld | Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993) [Contains Text of the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991]*, REFWORLD, https://www.refworld.org/docid/3ae6af0110.html (last visited May 4, 2023).

[23] Rome Statute of the International Criminal Court, *supra* note 5.

connection to such attacks. The Rome statute has differed from ICTY and ICTR to remain universal and unrelated to any particular issue.

The basis of elements in both tribunals has been accepted considerably in the subsequent statute of the ICC. The discussions of ad hoc tribunals and travaux preparatoires of the Rome statute also discuss the necessary elements of criminality but no hard and fast rule has been agreed upon. A certain degree of discretion is left for the particular tribunals and the court to accommodate different situations that might arise in these inhumane activities. Article 21 of The Vienna Convention on the Law of Treaties, states that compliance should be made firstly on the statute and the elements prescribed in them, and secondly on the treaties and relevant principles of international law. Thus, the customary rules of international law have to be looked into only when the statute is ambiguous.

The state practice and Raison d'être should be studied on the basis of protecting the victims of inhumane crimes. The balance between penetrating the statehood and confronting the governments has been a difficult task in humanitarian law. Thus the diversion of a lot of state accountability can be seen towards the non-state actors in international criminal law. This can be one of the reasons for the introduction of non-state/ organisational policy in the ICC statute elements of the crime. The statute of tribunals does not quantify the gravity of the acts which must be read along the lines of other crimes under crimes against humanity. *Ejusdem generis* is used to identify acts of similar gravity. The ICTY decisions on the gravity threshold of the crimes are taken as a reliable source to follow customary rules by the ECCC supreme court chamber.[24] Based on these practices, the threshold of the crimes has been decided by factors namely,

- Persecutory actions in connection with other crimes,
- Such acts directed towards the violation of fundamental rights,
- Acts with persecutory intent accompanied by the intention to promote such cruelty as well.[25]

[24] "Is the ECCC's supreme court chamber's conception of a common criminal " by Jordan Elizabeth Dinsmore, https://scholarlycommons.law.case.edu/war_crimes_memos/255/ (last visited Nov 13, 2024).
[25] Case 002/01 | Drupal, https://www.eccc.gov.kh/en/case/topic/1295 (last visited May 4, 2023).

Whether crimes against humanity is an established crime under general principles of international law is also unclear. In certain decisions, the ICTY believed that it is part of general principles of international law to the extent that it overrides the retroactivity principle.[26]

The rationale of the tribunals has been largely accepted and followed by subsequent courts resulting in higher consistency in certain practices. In the ARRC case of the Special Court for Sierra Leone (SCSL), the elements for crimes against humanity are as given in the *Krnojelac* judgment.[27] To answer the question of whether these decisions of the tribunals have created possible customary norms, the UN experts have referred to the view of states while accepting the conventions on these crimes.[28] This rationale has been used to argue that *nullum crimen* principle is not violated in international criminal tribunals.

CONTEXTUAL ELEMENTS

Crimes against humanity are not residual crimes. The threefold need for new criminality is to account for the crimes committed by the state against its fellow nationals, crimes on discriminatory grounds within the nations and outside the parameters of war. In the case of The *Prosecutor v. Goran Jelisić*,[29] the trial chamber acquitted him on the grounds of genocide but convicted him of crimes against humanity. Thus genocide and crimes against humanity are distinct in jurisprudence. Genocide requires the crime to be committed against a protected group. Irrespective of the group's size, the requirement must be on unyielding characteristics. The crime should be of a collective nature to be distinct from domestic crimes. These crimes are not isolated. The United Nations War Crimes Commission also noted that crimes against humanity are two broad sets of crimes independent of war and peace crimes.[30] The two categories are murder type and persecution type. Knowledge of the perpetrator is one of the subjective elements in the crime. In the *stakic* case of ICTY, though the tribunal did not find enough proof to determine *dolus specialis* for the crime of

[26] Appeal Judgement in the Celebici case. | International Criminal Tribunal for the former Yugoslavia, https://www.icty.org/en/press/appeal-judgement-celebici-case (last visited May 4, 2023).
[27] United Nations High Commissioner for Refugees, *Refworld | Prosecutor v. Milorad Krnojelac (Trial Judgement)*, REFWORLD, https://www.refworld.org/cases,ICTY,414806c64.html (last visited May 4, 2023).
[28] AFRC Case, Prosecutor v Brima (Alex Tamba) and ors, Appeal judgment, Case no SCSL-2004-16-A, ICL 669 (SCSL 2008), 22nd February 2008, Special Court for Sierra Leone [SCSL]; Appeals Chamber [SCSL], *supra* note 20.
[29] Jelisić (IT-95-10) | International Criminal Tribunal for the former Yugoslavia, https://www.icty.org/en/case/jelisic (last visited May 4, 2023).
[30] United Nations War Crimes Commission - UNARMS, https://search.archives.un.org/united-nations-war-crimes-commission-1950 (last visited May 4, 2023).

genocide, he was convicted on four grounds for crimes against humanity.[31] The trial chamber's decision was followed by the ICC pre-trial chamber in proving intent and knowledge.

- *dolus directus* in the first degree- the perpetrator is aware of his actions and the outcome of such actions will cause the elements of the crime. Includes material intent of the perpetrator.
- *dolus directus* in the second degree- where the perpetrator is aware of the possible outcomes of his actions which comes under the elements of the crime. Includes knowledge of a possible outcome.[32]

SELECTIVITY OF CRIMES

Criminal selectivity sheds light on two important questions: who suffers the wrath of over-criminalisation or under-criminalisation of crimes and, who selects the category of acts to be criminalised? There are acts which are gravely harmful to people and are under-criminalised.[33] The crimes committed in relation to colonisation are one such example. The moral entrepreneurs who decide the crimes often overlook the gravity of crimes perpetuated by states onto the colonies. The illegal occupation and the ancillary issues of threat to life, property and identity in general are often justified by positive law. Similar is the case of rebellions and countermeasures taken by states.[34] The subjugation and plunder happening around the armed conflicts, and war and international conflicts between states raise human rights violations. Apart from implementing the law, other socioeconomic factors contribute to this distortion in crime selectivity. Theories of criminology attempt to explain the reasoning behind such inequality.[35] Human beings owe each other the duties of humanity itself.[36] The widespread aggressions in recent times that affect

[31] Judgement in the Case the Prosecutor v. Dr. Milomir Stakic | International Criminal Tribunal for the former Yugoslavia, https://www.icty.org/en/sid/8212 (last visited May 4, 2023).
[32] Katanga | International Criminal Court, https://www.icc-cpi.int/drc/katanga (last visited May 4, 2023).
[33] VALERIA VEGH WEIS, MARXISM AND CRIMINOLOGY: A HISTORY OF CRIMINAL SELECTIVITY (2017), http://ebookcentral.proquest.com/lib/kcl/detail.action?docID=4819129 (last visited Nov 1, 2024).
[34] Tatjana Grote, *Crimes of Humanity* (2024), https://brill.com/view/journals/icla/24/2/article-p215_005.xml (last visited Oct 29, 2024).
[35] Bonger, Willem: Capitalism and Crime, ENCYCLOPEDIA OF CRIMINOLOGICAL THEORY (2010), https://sk.sagepub.com/reference/criminologicaltheory/n27.xml (last visited Nov 1, 2024).
[36] Michael Seidler, *Pufendorf's Moral and Political Philosophy*, *in* THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., Fall 2021 ed. 2021), https://plato.stanford.edu/archives/fall2021/entries/pufendorf-moral/ (last visited Nov 1, 2024).

civilians demand to be consumed within the residual elements of crime against humanity.[37] Thus, disproportional damage to humans should not be labelled as collateral but instead recognised as a widespread attack against humanity. It is the pressing human rights violations that led to the criminalisation of crimes against humanity.[38] The elements required for the crime are borrowed from the behaviour of humaneness expected from civilisation at different periods from different parts of the world.[39]

SELECTIVITY IN ADHOC TRIBUNALS

The common criticism international criminal law faces is the selectivity in prosecuting crimes. The argument comes from the principle, that some justice is not justice at all. The ad hoc criminal tribunals are ill-equipped to handle the power inequalities of states.[40] Inconsistency in the proceedings and uncodified crimes question the credibility of the tribunals. Crimes against humanity is a genus of crime which encompasses a group of crimes still different from genocide. The tribunal's selectivity in cases has been the standard critique on credibility.[41] Various critiques such as TWAIL, postcolonial, Marxist, and feminist approaches have linked this selectivity with neo-colonialism.[42] The mandate of these tribunals and major disposal of cases without conviction has also been a long pending accusation.[43] The principle of *nullum crimen sine lege* states that a crime must exist under proper law at the time of the commission of such crime. Modern arguments for state sovereignty also question the universality of prosecuting crimes against humanity. Universal jurisdiction has been equally contended against the need to prosecute heinous crimes like crimes against humanity.

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[37] Gregory S. Gordon, *Charging Aggression as a Crime against Humanity? Revisiting the Proposal after Russia's Invasion of Ukraine*, 57 ISR. LAW REV. 213 (2024).
[38] GERAS, *supra* note 7.
[39] FAUSTIN NTOUBANDI, AMNESTY FOR CRIMES AGAINST HUMANITY UNDER INTERNATIONAL LAW (2007), http://ebookcentral.proquest.com/lib/kcl/detail.action?docID=468301 (last visited Oct 30, 2024).
[40] Amparo Martínez Guerra, *Prosecuting International Crimes: Selectivity and the International Criminal Law Regime*, REV. ELECTRÓNICA ESTUD. INT. (2008).
[41] Birju Kotecha, *The International Criminal Court's Selectivity and Procedural Justice*, 18 J. INT. CRIM. JUSTICE 107 (2020).
[42] VEGH WEIS, *supra* note 33.
[43] Asad G. Kiyani, *The Three Dimensions of Selectivity in International Criminal Law*, 15 J. INT. CRIM. JUSTICE 624 (2017); Kotecha, *supra* note 41; Rui Carlo Dissenha & Derek Assenço Creuz, *The International Criminal Court at the Crossroads: Selectivity, Politics and the Prosecution of International Crimes in a Post-Western World*, 21 REV. DIREITO INT. (2024).

CUSTOMARY INTERNATIONAL LAW

It is challenging to identify customary international law from the decisions of the ad-hoc tribunals. In *the Prosecutor v Tadić case*, the trial chamber clarified the position of armed conflict linkage by stating that the requirement only limits the tribunal's jurisdiction and not a substantial part of defining crimes against humanity. In the case of *The Prosecutor v. Kupreskic et al.*, the ICTY chamber believed that genocide is the most detested crime against humanity.[44] This gained more validity when the Rome statute subsequently removed the armed conflict from its definition. If we look into the state practice to find the source and evidence for developing customary norms, it becomes complex again as most of these crimes confront the state governments. The state's failure to protect its nationals required tribunals to take up prosecution in the first place. In the case of *the Prosecutor v. Jean-Paul Akayesu*, though ICTR found him not guilty on the grounds of complicity in genocide and war crimes, he was still convicted for life imprisonment on the grounds of crimes against humanity under Article 3 of the statute.[45] In the case of *Sylvestre Gacumbitsi v. The Prosecutor*, the ICTR rightly held him guilty of crimes against humanity and denied the argument that a widespread policy and its knowledge is a separate element of the crime.[46] The ICTY in The Prosecutor v. Gotovina et al. referred to the Tadic appeal judgment and held that an attack on the civilian population is distinct from armed conflict, and found him guilty of crimes against humanity.[47]

In addition to objective elements in the statutes, subjective elements are also deciding factors in the proceedings. For instance, when it is impractical to quantify the attacks in a place, the magnitude of such crimes is taken into consideration.[48] similarly, while identifying the existence of patterns in killings, the perpetrators' and their allies' course of conduct are considered. According to the ILC report, international criminal law does not have a strong basis in customary

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[44] Kupreskic et al. - Judgement, *supra* note 16; Kupreškić et al. (IT-95-16) | International Criminal Tribunal for the former Yugoslavia, *supra* note 16.

[45] United Nations High Commissioner for Refugees, *Refworld | The Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, REFWORLD, https://www.refworld.org/cases,ICTR,40278fbb4.html (last visited May 4, 2023).

[46] United Nations High Commissioner for Refugees, *Refworld | The Prosecutor v. Sylvestre Gacumbitsi (Trial Judgement)*, REFWORLD, https://www.refworld.org/cases,ICTR,48abd5220.html (last visited May 4, 2023).

[47] United Nations High Commissioner for Refugees, *Refworld | The Prosecutor v. Gotovina et al. (Trial Judgment) - Vol. 2*, REFWORLD, https://www.refworld.org/cases,ICTY,4da835062.html (last visited May 4, 2023).

[48] United Nations High Commissioner for Refugees, *Refworld | Prosecutor v. Blagojevic and Jokic (Trial Judgment)*, REFWORLD, https://www.refworld.org/cases,ICTY,47fdfaf51a.html (last visited May 4, 2023).

international law.[49] However crimes against humanity are not a creation of international tribunals, rather it is the recognition of violations that are already penalised in almost all legal systems.[50] It is a culmination of the sense of conscience, principles of law and human behaviours expected by humankind in general.[51]

CONCLUSION

The chapeau elements of crimes against humanity have not been defined but rather defined inconsistently. What it lacks in stability can be considered advantageous in the flexibility of the elements of crime. If a separate convention had been created right after ICTY, then crimes against humanity would have been connected to an armed conflict. By not doing so, the space for a new element, namely, a systematic attack, found its way into criminality in the ICTR statute. Even after the statute of ICTR, the Rome statute has made changes in its elements of crimes and also clarified that these are only for restricting the jurisdiction of the criminal tribunals and the special courts and not to be considered as a substantial definition of the crime in itself. This is where the selectivity of the crimes also comes into the picture. Though the task of defining crimes against humanity has been left open to the further requirements of the future, the above-mentioned cases of ICTY, ICTR, ICC, SCSL, EEEC, EUHR etc show a bright picture of consistency in the decisions. Since uniform state practice cannot be found for international criminal law on genocide and humanity owing to the confrontation of statehood, domestic laws of the nations can be taken into account to agree upon the gravity and threshold of inhumane crimes that shock the entire humanity. I conclude by stating the need for a specialised convention for crimes against humanity that will provide a universal definition. Such a definition of the elements of crime will act as a departure point for developing customary international law and helping nations incorporate them into their domestic legislation. This will also act not just as a prosecutorial mechanism but a protective mechanism which will act as a collective restraint by the state governments from committing such crimes.

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[49] United Nations, Report of the International Law Commission: Forty-Eighth Session (6 May-26 July 1996) (1996), https://www.un-ilibrary.org/content/books/9789210452526 (last visited May 4, 2023).
[50] Ntoubandi, *supra* note 39.
[51] Forging a convention for crimes against humanity, (Leila Nadya Sadat ed., 2011).

ROLE OF MEDIA AND TECHNOLOGY IN SHAPING PERCEPTIONS OF GENDER

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INTRODUCTION

Media and technology play pivotal roles in modern society, influencing various aspects of human behavior and perception. One significant area of impact is the perception of gender. This article explores how media and technology shape gender perceptions, examining historical contexts, contemporary influences, and the implications of these dynamics. It delves into how traditional media forms, such as television and print, have set foundational gender norms, and how digital media and technology are redefining these perceptions today.

HISTORICAL CONTEXT OF GENDER REPRESENTATION IN MEDIA

Historically, media has played a crucial role in establishing and perpetuating gender roles. In the early 20th century, print media, including newspapers and magazines, often depicted women in domestic roles and men as breadwinners, reinforcing the patriarchal structure of society. Advertisements from this era typically featured women in kitchens, emphasizing their roles as homemakers, while men were shown in professional settings.

Television, which became widely accessible in the mid-20th century, further entrenched these gender stereotypes. Popular TV shows of the 1950s and 1960s, such as "Leave It to Beaver" and "The Donna Reed Show," portrayed women as dutiful housewives and men as the primary earners. These representations were not merely reflections of societal norms but also served to reinforce and normalize these roles.

SHIFT IN GENDER REPRESENTATION: LATE 20TH CENTURY TO EARLY 21ST CENTURY

The late 20th century saw significant shifts in gender representation in media, spurred by the feminist movements of the 1960s and 1970s. Media began to portray women in more diverse roles, reflecting their increasing participation in the workforce and public life. TV shows like "The Mary Tyler Moore Show" and "Murphy Brown" featured independent, career-oriented women, challenging traditional gender roles.

Despite these advances, many media forms continued to perpetuate stereotypes. For instance, action movies often portrayed men as strong, stoic heroes, while women were relegated to secondary roles or depicted as damsels in distress. However, the advent of the internet and digital media has brought new dynamics into play, significantly altering how gender is perceived and represented.

DIGITAL MEDIA AND TECHNOLOGY: NEW FRONTIERS IN GENDER REPRESENTATION

The rise of digital media and technology has profoundly transformed the landscape of gender representation. Social media platforms, streaming services, and online communities offer more diverse and inclusive portrayals of gender, challenging traditional stereotypes and providing a platform for marginalized voices.

SOCIAL MEDIA: AMPLIFYING DIVERSE VOICES

Social media platforms like Twitter, Instagram, and TikTok have democratized content creation, allowing individuals to share their stories and perspectives on a global scale. These platforms have been instrumental in amplifying voices that were previously marginalized in traditional media, including those of women, non-binary, and transgender individuals.

Campaigns such as #MeToo and #BlackLivesMatter have utilized social media to highlight issues of gender and racial inequality, mobilizing global audiences and fostering

greater awareness and advocacy. These movements have also sparked discussions about the intersectionality of gender, race, and other social identities, promoting a more nuanced understanding of gender issues.

STREAMING SERVICES AND ONLINE CONTENT: EXPANDING REPRESENTATION

Streaming services like Netflix, Hulu, and Amazon Prime have significantly expanded the scope of gender representation in media. Unlike traditional television networks, these platforms are not bound by rigid programming schedules or content restrictions, allowing for greater creative freedom and experimentation.

Shows like "Orange Is the New Black," "Pose," and "The Handmaid's Tale" offer complex and diverse portrayals of gender, exploring themes of identity, power, and resistance. These narratives challenge traditional gender norms and provide visibility to underrepresented groups, contributing to a more inclusive media landscape.

IMPACT OF ALGORITHMS AND ARTIFICIAL INTELLIGENCE

While digital media has expanded opportunities for diverse gender representation, it is also influenced by algorithms and artificial intelligence (AI) that shape what content is promoted and consumed. Algorithms on social media platforms and streaming services are designed to maximize user engagement, often prioritizing content that aligns with users' preferences and viewing histories.

This can lead to echo chambers, where users are exposed to content that reinforces their existing beliefs and biases. However, it can also promote content that challenges these biases, depending on how the algorithms are designed and implemented. For instance, recommendation systems that prioritize diverse and inclusive content can help to broaden users' perspectives and foster greater understanding of gender issues.

CHALLENGES AND CRITICISMS

Despite the progress made in gender representation through media and technology, significant challenges remain. One major issue is the persistence of gender stereotypes and biases in digital spaces. Online harassment and abuse, particularly against women and LGBTQ+ individuals, continue to be pervasive problems, undermining the potential of digital media as a tool for empowerment and inclusivity.

Furthermore, the underrepresentation of women and minorities in the tech industry itself poses a barrier to achieving truly diverse and inclusive media. The lack of diversity in tech leadership and content creation can result in products and algorithms that perpetuate existing biases rather than challenging them.

THE ROLE OF POLICY AND REGULATION

Addressing these challenges requires concerted efforts from policymakers, industry leaders, and civil society. Policies and regulations that promote diversity and inclusion in media and technology are crucial for fostering a more equitable landscape. This includes measures to combat online harassment, support for diverse content creators, and initiatives to increase representation of women and minorities in the tech industry.

EDUCATIONAL INITIATIVES AND MEDIA LITERACY

In addition to policy and regulation, educational initiatives play a vital role in shaping perceptions of gender in media and technology. Media literacy programs that teach critical thinking skills and promote an understanding of gender issues can empower individuals to navigate digital media landscapes more effectively.

These programs can help audiences recognize and challenge gender stereotypes and biases in media, fostering a more critical and informed consumption of content. By equipping individuals with the tools to analyze and question media representations, media literacy initiatives can contribute to a more inclusive and equitable society.

CONCLUSION

Media and technology have significant influence in shaping perceptions of gender, with the potential to both reinforce and challenge traditional norms. The evolution from traditional media to digital platforms has opened up new avenues for diverse and inclusive representations of gender, providing a platform for marginalized voices and fostering greater awareness of gender issues. However, significant challenges remain, including the persistence of gender biases and the underrepresentation of women and minorities in the tech industry. Addressing these issues requires a multifaceted approach, involving policy and regulation, industry initiatives, and educational programs.

As media and technology continue to evolve, it is crucial to remain vigilant and proactive in promoting diversity and inclusion. By leveraging the potential of digital media and technology, society can move towards a more equitable and inclusive future, where all individuals have the opportunity to see themselves represented and their voices heard.

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Reproductive Justice for Women with Cognitive Disabilities: A Critical Analysis

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Introduction:

In India, women with cognitive disabilities face numerous challenges due to their gender and impairment, including lack of identity, femininity, sexuality, and companionship. They are often denied the opportunity to become mothers and face obstacles in their lives such as menstrual hygiene training, sex education, marriage and reproduction, contraception, pregnancy planning, prenatal care, breastfeeding instruction, the mother's role, child safety, and permanent sterilization. Women with CDs also face obstacles while exercising their sexual rights, including privacy, bodily integrity, competence, consent, autonomy, and non-discrimination.[1]

The World Health Organization (WHO) defines disability as a multifaceted phenomenon that includes activity constraints, participation limits, and impairments. Young women and teenage girls with physical or mental challenges may find it difficult to access healthcare services, particularly reproductive health care.[2] According to World Health Organization guidelines, people with disabilities have primary unmet sexual and reproductive health needs and should be able to make informed decisions. However, poor health education has hampered progress toward this aim. Gynaecologists struggle to select medications to suppress menstruation in females with significant intellectual impairments. Women with intellectual impairments face double stigma and prejudice, both because of their condition and their gender. Raising awareness of CD women's human rights can help make those rights a reality.[3]

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1 Violation of Sexual and Reproductive Health Rights (SRHR): Where are the Women with Disabilities, Violation of Sexual and Reproductive Health Rights (SRHR): Where are the Women with Disabilities?

[2] Disability and Health Overview, https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html.

3.Promoting sexual and reproductive health for persons withdisabilities,https://www.unfpa.org/sites/default/files/pub-pdf/srh_for_disabilities.pdf.

The rights to sexual orientation and reproduction are essential human rights that are safeguarded by legislation and treaties at national, regional, and global levels. However, discussions around the United Nations Convention on the Rights of Persons with Disabilities (CRPD) demonstrate how sensitive these topics remain. Member states must ensure the full enjoyment of women 's sexual and reproductive wellbeing and human rights, including entrée to safe and legal abortion care and modern contraception.[4]

This article covered numerous issues in puberty and pregnancy, as well as reproductive justice for women with cognitive limitations.

Different Obstacles Cognitively Disabled Women Face during Reproduction:

1. Women with disabilities face barriers to accessing reproductive health care, including inaccessible facilities and resources, unaccommodating physical infrastructure, and inadequate equipment. These barriers can be exacerbated by federal laws shielding the rights of people with disabilities and preventing discrimination. Additionally, accessible transportation, particularly in rural areas, is a significant challenge, as lack of infrastructure and limited public transit systems make it difficult for disabled individuals to access healthcare services.[5]
2. The text emphasizes the need for improved accessibility of health systems, facilities, and services for women with Cognitive Disabilities, including public health education, domestic violence shelters, drug and alcohol intervention programs, home-based care, community outreach, health worker training, and reproductive services.
3. The article addresses sexual education and empowerment for CD sufferers. Before the 1970s, women with CD resided in institutions and received medical care only from physicians. However, the transition from institutionalization to community living has favourably influenced CD's behaviour and quality of life. Currently, most women with CD get primary care in the community, but primary care education may not have kept up

[4] Convention on the Rights of Persons with Disabilities (CRPD), https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd
[5] Barriers in access to healthcare for women with disabilities: a systematic review in qualitative studies, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7847569/.

with this cultural transition. Primary care practitioners should be exposed to women with CD and include it in medical education.

4. Sex education is crucial for individuals with Chronic Disease (CD) as they may lack knowledge about sexuality and health. Successful education includes gender differences, safer sex, basic reproductive physiology, and communication about intimacy and sexuality. It helps women identify and report abuses and is essential for practical planning and decision-making abilities.[6]
5. Women with intellectual disability face challenges in procreation and motherhood rights, often forced to undergo hysterectomy in state-run shelter homes. They struggle with understanding physiological changes, risking sexual exploitation, unplanned pregnancy, and medical termination. Training in menstrual hygiene is also challenging.[7]
6. Women with cognitive impairments often face limited reproductive healthcare access, with Medicaid being a crucial insurance source. They require precise disability information for abortion services, contraceptives, and health insurance.[8]

Capacity to give consent:

1. Capacity to consent refers to an individual's ability to give informed consent for medical procedures. It involves understanding the procedure, its consequences, and the decision-making process. Mental health professionals must assess this capacity through the status, outcome, or functional approaches. The RPwD Act does not explicitly address the capacity to consent, but the MHCA defines it as consent given without force, undue influence, fraud, threat, mistake, or misrepresentation.

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6 The Importance of Access to Comprehensive Sex Education, https://www.aap.org/en/patient-care/adolescent-sexual-health/equitable-access-to-sexual-and-reproductive-health-care-for-all-youth/the-importance-of-access-to-comprehensive-sex-education/.

7 Reproductive rights of women with intellectual disability in India, https://ijme.in/wp-content/uploads/2022/07/Reproductive-rights_53.pdf.

8 Challenges in Providing Reproductive and Gynecologic Care to Women With Intellectual Disabilities: A Review of Existing Literature, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9287117/.

Assessing capacity to consent can result in finding capacity present, capacity doubtful, or capacity absent.[9]

2. The capacity to give consent assessment for women with cognitive disability through psychiatrists who empower them through training to achieve the required level of capacity. The assessment process includes referral documentation, clinical status evaluation, and formal Intelligence Quotient assessment. If a woman with a cognitive disability can consent, a certificate can be prepared, and inpatient care can be considered for further evaluation. Psychiatrists must understand Article 12 of UNCRPD to guarantee equal recognition for persons with disabilities. Supporting the right to reproduction includes appropriate consent for caesarean delivery, breastfeeding training, and new mother roles.
3. Caregivers play a crucial role in education and post-delivery support. CDs may struggle with basic childcare knowledge and inconsistent interactions, making it difficult to provide an age-appropriate environment. Prenatal education is essential for infant care, and post-delivery interventions should focus on more straightforward activities. Positive reinforcement and training in handling crying babies can be helpful for these mothers.[10]
4. Women with intellectual disabilities often struggle with managing menstrual hygiene due to their understanding and mental development. Education should be tailored to the girl's understanding and explain hygiene issues clearly. Support from caregivers and healthcare professionals can be helpful. Therapeutic interventions include DMPA, OCs, GnRH analogues, oral progesterone, and surgical options like implantation, tubal sterilization, and hysterectomy. Hormone replacement therapy may be effective but may have side effects. Education about puberty and menstruation can enhance knowledge, communication, and confidence, improving self-esteem and self-confidence.[11]

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9 Consent in psychiatry - concept, application & implications,https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7055160/.

10 Supporting Caregivers in Pregnancy: A Qualitative Study of Their Activities and Roles,https://journals.sagepub.com/doi/10.1177/2374373518785570.

11 Menstrual issues for women with intellectual disability,https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4917628/.

5. Supporting the right to reproduction among Women with Indigenous Pregnancies (WID) involves consent, breastfeeding training, and new mother responsibilities. Obstetricians may suggest delivery but are not legally responsible for refusals.

Reproductive Justice for Cognitive disabled women:

Women have the right to make decisions about their children, maintain high standards of sexual and reproductive health, and make reproductive decisions without discrimination or violence. They also have the right to equality in reproductive choices, including marriage and sexual and reproductive security. They also have the right to safe and affordable family planning, safe motherhood, and the right to survive pregnancy. These rights should be the foundation for government and community-based policies.

Every individual has the right to control their sexuality and reproduction without discrimination, coercion, or violence, as well as access to a wide range of facilities, services, commodities, and information. These services include contraceptive counselling, education, prenatal care, safe delivery, post-natal care, infertility prevention, safe abortion services, HIV/AIDS prevention, as well as sexual and reproductive health information, education, and counselling**.**[12] A few of the rights discussed as below:

- The UNCRPD lacks a dedicated provision on reproductive rights and marginally addresses it in terms of health and respect for home and family provisions. Article 25 requires States Parties to deliver persons with incapacities with the similar range, value, and standard of free or reasonable healthcare and programs as other persons, including in sexual and reproductive health and population-based public health programmes. The right of persons with disabilities to access reproductive and family planning education and

12 Sexual and reproductive health and rights, https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights.

decide freely and correctly about the number and spacing of children is recognized in Article 23(1)(b), UNCPRD.[13]

- The Special Rapporteur's report on the rights of persons with disabilities on sexual and reproductive health and girls and young women with disabilities outlines reproductive rights, including the right to control sexuality and reproduction decisions without discrimination, coercion, and violence, and access to various health facilities, services, goods, and information..[14]
- Sexual and reproductive health services include contraceptive counselling, information, education, communication, and services; education and services for prenatal care, safe delivery, and post-natal care; the prevention and appropriate treatment of infertility; safe abortion services; the prevention and treatment of sexually transmitted and reproductive tract infections; and sexual and reproductive health information, education, and counselling.[15]
- The UNCRPD does not have a dedicated provision on reproductive rights and marginally addresses it in provisions related to health and respect for home and the family. Article 25 requires States Parties to provide persons with disabilities with the same range, quality, and standard of accessible or affordable health care and programs as other persons, including in sexual and reproductive health and population-based public health programs.[16]
- The Committee on Reproductive and Family Planning (CRPD) has adopted a protectionist and medical view of sexual and reproductive rights, focusing on violence

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[13] Department of Economic and Social Affairs Disability, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-25-health.html.

[14] Forms and Manifestations of SRHR Violations against Women & Girls with Disabilities, https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Facts%20-%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf.

[15] Forms and Manifestations of SRHR Violations against Women & Girls with Disabilities, https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Facts%20-%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf.

[16] Convention on the Rights of Persons with Disabilities, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

and force and restrictive solutions such as sex education and medical information. This view is based on an analysis of 40 concluding observations by the CRPD.[17]

- The Committee on RPD (CRPD) has a protectionist and medical view of sexual and reproductive rights, focusing on violence and force. Based on 40 observations, it has endorsed prejudices equated with disability, failing to acknowledge the experiences of persons with disabilities with different sexual orientations and gender identities.[18]
- Reproductive rights are intertwined with the right to exercise legal capacity and protection from violence, particularly in the context of bearing and raising children. Article 23(1)(c) of the UNCRPD emphasizes that persons with disabilities (PWDs) retain their fertility on an equal basis with others but does not make any reference to forced sterilizations. The Committee on the Rights of Persons with Disabilities observed the pervasive violation of the right to legal capacity of women with psychosocial or intellectual disabilities. Forced contraception and sterilization can result in sexual violence without the significance of pregnancy, especially for women with cognitive or intellectual disabilities, women in psychiatric or other institutions, and women in custody. Section 10(2) of the RPD Act protects PWDs from being subjected to medical procedures leading to infertility without their informed consent. Despite the rampant violation of reproductive rights, the irreversible effects of forced sterilization are not proportionate to the gross violation of bodily integrity and human dignity.[19]
- The MH Act prohibits the sterilization of men or women for mental illness treatment. First, infringement can result in fines of Rs 10,000 or both, and subsequent violations can result in penalties of Rs 50,000 or both. This provision is restrictive as sterilization may be carried out for convenience and non-medicinal reasons.
- The CRPD has been chastised for its narrow focus on health problems and failure to consider the experiences of people with disabilities of every sexuality and gender

17 The Committee on the Rights of Persons with Disabilities and its take on sexuality, https://www.tandfonline.com/doi/full/10.1080/09688080.2017.1332449.

[18] The Committee on the Rights of Persons with Disabilities and its take on sexuality, https://www.researchgate.net/publication/317146920_The_Committee_on_the_Rights_of_Persons_with_Disabilities_and_its_take_on_sexuality.

[19] rights of women with disabilities
Under indian legislations, http://docs.manupatra.in/newsline/articles/Upload/7102F404-0902-4EEC-BA55-F8EFC25DA6D4.pdf.

identity. The RPD Act, in particular, has been attacked for its lack of concern for the rights of people with disabilities and the potential for forced sterilizations and abortions to breach the provision of 'equal protection before the law' as written forth in the MH Act.

- The Mental Health Act (MH Act) does not separately recognize the vulnerability of women with mental illness to violence. Section 20(2)(k) provides the right of a person with mental illness living in a mental health establishment to be protected from all forms of physical, verbal, emotional, and sexual abuse.[20]
- The Indian Supreme Court (SC) has issued a decision on abortion for all women, confirming reproductive rights for women and people of all gender identities. The verdict relies on progressive government efforts to acknowledge Indian women's physical and reproductive autonomy, beginning with the legality of abortions under the MTP Act of 1971. The amendment increased the abortion time restriction from 20 to 24 weeks and included new categories of women eligible for abortions, such as rape survivors and people with disabilities.[21]
- Violations of reproductive rights disproportionately affect women because of their ability to get pregnant, and legal protection of these rights as human rights is crucial to achieving gender justice and women's equality. Many of these same rights are recognized as fundamental rights by the Indian Constitution, including the right to equality and non-discrimination (Articles 14 and 15) and the right to life (Article 21), which is understood through jurisprudence to include the rights to health, dignity, freedom from torture and ill-treatment, and privacy.[22]

Reproductive Rights, Case Study:

Reproductive rights are crucial for human rights, encompassing health, life, equality, non-discrimination, privacy, and information. India's Constitution recognizes these rights as

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[20] Ibid

[21] Equality and individual autonomy in reproductive rights: India shows the way, https://india.unfpa.org/en/news/equality-and-individual-autonomy-reproductive-rights-india-shows-way.

[22] https://www.unwomen.org/en/news-stories/statement/2022/06/statement-reproductive-rights-are-womens-rights-and-human-rights

fundamental rights, and the government has a constitutional obligation to uphold them. India is a signatory to international conventions and has a constitutional obligation to ensure legal remedies for violations of these rights.[23]

In 2017, the Supreme Court of India consistently declared privacy as a fundamental right under the Constitution, recognizing it as an inalienable right rooted in values like dignity. Privacy encompasses personal autonomy related to the body, mind, choices, and informational privacy. Reproductive rights, as recognized by the 1994 UNPIN, are vital to this autonomy. These rights include access to contraception, legal and safe abortion, the right to make decisions about reproduction free of discrimination, coercion, and violence, the right not to be subjected to harmful practices, and equal entitlement of disabled and LGBTQ persons to the same sexual and reproductive health services as all other groups.[24]

The Supreme Court has made significant progress in women's reproductive rights:

The Puttaswamy judgment recognized women's constitutional right to make reproductive choices as part of personal liberty under Article 21 of the Indian Constitution. The Puttaswamy judgment acknowledged the constitutional right of women to make reproductive choices as part of personal liberty under Article 21 of the Indian Constitution. This decision was based on the three-judge bench's position in Suchita Srivastava v Chandigarh Administration (2009). It emphasized reproductive rights as part of a woman's right to privacy, dignity, and bodily integrity, including carrying a pregnancy to its full term. [25]

The Suchita Srivastava case arose in the context of the Medical Termination of Pregnancy Act, 1971 (MTP Act), which governs abortions in India. Enacted two years before the landmark judgment of the US Supreme Court in Roe v Wade (1973), the MTP Act allows for legal abortions only if certain conditions are met. Under Section 3, only registered medical practitioners can terminate a woman's pregnancy if they believe in good faith that continuing the

[23] Reproductive Rights for Women in India, https://www.legalserviceindia.com/legal/article-3372-reproductive-rights-for-women-in-india.html#google_vignette.

[24] A Womb of One's Own: Privacy and Reproductive Rights, https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights.

[25] ibid

pregnancy would involve a risk to the woman's life or gravely injure her physical or mental health or that physical or mental abnormality would seriously handicap the child. If the woman has been pregnant for under 12 weeks, permission from one medical practitioner is required. If the pregnancy is between 12 and 20 weeks, the authorization of two medical practitioners is mandatory. Beyond 20 weeks, Section 5 of the act applies, which permits abortion only in situations where the medical practitioner believes that abortion is immediately necessary to save the woman's life.[26]

The act places these restrictions to balance a woman's right to privacy against the state's legitimate interest in protecting the woman's health, as well as the potentiality of human life. Another commonly-advanced justification is that restricting abortions is necessary to prevent sex-selective abortions. However, the 46-year-old act has met rising opposition over the years for its restrictive nature and failure to keep up with technological advancements in medicine. The privacy judgment significantly strengthens calls for reform, opening further avenues for Sections 3 and 5 to be challenged.[27]

The Independent Thought v. Union of India case highlighted the human rights of girls, regardless of marriage. These judgments have a significant impact on women's sexual and reproductive rights, including the right to safe abortion, which is essential for their right to bodily integrity, life, and equality[28].

Conclusion:

Reproductive justice for women with cognitive disabilities requires a comprehensive analysis that considers the interconnected factors of disability, gender, and reproductive rights. This includes an intersectional perspective, which acknowledges the interplay of disability, gender, race, and socioeconomic status in their experiences. A rights-based approach is essential, emphasizing autonomy, dignity, and self-determination. Women with cognitive disabilities face

[26] ibid
[27] supra
[28] supra

numerous challenges, such as limited access to information, social stigma, and healthcare barriers, which are further complicated by systemic inequalities and ableism.[29]

Intersectional advocacy efforts should adopt an intersectional approach, focusing on diverse individuals' unique needs and experiences. This includes incorporating women's voices in policy-making and advocacy initiatives. Policy and practice initiatives should remove structural barriers and promote inclusive, accessible, and rights-affirming approaches to reproductive healthcare and decision-making. This may involve implementing legal protections, providing comprehensive sexuality education, ensuring access to healthcare services, and fostering supportive environments that respect women's autonomy and agency.

Ethical considerations are crucial in discussions of reproductive justice for women with cognitive disabilities. Upholding principles of dignity, autonomy, and respect for individual choices while recognizing safeguards against exploitation, coercion, and harm is essential. Achieving reproductive justice for women with cognitive disabilities requires a nuanced understanding of their experiences, needs, and rights and a commitment to addressing systemic inequalities.

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29 Reproductive Rights, Reproductive Justice: Redefining Challenges to Create Optimal Health for All Women, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9930478/.

Reservations for Kannadigas in the Private Sector: How will it impact Economic Growth and Employment Opportunities?

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Introduction

The Karnataka State Employment of Local Candidates in the Industries, Factories, and Other Establishments Bill, 2024 has led to a significant debate. This legislation, with the goal of boosting employment for *Kannadigas* (the people of Karnataka), aims to reserve a substantial portion of jobs in the private sector for local residents of Karnataka.

Though the Bill is intended to address unemployment issues among local residents, it raises questions about its potential impact on job creation and the broader economy. Critics argue that strict local hiring requirements could deter investment, limit the availability of skilled talent, and ultimately hinder economic growth. On the other hand, proponents believe that it could enhance job opportunities for locals and stimulate economic activity within the state.

As Karnataka considers this Bill, it is crucial to understand how such policies might influence economic growth and job opportunities so that we can have a balanced approach that benefits both local workers and the state's economy. Now, let's explore the Bill, its major provisions and other details surrounding it and examine its implications on the issues of employment and economic growth.

Public demand for private reservations: The background

Before knowing the Karnataka Private Reservation Bill, it is pertinent to look into the situations that led the State Government of Karnataka to bring a policy which provides reservations for the locals in the private sector.

Sarojini Mahishi report

The committee, led by former Union Minister Sarojini Mahishi, was constituted in 1983 by the then Karnataka State Government.[1] Sarojini Mahishi was the first woman Member of Parliament (MP) from Karnataka, representing the Dharwad North constituency for four terms from 1962 to 1980. She was also elected to the Rajya Sabha as a member of the Janata Party. The committee included notable members like poet Gopalakrishna Adiga, G.K. Satya, K. Prabhakara Reddy, G. Narayana Kumar and retired IAS officers, B.S. Hanuman and Siddaya Puranik. The report by this committee in 1984, named "Sarojini Mahishi Report",[2] provided a recommendation that the Karnataka government reserve a certain percentage of jobs for *Kannadigas* in PSUs (Public Sector Undertakings), private companies and MNCs (Multi-National Companies).

The following are the major recommendations, among 58 recommendations made by the Sarojini Mahishi report –

1. 100% reservation for *Kannadigas* in all public sector units.
2. 100% reservation for *Kannadigas* in Group C and Group D jobs in Central Government departments and PSUs (Public Sector Undertakings) operating in Karnataka state.
3. At least 80% reservation for Group B jobs and 65% for Group A jobs for Kannadigas in Central Government units and PSUs operating in Karnataka.
4. All personnel offices in industrial units in Karnataka should have *Kannadiga* staff.
5. The private industries should prioritize hiring local people.

Public protests to implement Sarojini Mahishi Report

Earlier, before the pandemic, in February 2020, *Karnataka Sanghatanegala Okkuta*, a group of various pro-Kannada organizations, called for a state-wide *bandh* (shutdown).[3] They demanded

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[1] *What is Sarojini Mahishi report? And why Kannadigas call for bandh?*, ONEINDIA (Feb. 13, 2020, 8:55 PM), https://www.oneindia.com/india/what-is-sarojini-mahishi-report-and-why-kannadigas-call-for-bandh-3032263.html
[2] *Karnataka Bandh: What is the Sarojini Mahishi Report*, INDIA TV NEWS (Feb. 12, 2020, 23:56 PM), https://www.indiatvnews.com/news/india/karnataka-bandh-what-is-the-sarojini-mahishi-report-jobs-kannadigas-588336.
[3] *Supra*

the implementation of decades-old recommendations of the Sarojini Mahishi report on job reservation for *Kannadigas* in both the government and the private sectors.

On July 1, 2024, members of Kannada organizations held a protest rally in Belagavi, demanding the quick implementation of the Sarojini Mahishi report of the Kannada Development Authority.[4] Mr. Deepaka Gudaganatti, one of the members of Karnataka *Rakshana Vedika*, demanded that the State Government revoke licenses from companies that do not hire locals and take back the lands given to such industries at reduced prices.[5] He also proposed that people who have lived in the State for over 15 years should be considered *Kannadigas* after passing a Kannada writing test.

Because of such protests and public demands, the District in charge Minister Satish Jarkiholi met with the protestors and promised to discuss the issue with the Chief Minister of Karnataka.[6] He also said that he supports the idea of job quotas for locals but further mentioned that some states have faced legal issues with this. He said they will examine the issue and find a practical solution.

Karnataka Private Reservation Bill

The State Government of Karnataka introduced a bill titled the "Karnataka State Employment of Local Candidates in the Industries, Factories and Other Establishments Bill, 2024" (hereinafter mentioned as "the Bill") with an object to providing reservations for locals in the private sector.[7] As per this statute, in the case of non-managerial jobs, a substantial part, i.e., 70% of the jobs, are reserved for local candidates; while, in the case of managerial jobs, 50% are reserved. This is just a brief of what the Bill provides for. Before forming an opinion on the Bill, let us examine the Bill more and know what is the actual policy behind the Bill and the intention of the state legislation.

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[4] *Kannada activists take out rally seeking implementation of Sarojini Mahishi report*, THE HINDU (July 1, 2024, 08:54 PM), https://www.thehindu.com/news/national/karnataka/kannada-activists-take-out-rally-seeking-implementation-of-sarojini-mahishi-report/article68356037.ece.

[5] *Supra*

[6] *Supra*

[7] Shilpa Elizabeth, *Karnataka Cabinet clears Bill mandating 50% reservation for locals in management jobs and 70% in non-management positions*, THE HINDU (July 18, 2024, 10:16 AM), https://www.thehindu.com/news/national/karnataka/karnataka-cabinet-clears-bill-mandating-50-reservation-for-locals-in-management-jobs-and-70-in-non-management-positions-in-industries-factories-and-other-establishments/article68409256.ece.

Applicability of the Bill

The provisions of the Bill will be applicable to all private industries, factories, companies and other establishments in the Karnataka state. Hence, the entities that are owned and operated by the State and Central Governments are excluded from the application of the said Bill.

The Bill categorizes jobs or positions in those private establishments into the following two main roles:

1. Management roles: These include positions that are supervisory, managerial, technical, operational and administrative.
2. Non-management roles: These cover clerical positions as well as unskilled, semi-skilled, and skilled jobs, particularly in the IT-ITES sector.

Who is a local candidate?

We know that the reservations are provided by the State Government in favour of the local candidates. Now, we should refer to the Act to know exactly what the phrase “local candidate” means. The Act defines a local candidate, who is eligible for the said reservations in the private sector, as someone who qualified the following conditions.

1. The candidate must be born in Karnataka state.
2. He/she must have lived in Karnataka for at least 15 years.
3. He/she could be able to speak, read, and write the Kannada language clearly.
4. He/she has passed a test conducted by the nodal agency.
5. Candidates need to have a secondary school certificate with Kannada as a subject. If they don't, they must pass a Kannada proficiency test set by a nodal agency appointed by the government.

What if there are no adequately qualified local candidates?

After the implementation of the Bill, the private establishments may face a situation where there aren't enough qualified local candidates or the local candidates are not adequately qualified. The

Bill foresaw this situation, where the private sector recruiter raised complaints as to the capabilities of the local candidates, and stated that, in such a situation, the industries and establishments, by collaborating with the government, should train local candidates within three years.

If industries or establishments can't find local candidates in sufficient numbers, they can make an application to the government requesting a relaxation of the provision of the said Bill. The government will take up the matter and, only after due investigation, will make a decision on the issue and such decision shall be final as declared by the Bill.

Nevertheless, the Bill further mandated the reservation percentage of local candidates should not go below 25% in management positions and 50% in non-management positions. Non-compliance with the provisions of the Bill by the private establishments will face fines ranging from ₹10,000 to ₹25,000.

How Karnataka is important for the private players

Before knowing the talk of the stakeholders about the Bill, it is very appropriate to understand the economic dynamics surrounding the state of Karnataka and why it is so important for many private players. Karnataka, with its capital Bangalore, is a cornerstone of India's economic landscape, particularly for the private sector. The state has emerged as a significant player in several key industries, making it a vital area for private sector operations and investments. Understanding the importance of Karnataka for private sector players involves looking at various facets of its economic contributions, and sectoral strengths, which are detailed below.

Tech Sector Hub

Karnataka, and specifically the city of Bangalore, is renowned as the tech capital of India. The state's tech sector contributes approximately 25% of Karnataka's GDP and plays a pivotal role in the country's information technology (IT) and IT-enabled services (ITES) industries.[8] Bangalore is home to numerous global technology giants, including multinational corporations like IBM, Microsoft, and Cisco, as well as a thriving ecosystem of over 11,000 start-ups. This concentration

[8] *Supra*

of technology companies and innovation hubs underscores Karnataka's strategic importance in driving technological advancement and digital transformation.

Global Capability Centres (GCCs)

Karnataka hosts around 15% of the world's Global Capability Centres (GCCs).[9] These centres are critical to the global operations of multinational companies, providing a range of services from software development to business process outsourcing. The presence of these GCCs not only highlights Karnataka's role as a global service provider but also reflects its attractiveness as a destination for foreign direct investment (FDI) and high-value business operations.

Start-Up Ecosystem

Karnataka's start-up ecosystem is one of the most vibrant in India, with Bangalore often referred to as the "Silicon Valley of India." The state has fostered an environment conducive to start-up growth, characterized by supportive infrastructure, access to venture capital, and a network of incubators and accelerators. This dynamic start-up landscape not only drives economic growth but also positions Karnataka as a leader in entrepreneurial ventures and technological innovation.

Stakeholders' concerns

Various companies and groups are worried about the potential impact of the Karnataka Private Reservation Bill, potentially affecting the growth of businesses and the availability of skilled talent. They complained that the Bill raises many questions about balancing local employment requirements with maintaining the state's competitive edge in key industries.

[9] Reshab Shaw, *Karnataka wants to be home to 15% of global GCCs by 2030, eyes 1 million jobs*, MONEYCONTROL (July 15, 2024, 05:35 PM), https://www.moneycontrol.com/technology/karnataka-wants-to-be-home-to-15-of-global-gccs-by-2030-eyes-1-million-jobs-article-12769607.html.

National Association of Software and Service Companies (NASSCOM)

On July 17, 2024, the NASSCOM, the leading lobby group for the tech industry, expressed disappointment and deep concern about the Karnataka State Employment of Local Candidates in the Industries, Factories and Other Establishments Bill, 2024.[10]

NASSCOM stated, "*It's deeply disturbing to see this kind of Bill which will not only hamper the growth of the industry, impact jobs and the global brand for the state. NASSCOM members are seriously concerned about the provisions of this Bill and urge the State Government to withdraw the Bill. The Bill's provisions threaten to reverse this progress, drive away companies, and stifle start-ups*."

NASSCOM warned that local employment laws could force companies to relocate if skilled local talent becomes scarce. And, further emphasized that knowledge-driven businesses go where talent is, as attracting skilled workers is essential for their success. They noted that there is a global shortage of skilled talent, and Karnataka, despite having a large talent pool, is not immune to this issue.

They requested an urgent meeting for industry representatives with State authorities to discuss the concerns and prevent the State's progress from being derailed.

CEO of PhonePe

Sameer Nigam, the CEO and co-founder of PhonePe, has expressed opposition to the Karnataka Bill. In a post on X, Nigam, who has created over 25,000 jobs across India, argued that the Bill is unfair to people like him who have frequently moved and resided in various places due to his father was in the Indian Navy.[11] He further shared that he never lived in any state for more than 15 years and questioned whether his children deserved a private job in their home city under the new Bill. He expressed his disappointment with the situation, calling it "shameful".

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[10] *Nasscom opposes Karnataka's local jobs reservations bill, warns firms might relocate*, THE HINDU (July 17, 2024, 05:14 PM), https://www.thehindu.com/business/Economy/nasscom-opposes-karnatakas-local-jobs-reservations-bill-warns-firms-might-relocate/article68414123.ece.

[11] *"My Kids Don't Deserve Jobs?": PhonePe Founder On Karnataka Quota Bill*, NDTV (July 18, 2024, 01:59 PM), https://www.ndtv.com/india-news/phonepe-ceo-sameer-nigam-slams-karnatakas-job-quota-bill-6130753.

Chairperson of Biocon Ltd.

Kiran Mazumdar-Shaw, Executive Chairperson of Biocon Ltd, expressed concerns about the Karnataka Bill, stating "*As a tech hub, we need skilled talent. While the intention is to boost local employment, we must ensure it doesn't jeopardize Karnataka's leadership in technology. There should be provisions exempting highly skilled roles from this policy*".[12]

Former CFO of Infosys

TV Mohandas Pai, former CFO of Infosys, criticized the Bill, calling it "discriminatory" and "regressive". He stated "*This Bill must be scrapped. It's akin to fascism. How can the government dictate private-sector hiring practices? This move is reminiscent of Orwell's Animal Farm. It's unbelievable that @INCIndia (Indian National Congress) supports such a Bill*".[13]

Timeline of the key events surrounding the Karnataka Private Reservation Bill

Here is a comprehensive timeline highlighting all significant events related to the Karnataka State Employment of Local Candidates in the Industries, Factories, and Other Establishments Bill, 2024, and their relevance to the current context.

- **1980**: R. Gundu Rao becomes Chief Minister of Karnataka. His tenure is marked by controversies, including the Gokak agitation, which arose from his decision to impose Sanskrit as the first language in schools. This decision led to many protests by the people of Karnataka.[14]

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[12] *Explained: The Karnataka Quota Bill And Criticism Surrounding It*, NDTV (July 19, 2024, 01:49 PM), https://www.ndtv.com/india-news/explained-the-karnataka-quota-bill-and-criticism-surrounding-it-6139235.

[13] *Karnataka Reservation: Mohandas Pai calls it discriminatory & regressive, Kiran Mazumdar-Shaw says 'we need skilled talent'*, THE ECONOMIC TIMES NEWS (July, 17, 2024, 01:30 PM), https://economictimes.indiatimes.com/news/bengaluru-news/karnataka-reservation-mohandas-pai-calls-it-discriminatory-regressive-kiran-mazumdar-shaw-says-we-need-skilled-talent/articleshow/111802926.cms?from=mdr.

[14] Shilpa Elizabeth, *From Gokak agitation to 'quota for locals' Bill: A long history of language and quota movements in Karnataka*, THE HINDU (July 23, 2024, 09:00 PM), https://www.thehindu.com/news/cities/bangalore/from-gokak-agitation-to-quota-for-locals-bill-a-long-history-of-language-and-domicile-movements-in-karnataka/article68433521.ece.

- **June 4, 1982**: Chief Minister Gundu Rao holds two meetings regarding the Gokak Committee report, which recommends making Kannada the primary language in schools.

- **1983**: The Janata government, led by Ramakrishna Hegde, comes to power. This government seeks to address various movements, including the *Kannadiga* movement and introduces the Sarojini Mahishi Committee to address employment reservations for locals.

- **1986**: The Sarojini Mahishi Committee submits its report advocating for reservations of public sector jobs for local candidates. It suggests 100% reservation in Group D jobs and 65% in Group C jobs for locals in central public sector units and state public sector units, though the recommendations are never fully implemented.[15]

- **Post-1991**: The liberalization era begins, leading to significant growth in the private sector. The focus shifts from public to private sector investments, with states competing to attract industrial investments. The "quota for local bill" would have been seen as a deterrent to investment.

- **2016**: A revised Mahishi Committee report is submitted during the Siddaramaiah-led government. This report extends the reservations to the private sector, suggesting that C and D group jobs in various industries, including IT-BT and start-ups, should be reserved for locals.

- **December 27, 2023**: Karnataka *Rakshana Vedike* activists rally over Kannada signboard rules, underscoring ongoing local and regional demands related to Kannada language and employment reservations.

- **July 15, 2024**: The Karnataka Cabinet, chaired by Chief Minister Siddaramaiah, clears the Karnataka State Employment of Local Candidates in the Industries, Factories and Other Establishments Bill, 2024. This Bill mandates that industries and establishments appoint local candidates in 50% of management positions and 70% in non-management positions.

[15] Sharath Srivastsa, *Karnataka mulls over 100% reservation for Kannadigas in C and D group jobs in private industries*, THE HINDU (July 14, 2024, 12:13 PM), https://www.thehindu.com/news/national/karnataka/karnataka-mulls-over-100-job-reservation-for-kannadigas-in-c-and-d-group-jobs-in-private-industries/article68286323.ece.

- **July 17, 2024**: The Chief Minister of Karnataka on X posted that "*the draft bill intended to provide reservations for Kannadigas in private sector companies, industries, and enterprises is still in the preparation stage. A comprehensive discussion will be held in the next cabinet meeting to make a final decision*".[16]

- **July 22, 2024**: The State Cabinet defers discussion on the Bill due to backlash from industry leaders and bodies. The draft Bill's introduction in the ongoing monsoon session of the legislature is uncertain. The Congress high command also advises a cautious approach to the Bill. Additionally, a proposal to increase working hours in the IT sector is deferred for further consultations.[17]

This timeline captures the progression of the local employment reservation policy in Karnataka, from its historical roots in the Gokak agitation and Sarojini Mahishi Committee recommendations to the contemporary legislative developments and controversies surrounding the 2024 Karnataka Bill.

Similar policies in other states

Various Indian states, including Andhra Pradesh, Madhya Pradesh, and Jharkhand, have introduced similar policies providing reservations for locals in the private sector. Though these laws share commonalities with the Karnataka State Employment of Local Candidates in the Industries, Factories, and Other Establishments Bill, 2024, we can find differences too. For example, unlike Karnataka's proposed legislation, these laws focus primarily on residency criteria without requiring language proficiency. Here's a detailed comparison:

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[16] Arun Kumar Rao, *Karnataka Government Temporarily Withdraws Controversial Local Job Quota Bill Amid Industry Backlash*, THE FINANCIAL WORLD, https://www.thefinancialworld.com/karnataka-government-temporarily-withdraws-controversial-local-job-quota-bill-amid-industry-backlash/.

[17] *Discussion on Karnataka draft Bill on job reservation for locals deferred*, THE HINDU (July 23, 2024, 10:49 AM), https://www.thehindu.com/news/national/karnataka/discussion-on-karnataka-draft-bill-on-job-reservation-for-locals-deferred/article68434221.ece.

1. The Andhra Pradesh Employment of Local Candidates in the Industries/Factories Act, 2019

- **Provisions:** This statute, which was enacted in August 2019, mandates that 75% of jobs in private industries be reserved for local candidates. The Act broadly defines local candidates as those who have domiciled in the state.[18] The definition of local candidate states that the conditions to be considered as one will be prescribed under the rules. Unlike Karnataka's proposed Bill, the Andhra Pradesh law does not include language proficiency as a criterion.[19]

- **Legal status:** The law has faced legal challenges and is currently being reviewed by the Andhra Pradesh High Court.[20] The primary concern is whether the state can mandate private employers to reserve jobs based on domicile status, which could potentially infringe on constitutional rights such as the right to equality under Article 14[21] of the Constitution and the right to carry on any occupation, trade, or business under Article 19(1)(g).[22]

2. The Haryana State Employment of Local Candidates Bill, 2020

- **Provisions:** In 2020, Haryana enacted a law requiring private companies to reserve 75% of jobs for local candidates earning below a specified threshold.[23] Like the AP law, Haryana's legislation is based solely on residency and does not mandate language proficiency. This law applies to all private sector jobs, with some exceptions in case of inadequacy of skilled candidates.

- **Legal status:** The Punjab and Haryana High Court struck down the law in 2023, ruling that it violated constitutional principles, including the right to equality (Article 14) and the

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[18] Vikas Dhoot and V. Raghavendra, *Localising the labour force through reservations*, THE HINDU (Nov. 10, 2021, 02:49 PM), https://www.thehindu.com/news/national/andhra-pradesh/localising-the-labour-force-through-reservations/article37413859.ece.
[19] The Andhra Pradesh Employment of Local Candidates in the Industries/Factories Act, 2019, No.29, Acts of Andhra Pradesh State Legislative Assembly, 2019 (India).
[20] V. Raghavendra, *HC tells A.P. govt. to file counter on 75% job quota to locals*, THE HINDU (May 6, 2020, 11:30 PM), https://www.thehindu.com/news/national/andhra-pradesh/hc-tells-ap-govt-to-file-counter-on-75-job-quota-to-locals/article31521486.ece.
[21] INDIA CONST. art. 14.
[22] INDIA CONST. art. 19.
[23] *The Haryana State Employment of Local Candidates Bill, 2020*, PRS, https://prsindia.org/bills/states/the-haryana-state-employment-of-local-candidates-bill-2020.

freedom to practice any profession (Article 19(1)(g)).[24] The court highlighted that such laws could potentially lead to artificial walls within the country, hindering the free movement and employment opportunities for citizens across states.

3. The Jharkhand Reservations of Vacancies in Posts and Services (Amendment) Bill, 2023

- **Provisions:** This Bill, passed in 2023, introduced horizontal reservations, including a 5% quota for dependents of Jharkhand *Andolankaris*, i.e., the participants in the state's separate statehood movement, in State Government jobs.[25] The state already has a reservation system in place: 26% for Scheduled Tribes (ST), 10% for Scheduled Castes (SC), 14% for Other Backward Classes (OBC), and 10% for Economically Weaker Sections (EWS). The amendment aims to increase these reservations to 67% for SC, ST, and OBC categories.

- **Implementation status:** The full implementation of the Bill, particularly the increase in reservation quotas, awaits the governor's approval, which was sought by the Chief Minister of Jharkhand, Hemant Soren. The provisions are currently under consideration and there has been no formal legal challenge yet.

Lessons from Past Precedents

From the similar laws in Andhra Pradesh, Haryana, and Jharkhand that provided reservation policies favouring local candidates in the private sector and the legal difficulties those have been facing, we can find many important lessons.

The Andhra Pradesh Employment of Local Candidates in the Industries/Factories Act, 2019, which mandated 75% reservations for locals, has not been fully implemented and is currently under judicial review. The Haryana State Employment of Local Candidates Act, 2020, was struck down by the Punjab and Haryana High Court for violating constitutional rights and creating unfair divisions and inequality among citizens. The Jharkhand Definition of Local Persons Bill, passed

[24] Vikas Vasudeva, *High Court sets aside Haryana law guaranteeing 75% reservation to locals in private sector*, THE HINDU (Nov. 17, 2023, 07:44 PM), https://www.thehindu.com/news/national/other-states/high-court-sets-aside-haryana-law-guaranteeing-75-reservation-to-locals-in-private-sector/article67544320.ece.
[25] *Bill for statehood movement activists' 5% job quota passed*, THE TIMES OF INDIA (Dec. 21, 2023, 08:31 AM), https://timesofindia.indiatimes.com/city/ranchi/jharkhand-reservations-of-vacancies-in-posts-and-services-amendment-bill-2023-passed-5-job-quota-for-statehood-movement-activists/articleshow/106168640.cms.

in 2022, was returned by the Governor due to concerns over its constitutionality, particularly its provision for 100% local reservations in specific job categories.

Following the backlash and concerns of the private players and the advice from the Congress high command, the Karnataka government clarified that the Bill is still in the preparatory stage and will undergo comprehensive discussions. In this regard, it is pertinent for the State Government of Karnataka to look at the above-mentioned past precedents that illustrate the legal challenges such policies can encounter and emphasize the importance of thoughtful and meticulous planning. It is crucial to design these policies in a way that balances the interests of local job seekers with constitutional mandates and broader economic considerations.

Constitutional provisions and judicial precedents

The Karnataka State Employment of Local Candidates in the Industries, Factories, and Other Establishments Bill, 2024, has sparked debates and raised constitutional concerns. Let us look at what constitutional provisions are involved in the present issue and why there are concerns relating to it.

Article 19(1)(g): Right to occupation, trade, or business

The Bill mandates that the private sector entities reserve 50% of managerial positions and 70% of non-managerial positions for local candidates. A 'local candidate' is defined as an individual born in Karnataka, domiciled in the state for at least 15 years, and proficient in Kannada. This includes reading, writing, and speaking the language, with proficiency verified by a nodal agency through a Kannada language test for those who did not study the language in school.

These requirements could infringe on the fundamental right to engage in any occupation, trade, or business as provided under Article 19(1)(g) of the Constitution. The Supreme Court, in the cases of ***T.M.A. Pai Foundation v. State of Karnataka*** **(2002)**[26] and ***P.A. Inamdar v. State of Maharashtra*** **(2005)**,[27] established that private institutions could not be compelled to implement reservations, except based on merit, as it would violate their right to conduct their business

[26] T.M.A. Pai Foundation v. State of Karnataka, A.I.R. 2003 S.C. 355 (India).
[27] P.A. Inamdar v. State of Maharashtra, A.I.R. 2005 S.C. 3226 (India).

autonomously. The court further noted that the Constitutional (Ninety-thrid Amendment), 2006,[28] which permits reservations for certain classes in educational institutions does not extend to private-sector employment. Therefore, the provisions of the Karnataka Bill may overstep constitutional limits by imposing such obligations on private enterprises.

Articles 19(1)(d) and 19(1)(e): Freedom of Movement and Residence

The reservation for locals in the private sector may violate the constitutional rights of both employer and employee under Articles 19(1)(d) and 19(1)(e), which guarantee the freedom to move freely and reside anywhere in India respectively. When Clauses (d), (e) and (g) of Article 19 of the Constitution are read together, it can be understood that, in the case of an employer or recruiter in a private company or an establishment, the employer has the right to employ whoever as per their requirement, capabilities or based on any other considerations and the State cannot restrict such right; And, in case of a potential employee anywhere from the country, the State cannot deny the opportunity to be employed on the grounds of residency requirement, language, region or any other unreasonable and unfair grounds.

By potentially restricting job opportunities for non-residents, the Bill could infringe on the right of individuals to seek employment across state borders, thereby undermining national unity and the principle of equal opportunity.

Article 16: Discrimination in Public Employment

The provisions of the Bill provide certain conditions to be considered as a "local candidate". One of those conditions is that the candidate must be born and resided in Karnataka for a minimum of 15 years. These provisions in the Bill may conflict with Article 16,[29] which ensures equality of opportunity in public employment, especially Article 16(2)[30], which prohibits discrimination based on residence, among other factors. Further, Article 16(3)[31] allows only the Parliament—not state legislatures—to make laws prescribing a residential requirement for public employment. The Supreme Court has consistently held in many cases that the state laws providing preferential

[28] The Constitutional (Ninety-thrid Amendment), 2005, No.93, Acts of Parliament, 2006 (India).
[29] INDIA CONST. art. 16.
[30] INDIA CONST. art. 16, cl. 2.
[31] INDIA CONST. art. 16, cl. 3.

treatment based on residence are unconstitutional. For instance, in ***Kailash Chand Sharma v. State of Rajasthan & Ors.*** **(2002)**,[32] the Supreme Court struck down provisions which made the residence, whether within a state, district, or any other area, as a basis for preferential reservation or treatment. The Karnataka Bill, by stipulating local reservations in the private sector, raises similar issues of potential discrimination based on residence.

The Indira Sawhney Case: Cap on Reservations

The Supreme Court, in the case of ***Indra Sawhney v. Union of India*** **(1992)**,[33] established a ceiling of 50% on reservations in public employment, emphasizing that this cap applies broadly, including any form of affirmative action. This ruling aimed to balance the need for affirmative action with merit-based selection processes. The Karnataka Bill, which proposes significant reservations for local candidates, could potentially exceed this cap, especially when combined with existing reservations and, hence, may thereby invite legal scrutiny.

Arguments in favour of reservations for locals in the private sector

The following are the arguments in favour of reservation policies like the Karnataka State Employment of Local Candidates in the Industries, Factories and Other Establishments Bill, 2024, that provide significant reservations for locals in private industries and other establishments.

Increased Employment for Locals

The Karnataka Bill proposes that 70% of non-managerial and 50% of managerial jobs in private companies in Karnataka be reserved for people living in the area. This would mean more job opportunities for local residents, which could help lower unemployment and make sure local people get a fair chance at work. It also helps reduce reliance on government support and boosts steady economic growth in the region.

Protection of Local Language and Culture

The Bill requires employees to know the Kannada language. This helps to keep the local language and culture alive in the workplace. It ensures that the region's cultural identity is maintained and

[32] Kailash Chand Sharma v. State of Rajasthan & Ors., (2002) 6 S.C.C. 562.
[33] Indra Sawhney v. Union of India, A.I.R. 1993 S.C. 477.

that local traditions are represented. It also helps create a work environment that reflects local values so that it will be more inclusive for everyone.

Economic Development

By hiring locals, the money paid in salaries stays within the local community. This supports the growth of local businesses, improves public services, and helps build better infrastructure. The spending by local workers boosts the local economy, reduces economic disparities, and supports more balanced growth across Karnataka.

Fulfillment of Past Demands

The Bill addresses long-standing requests from Kannada organizations and local groups for better job opportunities. These groups have felt neglected in the past, and the Bill aims to correct this by following the suggestions made in the Sarojini Mahishi Report, which recommended reservations for locals to benefit the community.

Encouragement of Skill Development

With more local job opportunities, educational institutions and training centres might enhance their programs to better prepare students for these jobs. This can improve the skills of local workers and ensure they are ready for the job market, thus, benefiting the community and increasing local talent.

Reduction of Urban Migration

Providing more jobs locally means people won’t need to move to big cities for work. This helps to reduce congestion in cities and lessens the pressure on city services. It also promotes development in rural and semi-urban areas so as to make them more self-sufficient.

Arguments against reservations for locals in the private sector

The following are the arguments in favour of reservation policies like the Karnataka State Employment of Local Candidates in the Industries, Factories and Other Establishments Bill, 2024, that provide significant reservations for locals in private industries and other establishments.

Legal Challenges

The Karnataka Bill, like similar laws in other states, challenges the broader ethos of Indian federalism and the principle of national unity. Such laws can create regional inequalities and undermine the foundational idea that every Indian citizen has the right to live and work anywhere in the country as recognised under Article 19 of the Constitution of India. These measures could lead to a fragmentation of the labour market and create artificial walls between states, as noted by the Punjab and Haryana High Court with regard to the Haryana Bill providing reservations for locals in private establishments. Furthermore, the Constitution of India guarantees equal job opportunities and the freedom to work anywhere. Previous precedents in various states have emphasised these rights, which could make the Bill legally problematic. In this way, the Bill might face legal issues because it could conflict with the constitutional rights of Indian citizens.

Industry Opposition

The Karnataka Bill has also faced strong opposition from the business community. Industry leaders argue that such measures could deter investment, drive companies away, and harm Karnataka's reputation as a hub for technology and innovation. Organizations like NASSCOM have expressed concerns that the Bill would hamper industry growth and negatively impact employment and the state's global standing. This pushback highlights the broader economic and strategic implications of the Bill beyond its legal aspects.

Economic Concerns of Private Players

In today’s global market, an investor in a private industry, company or any other private establishment takes a lot of risk by investing his hard-earned personal money, including his savings, only with an ambition to gain significant profits and returns from such investments. Sometimes, a few investors invest money that was acquired through loans, borrowings, mortgaging assets, etc, which is considered an enormous amount of risk, especially when the financial status of the investor, among other aspects, is considered. These investments in the private sector are often associated with the word “risk” because there is no guarantee that one will receive profits and returns when they invest in something; many investors suffer losses due to many aspects, one among them being the lack of capabilities and low skills of the employees. Besides this, the companies in India should compete within the country and also across the globe because the

monopoly is not allowed in most of the fields in the private sector in India. Because of such vast competition, a few companies still may not survive with the market forces, though they invested a lot of money and effort. On top of that, if a government imposes reservation policies on private recruiters, it would be more risky and, thus, may have a possibility of a reduction in investments in Karnataka. Employers and recruiters in private companies are often very cautious when recruiting employees by testing their talent and deciding who is give a best value for such recruitment. Strict imposition of recruiting policies by the government may result in no investment, which may further lead to more unemployment, that is, the problem will increase in the long run.

Potential Impact on Business Growth

Considering the backlash from the private businessmen on the Karnataka Bill, we predict that private companies might be hesitant to start or expand their operations in Karnataka because of such strict local hiring rules and reservation policies. Because the companies give more importance to the skilled workforce as 'labour' is one of the factors of production and, sometimes, a deciding factor for survival in the market and even profit generation. The strict employment policies can reduce industrial output as companies might struggle to find suitable talent. Thus, these regulations could be seen as too limiting, affecting their ability to find the best candidates and potentially slowing down business growth in the region.

Possible Decline in Work Quality

If the local workforce doesn't have the necessary skills for certain jobs, it could lead to lower quality work and reduced productivity for companies. This is especially critical for specialized positions where high skills and talent are very essential requirements. Hence, it might affect their operations and competitiveness if unskilled local workers for technical roles are hired.

Risk of Economic Fragmentation

According to general economic principles and various industry analyses, restrictive labour policies can have a negative impact on foreign direct investment (FDI), as businesses may prefer to invest in regions with more flexible employment laws. This can be a critical factor for companies looking to optimize operational efficiency and reduce costs.

Reserving a significant portion of the private jobs for locals might drive companies to relocate their operations to states with less restrictive hiring rules so that they will be saved from the compromise of hiring an unskilled workforce, who are not so potential and meet the expectations of the recruiters of the private establishments. This could lead to less investment in Karnataka and might increase economic differences between regions.

Challenges in Implementation

From the views of various stakeholders, it was understood that a significant proportion of businessmen and private players have expressed concerns about the administrative challenges and complexities involved in implementing new labour and employment policies. These concerns often revolve around the potential increase in operational costs and the difficulty in ensuring compliance with the new regulations. Because the companies might find it difficult to verify residency and language skills for job candidates, leading to potential disputes and added complexity. This could increase the burden on both businesses and regulatory authorities.

Effects on Workplace Morale and Diversity

Private job reservations for locals might affect feelings of fairness and diversity among employees. A study by McKinsey & Company[34] found that diverse teams are 35% more likely to have better financial returns, suggesting that diversity can significantly enhance business performance.

If jobs are given based on residency and language skills rather than qualifications, it could lead to perceptions of unfairness among non-local candidates. It might also limit the diversity of ideas and creativity that come from a more varied team.

Unemployment: The actual issue

The Bill providing reservations for locals in the private sector was introduced mainly due to the previous public demands and protests. The public was concerned with unemployment and, hence, demanded the government to provide reservations to them in the private sector. So, the main issue

[34] *Why diversity matters*, MCKINSEY & COMPANY (July 1, 2015), https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/why-diversity-matters.

here is the unemployment among Kannadigas (the people of Karnataka), especially the youth in Karnataka.

Not just Karnataka, but even India faces a significant unemployment challenge, primarily due to the mismatch between the skills of its workforce and the demands of the job market. As per a study conducted by the Ministry of Skill Development and Entrepreneurship, currently, only about 2.3% of India's workforce has received formal skill training, compared to 68% in the UK and 96% in South Korea.[35] This skills gap exacerbates unemployment, as many educated individuals lack the practical abilities required by employers. The country's demographic advantage, with over 54% of its population under 25 years of age, offers a potential economic boost. However, this advantage will be fleeting unless there is a substantial increase in skill development initiatives.

We found out what is the issue, i.e., unemployment among the people of Karnataka. Now, the question at hand is what is the solution to the issue of unemployment? Many experts say that one of the effective and practical solutions, possibly a permanent solution, to this issue, is to invest in education and skill development by the State Government so as to significantly uplift the employability of youth and the existing workforce.

The other possible solution is to create jobs in both public and private sectors by encouraging investments from private players. Bangalore is one of the metropolitan cities in India that receives huge investments, which will not only generate jobs but also capital for the government. Nevertheless, the reservation provisions in recruiting policies as required by the Karnataka Bill might hamper investments in Karnataka and, thus, even might reduce employment rate further.

Way forward

As the Karnataka State Employment of Local Candidates in the Industries, Factories and Other Establishments Bill, 2024, advances through its legislative process, several critical steps and considerations are essential to ensure a balanced and effective implementation. The path forward involves addressing both the practical challenges and the legal and economic implications of the Bill.

[35] National Skill Development Scheme, Ministry of Skill Development and Entrepreneurship, https://www.msde.gov.in/sites/default/files/2019-09/National%20Skill%20Development%20Mission.pdf.

1. Job creation

Karnataka, one of India's most dynamic states, can significantly remove unemployment through strategic job creation initiatives by the government. By growing its technology, manufacturing, and service sectors, the state can create a wide range of jobs. Encouraging investments and supporting new businesses will also help boost the economy and generate new jobs. Setting up innovation centres and business incubators will also help create jobs in new and exciting industries. Additionally, improving infrastructure and making it easier for businesses to operate will attract more companies to the state, leading to more job opportunities for its local employees.

2. Capacity Building and Skill Development

Data from the Ministry of Skill Development and Entrepreneurship reveals that the "*Large sections of the educated workforce have little or no job skills, making them largely unemployable*."[36]

To ensure that the youth *Kannadigas* are highly skilled and employed, the reservations though can provide immediate relief for the employment, they are not the sole solution for boosting local employment. A multi-faceted approach can create more robust employment opportunities for *Kannadigas*. The State Government of Karnataka can adopt the following measures and focus more on the same in your budget allocations and policy formulations.

- **Vocational Training Programs**: Expanding vocational education and training programs to align with industry needs can better prepare the local workforce for available job opportunities. Collaboration between educational institutions and industries can ensure that training programs are relevant and effective.

- **Entrepreneurship Support**: Encouraging entrepreneurship through support programs, funding, and mentorship can stimulate job creation. The National Small Industries Corporation (NSIC) reports that small and medium enterprises (SMEs) contribute to 45% of India's employment, highlighting the potential of entrepreneurship in generating jobs.

- **Infrastructure Development**: Investing in infrastructure projects can create numerous jobs across various sectors, including construction, maintenance, and management. The

[36] *Supra*

Economic Survey 2023 indicates that infrastructure projects could create an estimated 8 million direct and indirect jobs over the next decade.

- **Sector-Specific Initiatives**: Targeted initiatives in key sectors such as technology, healthcare, and manufacturing can drive job creation. For instance, the IT sector alone contributed to over 4.5 million jobs in India in 2022, as reported by NASSCOM.

3. Stakeholder Engagement and Dialogue

To foster a constructive dialogue and mitigate concerns, it is imperative for the Karnataka government to engage with a diverse range of stakeholders, including business leaders, industry associations, local communities, and legal experts. These discussions should aim to:

- **Address Industry Concerns**: Understanding and addressing the apprehensions of businesses, particularly regarding the potential impact on investment, competitiveness, and operational efficiency. This may involve providing clarifications or adjustments to the Bill to accommodate industry needs while still meeting the objectives of local employment.
- **Public Consultation**: Conducting public consultations to gather input from local communities and affected individuals. This can help in refining the criteria for "local candidates" and ensure that the Bill is equitable and addresses the genuine needs of the local workforce.

4. Legislative Revisions and Legal Review

Given the legal challenges that similar policies have faced, it is crucial to:

- **Review Constitutional Compatibility**: The Bill should be reviewed for its compliance with constitutional provisions, particularly concerning Article 19(1)(g) and Article 16. Engaging with legal experts to conduct a thorough review can help in making necessary amendments to avoid potential legal challenges.
- **Consultation with Legal Experts**: Seeking advice from constitutional and employment law experts to ensure that the Bill's provisions are legally sound and align with judicial precedents.

Conclusion

The Karnataka State Employment of Local Candidates in the Industries, Factories, and Other Establishments Bill, 2024 aims to address unemployment issues among the people of Karnataka and satisfy the public demands. Nevertheless, a larger and long-term strategy such as enhancing education and skill development is said to be a permanent and practical solution to the issue of unemployment in Karnataka. With only less than 3% of India's workforce receiving formal vocational training compared to 70% and more in developed countries, and 56% of Indian youth lacking job-relevant skills, there is a clear need for comprehensive upskilling initiatives by both central and state governments.

To effectively increase employment opportunities for *Kannadigas*, the State Government of Karnataka needs to complement legislative efforts with robust vocational training programs, support for entrepreneurship, and investment in growth sectors such as technology and healthcare. These approaches can create sustainable job opportunities without solely relying on reservations, thus, fostering long-term economic development and improving workforce readiness in Karnataka.